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Numerous Opportunities for Aggressive Trust and Estate Planning Strategies Available in 2012

by Ira Herman, CPA

The start of the new year marked the half-way point in the two-year period during which the Bush-era tax cuts are extended and significant gift and estate planning opportunities are available. Because of this, we believe individuals should consider aggressively planning or readdressing various trust and estate issues before the end of 2012.

Increased Exclusions: Estate tax exclusion amounts are $5,120,000 per individual and $10,240,000 per married couple for 2012, and the top tax rate for estates in excess of the exclusion amount is 35 percent. Also, since the gift tax has been reunified with the estate tax, an individual's exclusion may be used for gifts during life or for assets passing upon death. Lifetime gifts over the exclusion threshold will be taxed at 35 percent. Further, there is still a $5,120,000 million generation-skipping tax exemption for 2012.

As of January 1, 2013, the gift tax and estate exclusion is scheduled to return to $1 million with a tax rate of 55 percent. This means an effective $4 million reduction on the opportunity to transfer wealth on a tax-free basis.

Portability: New portability rules allow a surviving spouse's estate to use any unused Federal estate and gift tax exemption. For example, if a husband dies survived by his wife and his estate only needed to use $3.5 million of his exemption, his wife can combine the unused portion of $1.5 million with her $5 million exemption, thereby passing an additional $6.5 million estate tax free. (It is important to note that a timely election must be filed upon death of the first spouse.)

Other Key Points to Consider

- **Every will, revocable trust, and power of attorney should be reviewed** for formula clauses and percentage allocations, among other things that may no longer work as expected.
- **State transfer taxes must be carefully considered** as they have a significant impact on costs and payments.
- **Portability should be considered in prenuptial agreements.** Many prenuptial agreements include formula clauses that were never addressed in 2009 or early 2010 to deal with repeal. These too should be reviewed to ascertain whether the $5,120,000 exclusion undermines their intent.
- Should you **continue rolling Grantor Retained Annuity Trusts** or just make outright gifts?
- Can you **eliminate or lessen guarantees on trust obligations** by adding additional gifts to the trust using the new $5,120,000 exclusion?
- What role should **discounted gifts** play in your estate planning strategy?

- Is it worthwhile to **freeze assets now** to remove future appreciation from an estate?
- There can be a great benefit to **setting up a lifetime spousal bypass trust** or a lifetime Qualified Terminable Interest Property Trust.
- Is it time to **gift higher cash value policies** to an irrevocable life insurance trust, something that could not have been done in the past due to the lower gift tax exemption?

The extensions of the Bush-era tax cuts and the current exclusion amounts may not last forever, but present an ideal opportunity to work with your J.H. Cohn advisor to ensure that your estate is set up to maximize the current opportunities. ■

Ira Herman, CPA, is a J.H. Cohn partner and director of the Firm's Trust and Estate Practice. He can be reached at iherman@jhcohn.com or 973-618-6245

A Five-Step Life Insurance Analysis

by Laurence F. Ziff

Although most individuals probably review their financial goals and investments on a regular basis, far fewer examine their life insurance coverage to determine if it is still meeting their needs. A thorough review of your life insurance should be conducted annually, and as you work on tax planning paperwork this time of year, now may be an ideal time to take a fresh look. (Life insurance should also be reviewed after a major life event, such as marriage, birth of a child, retirement, career change, or the launch of a new business venture.)

To be certain your time is well spent, follow these steps for a life insurance analysis:

1. **Find an agent who will provide thorough service.** It is no secret that agents make the bulk of their commission when you initially buy insurance coverage. However, this should not prevent the agent from providing outstanding service throughout the life of the policy. Insist that you discuss any changes in your personal or financial situation and review changes in the insurance industry. If the agent doesn't sit down with you, find an insurance professional who will.

2. **Review the nuts and bolts of your current coverage.** An "in-force" illustration is available from your life insurance carrier. This illustration will show exactly how the policy has performed up until now, and can project future costs and cash values based on current assumptions. Universal life policies, a type of permanent life insurance, include both guaranteed values and values based on current assumptions. These assumptions can change since they are based on mortality charges, interest rates, carrier experience, carrier expenses, and on the carrier's investment portfolio performance. In-force ledgers with "reasonable" future assumptions should be retrieved and reviewed during the evaluation process.

3. **Assess the need behind the life insurance.** Does the need for which you bought the coverage still exist? Life insurance is not about dying. It is about dying at the wrong time, when you are still an integral part of your business or when your kids are still in college. Life insurance can outlive these risks. A policy review can also uncover new risks that require protection and determine the appropriate amount of coverage.

4. **Be informed about any changes to the life insurance industry.** Life insurance companies and policies have changed drastically in the last 20 years. Mortality tables have changed, secondary death benefit guarantees have emerged, and mutual companies have demutualized. In other words, the environment has evolved and there may be a product that outperforms your existing coverage or provides a benefit that was not available before. Work with your agent to get an update on the industry overall—not just your carrier. Also, in today's market, be sure to understand the viability of the insurance company.

5. **Evaluate the fair market value of your policy.** The cash value of your policy is not the only way to assess what your policy is worth. Capital sources all over the world are purchasing existing policies from policyholders for more than the cash value of the policy—this process is called a life settlement. Over 50 percent of the time, the insured sells his existing coverage and takes the proceeds to buy new life insurance, saving thousands of dollars in premium. Just as you would update your computer when the latest technology becomes available, we recommend that you follow the same reasoning with your life insurance policies. Like new technology, a new life insurance policy can be better suited for today's environment and your current needs.

Laurence F. Ziff, a J.H. Cohn principal, is president and director of Insurance Services at Cohn Wealth Management, a J.H. Cohn affiliated company. He can be reached at lziff@jhcohn.com or 973-618-6276.

CALIFORNIA

Los Angeles
11755 Wilshire Boulevard
17th Floor
Los Angeles, CA 90025
310-477-3722

San Diego
9255 Towne Centre Drive
Suite 250
San Diego, CA 92121
858-535-2000

Warner Center
21700 Oxnard Street
7th Floor
Woodland Hills, CA 91367
818-205-2600

CAYMAN ISLANDS

P.O. Box 1748 GT
27 Hospital Road
George Town, Grand Cayman
877-704-3500 x7839

CONNECTICUT

Farmington
76 Batterson Park Road
Farmington, CT 06032
860-678-6000

Glastonbury
180 Glastonbury Blvd.
Glastonbury, CT 06033
860-633-3000

New London
125 Eugene O'Neill Drive
Suite 120
New London, CT 06320
860-442-4373

Stamford
1177 Summer Street
Stamford, CT 06905
203-399-1900

MASSACHUSETTS

Springfield
One Monarch Place
Suite 2020
Springfield, MA 01144
413-233-2300

NEW JERSEY

Roseland
4 Becker Farm Road
Roseland, NJ 07068
973-228-3500

Eatontown
27 Christopher Way
Eatontown, NJ 07724
732-578-0700

Metro Park
333 Thornall Street
Edison, NJ 08837
732-549-0700

Princeton
103 Carnegie Center
Suite 311
Princeton, NJ 08540
609-896-1221

NEW YORK

Manhattan
1212 Avenue of the Americas
New York, NY 10036
212-297-0400

Long Island
100 Jericho Quadrangle
Suite 223
Jericho, NY 11753
516-482-4200

White Plains
1311 Mamaroneck Avenue
White Plains, NY 10605
914-684-2700

J.H. COHN LLP
ACCOUNTANTS & CONSULTANTS

877-704-3500
www.jhcohn.com