INSIGHT ON ESTATE PLANNING

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YEAR END 2017

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When should you turn down an inheritance?

"Thanks, but no thanks." If you expect to receive an inheritance from a family member, such as a parent or other loved one, you might choose to use a qualified disclaimer to refuse the bequest. As a result, the assets will bypass your estate and go directly to the next beneficiary in line. It's as if the successor beneficiary, not you, had been named as the beneficiary in the first place.

Why would you ever look this proverbial gift horse in the mouth? Frequently, using a legally valid disclaimer (see "5 legal requirements for qualified disclaimers" on page 3) will save gift and estate taxes, while redirecting funds to where they ultimately would have gone anyway. This estate planning tool is designed to benefit the entire family. Be aware that a disclaimer doesn't have to be an "all or nothing" decision. It's possible to disclaim only certain assets, or only a portion of a particular asset, which would otherwise be received.

Reasons for using a disclaimer

Federal estate tax laws are fairly rigid, but a qualified disclaimer offers some unique flexibility to a forward-thinking beneficiary. Consider these possible reasons from an estate planning perspective:

Gift and estate tax savings. This is often cited as the main incentive for using a qualified disclaimer. For starters, the unlimited marital deduction shelters all transfers between spouses from gift and estate tax. In addition, transfers to nonspouse beneficiaries, such as your children and grandchildren, may be covered by the gift and estate tax exemption.

Currently, the exemption can shelter a generous $5.49 million in assets for 2017. By maximizing portability of any unused exemption amount, a married couple can effectively pass up to $10.98 million in 2017 to their heirs free of gift and estate taxes.

However, despite these lofty amounts, wealthier individuals, including those who aren't married and can't benefit from the unlimited marital deduction or portability, still might have estate tax liability concerns. By using a disclaimer, the exemption won't be further eroded by the inherited amount. Assuming you don't need the money, shifting the funds to the younger generation without it ever touching your hands — as well bypassing your taxable estate — can save gift and estate tax for the family as a whole.

5 legal requirements for qualified disclaimers

To be legally valid as a qualified disclaimer, the following five requirements must be met:

1. The disclaimer is made in writing and signed by the disclaiming party.
2. The disclaimer must be irrevocable and unqualified.
3. The disclaimant (that is, the person disclaiming) must not accept the interest or any of its benefits.
4. The disclaimer is delivered to the person or entity charged with the obligation of transferring the assets no more than nine months after the date the property was transferred or nine months after a disclaimant who is a minor reaches age 21.
5. The interest must pass to a person other than the disclaimant without any direction by the disclaimant. Bear in mind that the spouse of the deceased is specifically authorized to be the person receiving the property by virtue of a disclaimer.

Generation-skipping transfer (GST) tax. Disclaimers may also be useful in planning for the GST tax. This tax applies to most transfers that skip a generation, such as bequests and gifts from a grandparent to a grandchild or comparable transfers through trusts. Like the gift and estate tax exemption, the GST tax exemption is $5.49 million for 2017.

If GST tax liability is a concern, you may wish to disclaim an inheritance. For instance, if you disclaim a parent's assets, the parent's exemption can shelter the transfer from the GST tax when the inheritance goes directly to your children. The GST tax exemption for your own assets won't be affected.

Family businesses. A disclaimer may also be used as a means for passing a family-owned business to the younger generation. By disclaiming an interest in the business, you can position stock ownership to your family's benefit.

Creditor protection. Any inheritance you receive would immediately be subject to claims of creditors. It might be possible to avoid dire results by using a disclaimer to protect these assets. However, be aware that state laws and federal bankruptcy laws may defeat or hinder this goal. Consult with your estate planning advisor about your specific situation.

Charitable deductions. In some cases, a charitable contribution may be structured to provide a life estate, with the remainder going to a charitable organization. Without the benefit of a charitable remainder trust, an estate won't qualify for a charitable deduction in this instance, but using a disclaimer can provide a deduction because the assets will pass directly to the charity.

Look before you leap

Before you "give away the farm," make sure that you're standing on firm legal ground and that using a disclaimer is the best approach. Find out about the applicable laws, especially if you're relying on a disclaimer for creditor protection. Be careful to meet any deadlines imposed under federal and state laws. And be aware that multiple disclaimers may be required if you're not the only beneficiary.

Finally, be absolutely certain about the next beneficiaries in line. Once you've checked all the boxes, your estate planning advisor can provide the necessary assistance. •

Addressing intellectual property requires careful estate planning

Intellectual property (IP), such as copyrights and patents, can hold enormous value. Whether IP rights are a significant source of wealth or only a small fraction of your estate, it's critical that you properly address them in your estate plan. These intangible assets behave differently from other types of property, so careful planning is required to be sure their value is preserved for your family.

Understanding IP

IP generally falls into one of four categories: patents, copyrights, trademarks and trade secrets. Let's focus on only patents and copyrights, creatures of federal law intended to promote scientific and creative endeavors by providing inventors and artists with exclusive rights to benefit economically from their work for a certain period.

In a nutshell, patents protect inventions. The two most common are utility and design patents:

1. A utility patent may be granted to someone who "invents or discovers any new and useful process, machine, manufacture or composition of matter, or any new useful improvement thereof."

2. A design patent is available for a "new, original and ornamental design for an article of manufacture." To obtain patent protection, inventions must be novel, "nonobvious" and useful.

Under current law, utility patents protect an invention for 20 years from the patent *application filing* date. Design patents last 15 years from the patent *issue* date. For utility patents, it typically takes at least a year to a year and a half from the date of filing to the date of issue.

When it comes to copyrights, they protect the *original* expression of ideas that are fixed in a "tangible medium of expression," typically in the form of written works, music, paintings, sculptures, photographs, sound recordings, films, computer software, architectural works and other creations. Unlike patents, which must be approved by the U.S. Patent and Trademark Office, copyright protection kicks in as soon as a work is fixed in a tangible medium.

For works created in 1978 and later, an author-owned copyright lasts for the author's lifetime plus 70 years. A "work-for-hire" copyright expires 95 years after the first publication date or 120 years after the date the work is created, whichever is earlier. More complex rules apply to works created before 1978.

Estate planning considerations

For estate planning purposes, IP raises two important questions:

1. What's the IP worth?
2. How should it be transferred?

Valuing IP is a complex process. So it's best to obtain an appraisal from a professional with experience valuing this commodity.

After you know the IP's value, it's time to decide whether to transfer the IP to family members, colleagues, charities or others through lifetime gifts or through bequests after your death. The gift and estate tax consequences will affect your decision. But you also should consider your income needs, as well as who's in the best position to monitor your IP rights and take advantage of their benefits.

If you'll continue to depend on the IP for your livelihood, for example, hold on to it at least until you're ready to retire or you no longer need the income. You also might want to retain ownership of the IP if you feel that your children or other transferees lack the desire or wherewithal to take advantage of its economic potential and monitor and protect it against infringers.

Whichever strategy you choose, it's important to plan the transaction carefully to ensure your objectives are achieved. There's a common misconception that, when you transfer ownership of the tangible medium on which IP is recorded, you also transfer the IP rights. But IP rights are separate from the work itself and are retained by the creator — even if the work is sold or given away.

Work with a professional

Having your assets distributed according to your wishes after your death is a primary reason for having an estate plan. And whether artistic or scientific endeavors are the source of your wealth, or simply meaningful diversions, it's likely that you care deeply about who ultimately possesses your works and enjoys their benefits. Contact your estate planning advisor to help ensure your IP is correctly accounted for in your plan. •

Year end is an ideal time to review your estate plan

As of this writing, it's still anybody's guess as to whether Congress will enact major tax reform legislation affecting federal gift and estate taxes. This situation casts a large shadow over estate planning at the end of 2017 and how to proceed for 2018.

Nevertheless, it's advisable to review your current plan at this time of year and pinpoint specific areas that should be addressed, regardless of the prospects for tax reform. Where should you look? Let's consider four points of interest.

1. Where there's a will, there's a way. A will is the primary legal document for determining how your assets will be distributed and what would happen to your minor children on your death. But you can't just place your will in a firesafe box and forget about it: Review and update it regularly to reflect changes in your personal circumstances as well as other events.

For instance, you might add to or subtract from the list of beneficiaries, possibly because of births of children and grandchildren and marriages or divorces of family members. Furthermore, you may want to replace the executor you initially named in your will with another choice, perhaps a professional instead of a family member. And your will may need to be amended if and when significant tax reforms are passed.

2. Trust in a living trust. Like a will, a living trust provides for distributions of assets to named beneficiaries. Unlike a will, however, a living trust avoids the probate process — which can be lengthy and expensive in some states — and is shielded from public inspection. For these reasons, a living trust is often used to complement a will, with select assets being transferred to the trust.

Similar to a will, changes in your circumstances may dictate revisions to a living trust. Typically, after reviewing this document, you may decide on a reallocation of assets. The trust may also be affected by sales or acquisitions of property. In addition, you may want to change the guardians of minor children in a pour-over will. Generally, the trustee will have substantial discretion in financial matters, so make sure you are comfortable with the current designation.

3. Find the power. When the unexpected occurs — such as a lengthy illness or a disabling injury — a power of attorney can come in handy. This legal document authorizes a designated agent to act on your behalf. A "durable" power of attorney continues in the event of an illness or injury.

A power of attorney can be especially beneficial if you are planning to buy or sell assets, undergo major surgery or embark on an extended trip. As with the executor of your estate and the trustee of a living trust, you might switch to another agent after a year-end review.

4. Address end-of-life situations. A living will, not to be confused with a regular will, can provide guidance to loved ones concerning difficult life-sustaining decisions. With a living will, you decide ahead of time about use of life support, medication, tube feeding and artificial hydration in the event you become terminally ill or can no longer speak for yourself. Also, by using a health care power of attorney, you may authorize someone to ensure that your wishes are met.

Although living wills are often associated with the elderly, unexpected health events can happen at any age. That's why it's important to create this document if you haven't done so already. During your annual review, you may update your living will to reflect any significant changes in your health condition or upcoming surgeries.

Invariably, everyday life will provide plenty of twists and turns. It's important to adapt your estate plan to reflect the events that are both within and beyond your control. As one year draws to an end and a new one beckons, review these four legal documents and then act accordingly. •

ESTATE PLANNING PITFALL

You're retiring to a foreign country

Do you have dreams of spending your retirement abroad in a tropical paradise or cultural mecca? Before you pull up stakes, be aware that your golden years may be tarnished if you don't look into all potential estate tax and income tax implications first. Typically, you might encounter problems in the following three areas:

1. Double taxation. If you remain a U.S. citizen, you're still subject to the tax clutches of the United States — plus maybe taxes from your individual state — in addition to your new jurisdiction. In some cases, you can claim a credit against U.S. tax liability for taxes paid to a foreign country, but this tax break isn't always available.

One option for avoiding U.S. taxes is to relinquish your citizenship. But this strategy raises a host of other legal and tax issues, including potential liability for a one-time "expatriation tax."

2. Real estate issues. If you intend to buy a home on foreign soil, you may be deterred by certain restrictions. For instance, some countries

bar foreigners from owning property along a coast or within other specified boundaries. It may be possible to overcome these hurdles by using a corporation or trust to hold property, but this can result in other tax complications for U.S. citizens.

3. Inheritances. Don't assume that the estate and inheritance tax laws in foreign countries are comparable to the laws of our land. In certain countries, for example, a child may have a higher priority for an inheritance than a spouse, regardless of the terms of your will. This could create an estate planning calamity.

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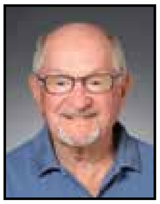

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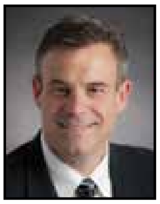

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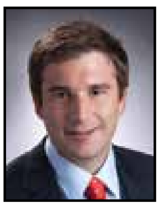

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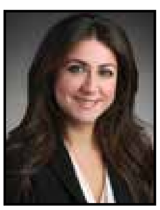

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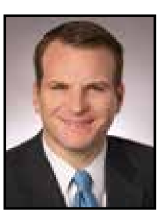

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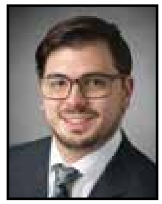

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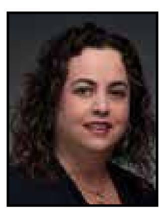

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