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Estate Planning for Gift Planners



Date: July 25, 2013
 Time: 1:00 – 2:30 Eastern Time
 Presenter: Jeff Lydenberg
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Estate Planning Objectives

- Orderly disposition of assets
- Provide for spouse's care and support
- Provide for children or other heirs
- Minimize income, estate, and gift taxes
- Provide for charity


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Transfer Tax History

- Estate taxes
 - 1797 rebuild Navy, repealed 1801
 - 1862, Civil War, repealed 1870
 - 1898, Spanish-American War, repealed 1902
 - America's fourth estate tax, First World War 1916
- Gift taxes 1924 and 1932


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1976 Tax Act

- Unified gift and estate taxes
- Remained cumulative
- Unified tax table
- Unified credit
- No inflation adjustment


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Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA)

- Reduced transfer tax rates
- Increased exemption amounts
- Estate tax repeal in 2010
- Gift tax in 2010 with carryover basis
- Repealed state estate tax credit


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2010 Tax Act

- Reinstated estate tax for years after 2010
- \$5,000,000 gift, estate, and GST exemption
- 35% top tax rate
- For years 2011 and 2012


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American Taxpayer Relief Act of 2012 (ATRA)

- Without ATRA:
 - Exemption amount and rates revert to pre-2001 levels
 - \$1,000,000 gift, estate, and GST exemption
 - 55% top tax rate
- With ATRA:
 - \$5,250,000 gift, estate and GST exemption
 - Top transfer tax rate of 40%
- Permanent...for now


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Gift Taxes

- Tax on assets transferred during life
- Annual exclusion
 - \$14,000
 - Adjusted for inflation
- Gift tax exemption \$5,250,000
- Gift tax marital deduction
- Qualified transfers


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Gift Tax

- Annual exclusion
 - \$14,000 per donee
 - Gift splitting doubles exemption
 - Gifts under exclusion amount not reportable
 - Gifts in excess of exclusion erode exemption amount
- Mr. and Mrs. Remington
 - Three children
 - \$28,000 to each child
 - \$84,000 can pass gift tax-free each year


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Gift Tax

- Unlimited marital deduction for gifts between spouses
- Annual exclusion \$143,000 for gifts to non-US citizen spouses
 - Adjusted for inflation


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Gift Tax

- Qualified transfers not subject to gift taxes
- Tuition payments
- Payments for medical care
- Must be made directly to provider


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Estate Taxes

- Tax on assets transferred at death
- ATRA effectively repeals estate taxes for estates of less than \$10,500,000
- Gross estate subject to tax
 - Assets in decedent's name only
 - ½ of assets owned jointly with others
 - Before deductions for estate expenses


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Estate Taxes

- Without ATRA?
 - Exemption plummets to \$1M from \$5.12M
 - Tax rate skyrockets from 35% to 55%
- Portability
 - QTIP trust not required to use both spouse's exemption amounts
 - If remarried, unused exemption available from second spouse only
 - Available only if elected on deceased spouse's estate tax return


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Estate tax

- Portability example
- Karen McNeil dies 2013
 - Made \$1,000,000 lifetime gifts
 - Value of her estate \$10,000,000
 - Estate tax return election allows husband to use unused \$4.25M exemption
 - Surviving spouse has \$9.25M exemption in 2013

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Estate Tax

- Federal estate, gift and GST tax rates for 2013

Taxable Transfer	Tax	% on Excess
\$0	\$0	18
10,000	1,800	20
20,000	3,800	22
40,000	8,200	24
60,000	13,000	26
80,000	18,200	28
100,000	23,800	30
150,000	38,800	32
250,000	70,800	34
500,000	155,800	37
750,000	248,300	39
1,000,000	345,800	40


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Estate Taxes

- Basis step-up
 - Increase in basis of inherited assets
- Don
 - GE stock purchased in 1962 for \$6,712
 - Stock worth \$238,224 in 2013
 - Cost basis after 5 splits, 70 cents a share
 - If given during life to son, \$231,512 of capital gain income
 - If passed to son at death, zero capital gain income


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Estate Tax

- Marital Deduction
 - Unlimited amounts can pass estate tax-free to US citizen spouses
 - Can be outright or in trust
 - Non-citizen spouses not eligible except through a qualified domestic trust

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Estate Tax

- Qualified Terminable Interest Property (QTIP)
 - Property transferred to a trust that makes:
 - Payments at least annually for life
 - Only surviving spouse entitled to trust during life
 - Principal can be distributed in discretion of trustee
 - QTIP trust allows first spouse to die to control gifts to charity at death of second spouse

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State estate taxes

- Budget pressure has increased # of states that are collecting estate and inheritance taxes
- ATRA made permanent deduction of state estate taxes paid against federal estate taxes
- 16 states impose estate tax, 6 also impose inheritance taxes
- New Jersey= \$675,000 exemption, 16% top rate




Generation Skipping Taxes

- Tax on assets transferred to "skip person"
 - Lineal descendent more than one generation removed
 - Others at least 37.5 years younger than transferor
- Discourages transfers that skip a generation to avoid transfer taxes
- Applies to transfers during life and at death



Generation Skipping Taxes


- Direct skip
 - Assets directly to skip person
 - Donor or donor's estate pays GST tax
- Taxable distribution
 - Assets distributed to skip person via trust (CRT)
 - Recipient pays GST tax
- Taxable termination
 - Assets distributed at termination of trust (CLT)
 - Trust pays GST tax

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Advanced Planning Techniques

- **Wealth Replacement**
 - Also known as ILIT or Crummey trust
 - Annual exclusion gifts to trust
 - Children offered right to take the money
 - Trust pays insurance premiums
 - Proceeds distributed tax-free to heirs
- **Consider pairing with a gift annuity or remainder trust**


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Advanced Planning Techniques

- **Qualified Personal Residence Trust (QPRT)**
 - Non-charitable retained life estate
 - Parent puts residence in name of trust
 - Upon termination, residence passes to heirs
 - Gift tax deduction equal to owners right to live in home
 - Low discount rate favors this arrangement

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Advanced Planning Techniques

- **Grantor Retained Annuity Trust (GRAT)**
 - Non-charitable lead annuity trust
 - Parent puts assets into GRAT
 - Trust makes fixed payments to parent
 - Gift tax deduction for parent's retained income interest
 - Heirs receive assets transfer tax-free
 - Low discount rate permits leveraging deduction

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Advanced Planning Techniques

- Grantor Retained Unitrust (GRUT)
 - Operates like a GRAT, but pays unitrust amount
 - GRUTs, like CRUTs, are less sensitive to low discount rate
 - Allows transfer tax-free distribution to heirs



Calculating Transfer Taxes


- Transfer taxes are cumulative and progressive
- Sarah Shulman, never married
 - Dies in 2013
 - \$8,000,000 estate
 - \$2,000,000 of taxable gifts during life



Calculating Transfer Taxes

If no charitable bequests:

Estate value	\$8,000,000
Prior taxable gifts	<u>+\$2,000,000</u>
Taxable estate	\$10,000,000
Estate Tax Exemption	<u>-\$5,250,000</u>
Taxable Estate	\$4,750,000
Tax owed (\$4,750,000 x 40%)	\$1,900,000


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Calculating Transfer Taxes

\$1,000,000 charitable bequest

Estate value	\$8,000,000
Prior taxable gifts	<u>+\$2,000,000</u>
Charitable bequests	<u>-\$1,000,000</u>
Taxable estate	\$9,000,000
Estate Tax Exemption	<u>-\$5,250,000</u>
Taxable Estate	\$3,750,000
Tax owed (\$3,750,000 x 40%)	\$1,500,000


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Life Income Gift for Others

- Jeremy Bird
 - Mother 84
 - 7.6% CGA (\$7,600 a year)
 - \$100,000 cash
 - \$53,066 income tax charitable deduction
 - \$46,934 taxable gift


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Life Income Gift for Others

- Offsetting the \$46,934 taxable gift
 - Retain right to revoke, or
 - Use annual exclusions, \$28,000 split with wife
 - Report balance but offset with available exemption
- How to leverage the annual exclusion
 - Fund CGA with \$368,421
 - Retain right to revoke
 - \$28,000 annually to Mother


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Life Income Gift for Others

- Capital gain when funding CGA for others
 - Pro rata capital gain reporting only if annuitant and donor are same person
- \$100,000 stock, \$60,000 basis
 - \$40,000 potential capital gain income
 - \$18,774 capital gain income if annuity funded
 - Offset by \$53,066 income tax charitable deduction


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Simple Will

- Upon death of first spouse, all assets to survivor
- Unlimited marital deduction, no estate tax
- Before portability, wasted estate tax exemption at first death
- Second spouse controls estate


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Credit Shelter/Marital Trust Plan

- Upon first death, two trusts created
- Credit Shelter Trust
 - Funded with available estate tax credit
 - Less important than in past because of portability
- Marital Trust
 - Funded with balance of estate
- First spouse maintains control


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The Probate Process

- When do we get it?
- Probate estate includes
 - Bank accounts and securities in decedent's name only
 - Tangible personal property: cars, jewelry, collections, etc.
 - Real estate held solely by decedent
 - 50% of assets held jointly at death


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The Probate Process

- Charity and probate assets
 - Fair process overseen by courts
 - Can be expensive
 - Not private
 - Finality of creditors claims


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The Probate Process

- Charity and non-probate assets
 - No guarantee of fairness
 - No oversight
 - Less transparent
 - State trust law may protect beneficiaries


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The Probate Process

- Representing charity
 - Ambiguous language
 - How are taxes and expenses paid?
 - Passage of time can compromise rights
 - Residuary bequests require attention
 - Don't be shy

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Conclusion

- Transfer tax system permanent ... for now
- Taxes aren't the primary motivation
- Charitable giving eases transfer tax burden
- It's about mission

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Questions and Answers



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Still Have a Question?

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