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Estate Planning Updat

Insights and Developments in the Law

Summer 2012

2012 Could Be the End— Without Smart Estate Planning



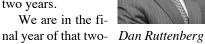
Jason Smolen us by Congress.

Worried about the Mayan calendar's much-hyped (and much-spoofed) end-of-times prediction for 2012? You should be more wary of the devastating scenario, brought to

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) repealed the Federal estate and generation-skipping transfer (GST) taxes for 2010, while the gift tax remained in place but at a lower rate of 35 percent. Most of the provisions of the EGTRRA were scheduled to "sunset" on December 31, 2010, and, unless Congress acted, the estate, gift and GST tax rates and exemptions would have returned to their pre-2001 levels on January 1, 2011.

On December 17, 2010, however, President Obama signed into law The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act

of 2010 (2010 Tax Relief Act), which resulted in some significant changes to the estate, gift and GST tax regimes for two years.





year period. The following provisions of the 2010 Tax Relief Act will remain in effect only through December 31,

- Estate, gift, and GST tax rates of 35 percent and
- Estate tax, gift tax, and GST tax Continued on page four.

Coordinating Estate Planning and **Business Succession Planning**

Maybe you own a fully-autonomous government contracting business that is growing both its bottomline value and the number of employees. Or, perhaps you operate a professional services practice, whose income is steady but depends solely on you to keep it chugging along. If you own a business, most likely you are somewhere in between those examples.

No matter where you fall on that spectrum, addressing business succession planning in the context of your personal estate plan is essential. Life like business—does not always unfold according to our greatest hopes and desires. Being prepared is a must if you want to minimize the chaos and heartache that would ensue upon your unexpected "exit".

Do you have loved ones whom you would like to see financially benefit from your business? If you have children, do you-or they-plan to join the business, in the near or distant future? Do you own commercial or residential real estate? If your business includes employees, partners, LLC members and/or corporate shareholders, do they know what should happen if you were suddenly absent due to catastrophic disability—or worse?

"We often see clients who own a business but neglect to create an exit strategy," observes Jason D. Smolen, a Co-founding Principal of Smolen-Plevy. "Some don't think of the 'business' as something beyond themselves, especially if they're in a solo practice or are the sole shareholder. They often fail to value the business and/or structure it, either for the next generation or for a future sale."

Continued on page three.

After a Divorce: Taking the Right Steps, Right Away

Divorce is a difficult—and sometimes highly contentious—experience for most couples, however, people ap-



Alan Plevy

preciate that the process must end before they can get on with their lives. Unfortunately, not everyone appreciates when the process the ends, as it is not really over when the court issues its

Final Decree. A number of financial and estate planning tasks remain.

"Getting these things done right away is vital," explains Alan B. Plevy, a Co-founding Principal of SmolenPlevy.

For example, jointly-titled bank accounts and credit cards must be dealt with, as well as IRAs, Roth IRAs, SEP-IRAs, thrift savings plans, 401k or 403b retirement accounts, and any other accounts where one spouse had named the other as beneficiary. Simi-

larly, insurance companies must be notified quickly of new beneficiaries.

"These have to be changed immediately to reflect a new beneficiary," says Plevy. "If the person you just divorced is still listed



Kathryn Dickerson

as beneficiary on any of your policies or accounts, he or she may receive a windfall in the event of your demise."

While these are relatively simple things to handle, most people forget about them, he notes, and there are significant consequences if they are not handled timely.

Plevy recalls a client's situation some years back. She had entered into a property settlement agreement with her estranged husband and shortly thereafter the man had an accident. The wife was notified of his death and was entitled to the life insurance proceeds however the deceased husband's brother and father contested her receipt

of the funds. In the end, the client received the monies.

In addition, says Plevy, it's vital to revise your will, trust, powers of attorney, and medical directives. "When you get divorced, you have to reevaluate how you want to disperse your estate—and who you want to give decision-making authority to in the event you become incapacitated."

Some of these tasks are easily accomplished on one's own. A call or visit to your banks, your retirement plan administrator, and other applicable agents can dispatch many of these changes. You can likely go online and download a form directly from the institution's website.

The key is following through and getting these changes made.

If you have any questions regarding Divorce or Family Law, please contact Alan Plevy or Kyung (Kathryn) Dickerson at 703-790-1900 or by email at abplevy@smolenplevy.com or kndickerson@smolenplevy.com.

Who Gets Your Passwords— After You Pass Away?

With so many people engaging in commerce and transacting other important pieces of their lives via the Internet, estate planning today requires us to address some uniquely 21st century details. In particular, those online login "passwords" and "usernames" many of us take for granted become vital gateways to a host of sensitive information about our lives, our relationships, and our assets.

This virtual world presents a very real question: When you pass away, how will your executors or selected family members gain access to the login and password information necessary to manage online accounts and settle your affairs?

Moreover, what will happen when vital documents and data are lost in a disaster, such as a house fire, storm, or other personal or community calamity? (Hundreds of millions of dollars reportedly go unclaimed each year, for example, because beneficiaries are unaware their loved one left a life insurance policy.)

Deciding who should have access to your confidential information and how data and documents can be retrieved, in the event of disaster or death is vital and should be addressed *before* that day comes. Those instructions need to be part of the conversation you have with your attorney.

"These questions are certainly relevant for any of us who use the Internet to log into our bank account, our investment portfolio, or even simply social media sites," observes Daniel H. Ruttenberg, a Principal at Smolen-Plevy whose practice areas include estate planning matters. "But they are also a part of old-fashioned emergency preparedness."

As a leader in estate planning services, SmolenPlevy has arranged access to a new service for its estate planning clients: secure digital storage of personal information and estate documents. This innovative platform is powered by My Personal Data Safe, LLC and provides SmolenPlevy clients with customizable access to important digital information for themselves in the event of a disaster, and for a few trusted survivors who will carry out a client's final wishes. Ensuring that loved ones and professional advisors can manage the affairs of Smolen-Plevy clients in the event of a sudden

Continued on page three.

Business Succession

Continued from page one.

Different types of businesses call for different approaches to succession planning. Available strategies depend on a client's circumstances. To suggest the most appropriate course of action, we would want to discuss issues such as:

- Family member involvement
- Owner involvement
- Key employees
- · Nature of industry
- Competitors
- · Barriers to entry, and
- Business trending

"Integrating your estate planning and business succession planning can save owners millions in estate taxes" adds Daniel H. Ruttenberg, a Principal with SmolenPlevy. "Meaningful estate tax saving opportunities can be lost when a business succession plan does not take into account an owner's estate plan and vice versa."

By paying attention to the estate tax planning and gifting strategies available as a result of The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (see related article in this issue), clients can make some particularly tax-efficient choices about their business proceeds if they act soon. The law sunsets at the end of 2012, unless Congress acts before then.

"A highly-appreciating asset—like a successful business—might be ideal to gift out," notes Smolen. "Giving a percentage of your business to your beneficiaries can make a lot of sense."

Similarly, clients who have significant real estate can consolidate their holdings into business entities—and start gifting ownership to their intended beneficiaries.

When is the best time to focus on business succession planning? If you have not already done so—Now! Succession planning should be addressed

at the start-up of a business and affects issues such as choice of entity and agreements among the owners. Other typical triggering events include but are not limited to:

- Addition or withdrawal of members
- Significant change in value (anticipated or actual)
- Changes in tax law
- Changes in state law (creditor protection and governance)
- Life changes (retirement, death, disability, marriage or divorce)
- · Personal estate planning

"Loss of an original owner can be very challenging to the successful continuation of a business, even with a succession plan in place," says Ruttenberg. "Remaining owners or heirs often have very little chance of keeping a business running when no planning has been done."

Life brings plenty of uncertainty on its own. There is no sense adding to it by failing to address your business's succession planning as part of your estate planning.

If you have questions about Estate or Succession Planning, please contact Jason Smolen or Dan Ruttenberg at 703-790-1900, or by email at *jdsmolen* @smolenplevy.com or dhruttenberg@smolenplevy.com.

Passwords

Continued from page two.

illness or tragedy, or expeditiously execute the will, offers peace of mind for all concerned.

"We've kept a close eye on data storage trends, because we want to make sure SmolenPlevy's clients continue to receive timely, well-considered advice, as well as cutting-edge solutions," notes Co-founding Principal Jason D. Smolen.

The system uses personal information management software to run a state-of-the-art encrypted site that empowers a client to authorize complete or partial access to legal advisors and family members. It gives each client control over stored data and the ability to designate who gets to open this personalized digital vault and under what circumstances they may do so.

Use of this system is voluntary. It offers clients access to a no-cost, optional service that provides them—and their executor and/or selected family members—peace of mind in the event disaster strikes.

If you are an existing client of SmolenPlevy and would like to take advantage of our new data safe, please contact our office. SmolenPlevy will be happy to assist you with uploading vital documents—copies of wills, trusts, powers of attorney, medical directives, etc. We will then turn the account over to you to securely enter your usernames and passwords from your various online accounts—and determine who has permission to view them in an emergency.

"This platform is another example of our firm being a pioneer in estate planning services," says Ruttenberg. "It's the way of the future—but it's very much needed right now."

The 21st century might add a new layer of complexity to our lives, but thankfully it is also providing some helpful tools to help address that complexity.

If you have questions about Estate Planning, please contact Jason Smolen or Dan Ruttenberg at 703-790-1900, or by email at jdsmolen@smolen plevy.com or dhruttenberg@smolen plevy.com.

Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.

Smart Estate Planning

Continued from page one.

lifetime exemptions of \$5 million (adjusted for inflation).

Without congressional action, the law reverts to its pre-2001 version, and the following provisions will apply:

- Top gift and estate tax rate increases to 55 percent
- GST rate increases to 50 percent
- The estate and gift tax lifetime exemption drops back to \$1 million and
- The GST lifetime exemption drips back to \$1 million (adjusted for inflation).

Please note: Congress does not need to act for this reversion to occur. The pre-2001 law kicks in automatically on January 1, 2013.

"The clock is ticking," observes Jason D. Smolen, a Co-founding Principal of SmolenPlevy.

There is something we can do, however, to soften the impact of the reversion on your—and your family's—financial life. We can help you plan so as to take full advantage of the lower estate, gift, and GST tax rates, and the higher lifetime exemptions, while they last, by using any number of wealth transfer strategies.

Many clients do not believe that they have a "high-value estate." Dan Ruttenberg, a Principal at Smolen-Plevy, notes that "A lot of people don't realize they should look at these issues, because they don't think about all of their assets, such as real estate, business interests or life insurance, or they don't value their assets as highly as the IRS will for estate tax purposes."

For example, if you want to make the most of the \$5M exemption before it goes away, you might:

- Consider making direct gifts to descendants or other beneficiaries or to trusts for their benefit. (A married couple can gift \$10M to their descendants or any beneficiary without paying gift tax.); or
- Consider forgiving loans previously made to children or grandchildren, particularly if you did not necessarily intend to collect the bal-

ances due on the loans.

Of course, what is the best course of action for you depends on your specific goals and circumstances. Generally speaking, though, making gifts during your life can remove from your taxable estate all of the financial appreciation on that gift, as well as the income generated from the gift. This is particularly appealing for people who do not rely on the income these potential gifts may generate.

Making the maximum allowable non-taxable gift has an enormous effect on the eventual value of that gift. Remember that through tax year 2012, the maximum tax-exempt gift amount is \$5 million. If you only give a \$1 million gift today, assuming a 5 percent annual return, the value of that gift will be \$2,653,298 in 20 years, for a total gain of \$1,653,298.

If instead you give a \$5 million gift today, assuming a 5 percent annual return, the value of that gift will be \$13,266,489 in 20 years, for a total gain of \$8,266,489. The additional \$4 million gift today, assuming a 5 percent annual return, will result in removing total future gains of \$6,613,191 from your estate.

You might also consider taking advantage of today's higher exemption amounts to make gifts of property in trust instead of outright to individuals. Gifting to trusts for the benefit of your descendants allows for the allocation of a GST exemption to that trust, which enables the funds in the trust, plus all future income and growth, to pass to your descendants without the imposition of any estate or GST tax.

Moreover, the trust may be created as a "grantor trust," so that the income is taxed to you instead of to the trust beneficiaries. The payment of the tax is an additional tax-free "gift" and will reduce the amount of assets includible in your estate. Gifts in trust are protected from claims by beneficiary's creditor, including estranged or former spouses, and can ensure that the assets do not pass outside the family.

Another strategy: Instead of making a gift of cash, consider gifting an interest in a partnership or LLC, or

shares in a closely held corporation, to a trust for the benefit of descendants.

Other short-term opportunities to consider this year include:

- Non-reciprocal trusts created by married couples
- Self-settled trusts/single individuals
- Gifts of real property (including use of a qualified personal residence trust - QPRT)
- Purchase additional life insurance in trust, and
- Gift/sale to an intentionally defective grantor trust (IDGTs).

To take advantage of today's low interest rates, currently favored tools include:

- Intra-family Loans
- Grantor retained annuity trusts (GRATs)
- Gift/sales to intentionally defective grantor trusts (IDGTs) and
- Charitable lead annuity trusts (CLATs).

Determining which strategies and tools are appropriate to your goals and preferences requires planning and consultation with counsel. Deciding when to utilize them is much simpler, though: Now!

No one knows whether Congress will act this year to modify the law. However, if Congress does not act, December 31, 2012 really will be "the end" for the 35 percent estate, gift, and GST tax rate, and the \$5 million estate tax, gift tax, and GST tax lifetime exemption.

Jason Smolen and Dan Ruttenberg can be reached to discuss wills, estates and estate planning at 703-790-1900. Jason's email address is *jdsmolen @smolenplevy.com*. Dan's email address is *dhruttenberg@smolenplevy.com*.



For more information on SmolenPlevy, scan here.