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The Thursday Report

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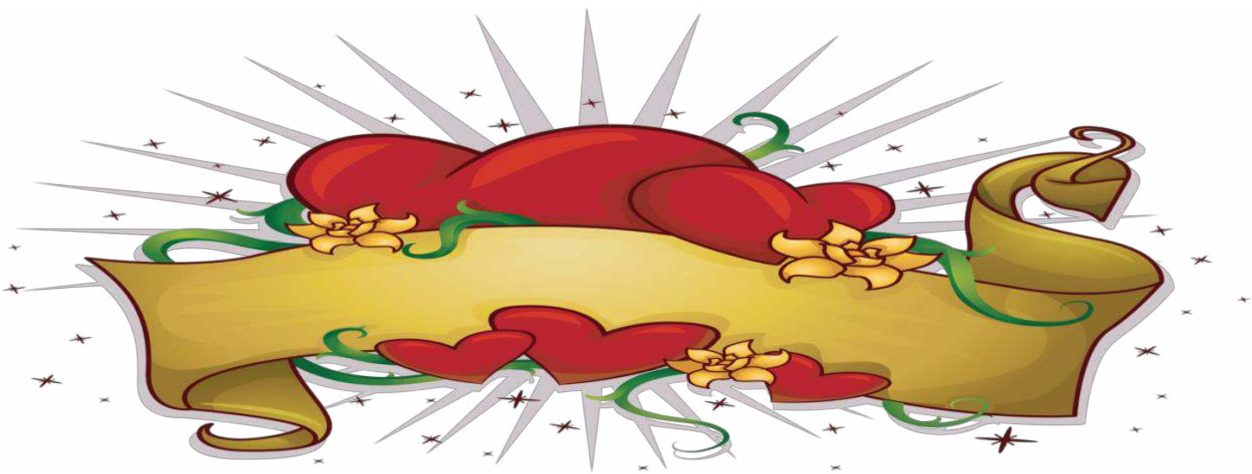
Re: Happy Valen-Thurs Day-Our Famous Couples Edition



Sneak Preview of Creditor Protection for Pension Plans, IRAs, and Other Qualified Retirement Plans from the Newly Updated *Gassman & Markham on Florida & Federal Asset Protection Law* **by Alan Gassman & Mike Markham**

How to File Tax Returns for Disregarded Entities and Grantor Trusts **by Ken Crotty**

How to Start an IPA? **by Pariksith Singh, MD**

Richard Connolly's World

Some Needed Considerations of Trust Protectors **by Martin Shenkman**

Humor! (Or Lack Thereof!)

We welcome questions, comments, suggestions, and compliments, whether true or not…

Quote of the Week

"Instead of getting married again, I'm going to find a woman I don't like and give her a house"

– Groucho Marx

As an interesting note…we originally heard the above quote from Rod Stewart…apparently, he was a Marx Brothers fan as are we. We certainly can't blame him for his adulation, though…after all, just read Groucho's letter to Warner Brothers over the "Casablanca" title controversy by clicking HERE.

Valentine's Day, also called **Saint Valentine's Day** or the **Feast of Saint Valentine**, is celebrated annually on February 14. Originating as a Western Christian feast day honoring one or two early saints named Valentinus, Valentine's Day is recognized as a significant cultural, religious, and commercial celebration of romance and romantic love in many regions around the world, although it is not a public holiday in any country.

The day first became associated with romantic love within the circle of Geoffrey Chaucer in the 14th century, when the tradition of courtly love flourished. In 18th-century England, it evolved into an occasion in which lovers expressed their love for each other by presenting flowers, offering confectionery, and sending greeting cards (known as "*valentines*"). Valentine's Day symbols that are used today include the heart-shaped outline, doves, and the figure of the winged Cupid. Since the 19th century, handwritten valentines have given way to mass-produced greeting cards.[6] In Europe, Saint Valentine's Keys are given to lovers "as a romantic symbol and an invitation to unlock the giver's heart", as well as to children, in order to ward off epilepsy (called Saint Valentine's Malady).

Sneak Preview of Creditor Protection for Pension Plans, IRAs, and Other Qualified Retirement Plans from the Newly Updated *Gassman & Markham on Florida & Federal Asset Protection Law*

by Alan Gassman & Mike Markham

Pension and IRA accounts enjoy exempt asset status both under the Florida Statutes and the Federal Bankruptcy Code.

Many new businesses and professionals do not have pension plans, or have plans which are not of optimum design for their situation. Fortunately, some pension actuaries will not charge to take a look at an existing plan and employee information in order to advise on optimum plan design, which may include consideration of cross-tested defined benefit or cash balanced plans, which are not well understood. The census that follows can be used to provide the information that an advisor will need to facilitate plan design.

Many advisors are not aware of the Affiliated Service Group rules and Employee Leasing rules under Internal Revenue Code Sections 414(m) and (n) which can cause individuals who work indirectly or in associated companies to be required to be included in a pension plan in order to avoid disqualification under the anti-discrimination rules.

In Bankruptcy, individuals who are not able to use Florida law will be subject to loss of exemption for any inherited IRAs they own or receive, at least if it is not passing to a surviving spouse, and to a present cap of $1,283,025[1] as to contributory IRAs. This cap does not apply to the extent of values attributable to rollover contributions from qualified pension contributory plans.

Florida's exemption status applies to the unlimited values of both pension and IRA accounts, and includes rollover IRAs that pass to surviving spouses and other beneficiaries who reside in Florida.

Previously case law permitted creditors of an IRA beneficiary to reach an inherited IRA, but this was amended by Florida Statute in 2011.[2] The updated language under Florida Statute Section 222.21 and Bankruptcy Code Section 522 provides protection for plans that have legal or operational flaws, and for single person pension plans that were not considered to be qualified under ERISA, as further discussed below.

For example, pension and IRA accounts will be considered to be in compliance with applicable law "<u>unless it has been ... determined that the plan or governing instrument is not exempt from taxation in a proceeding that has become final and nonappealable.</u>"[3] Pension plans and IRAs with documentation or operational flaws will still be protected under the Florida statute if the debtor claiming the exemption proves by a preponderance of the evidence that the fund or account would have been in substantial compliance with the applicable requirements for tax exemption but for the negligent or wrongful conduct of a person or persons other than the debtor claiming the exemption.

The Florida statute reads as follows, with forgiveness provisions being underlined for the convenience of the reader:

> **§ 222.21 Exemption of pension money and certain tax-exempt funds or accounts from legal processes.**
>
> (1) Money received by any debtor as pensioner of the United States within 3 months next preceding the issuing of an execution, attachment, or garnishment

[1] 11 U.S.C. § 522(n) (2017). This value is adjusted every three years for inflation, with the last increase occurring April 1, 2016.
[2] Fla. Stat. § 221.21(c)(2).
[3] Fla. Stat. § 222.21(2)(a)(1) 2017.

process may not be applied to the payment of the debts of the pensioner when it is made to appear by the affidavit of the debtor or otherwise that the pension money is necessary for the maintenance of the debtor's support or a family supported wholly or in part by the pension money. The filing of the affidavit by the debtor, or the making of such proof by the debtor, is prima facie evidence; and it is the duty of the court in which the proceeding is pending to release all pension moneys held by such attachment or garnishment process, immediately, upon the filing of such affidavit or the making of such proof.

(2)(a) Except as provided in paragraph (d), any money or other assets payable to an owner, a participant, or a beneficiary from, or any interest of any owner, participant, or beneficiary in, a fund or account is exempt from all claims of creditors of the owner, beneficiary, or participant if the fund or account is:

1. Maintained in accordance with a master plan, volume submitter plan, prototype plan, or any other plan or governing instrument that has been preapproved by the Internal Revenue Service as exempt from taxation under s. 401(a), s. 403(a), s. 403(b), s. 408, s. 408A, s. 409, s. 414, s. 457(b), or s. 501(a) of the Internal Revenue Code of 1986, as amended, <u>unless it has been subsequently determined that the plan or governing instrument is not exempt from taxation in a proceeding that has become final and nonappealable;</u>

2. Maintained in accordance with a plan or governing instrument that has been determined by the Internal Revenue Service to be exempt from taxation under s. 401(a), s. 403(a), s. 403(b), s. 408, s. 408A, s. 409, s. 414, s. 457(b), or s. 501(a) of the Internal Revenue Code of 1986, as amended, <u>unless it has been subsequently determined that the plan or governing instrument is not exempt from taxation in a proceeding that has become final and nonappealable;</u> or

3. <u>Not maintained in accordance with a plan or governing instrument described in subparagraph 1. or subparagraph 2. if the person claiming exemption under this paragraph proves by a preponderance of the evidence that the fund or account is maintained in accordance with a plan or governing instrument that</u>:

a. <u>Is in substantial compliance</u> with the applicable requirements for tax exemption under s. 401(a), s. 403(a), s. 403(b), s. 408, s. 408A, s. 409, s. 414, s. 457(b), or s. 501(a) of the Internal Revenue Code of 1986, as amended; <u>or</u>

b. <u>Would have been in substantial compliance</u> with the applicable requirements for tax exemption under s. 401(a), s. 403(a), s. 403(b), s. 408, s. 408A, s. 409, s. 414, s. 457(b), or s. 501(a) of the Internal Revenue Code of 1986, as amended, <u>but for the negligent or wrongful conduct of a person or persons other than the person who is claiming the exemption under this section</u>.

(b) It is not necessary that a fund or account that is described in paragraph (a) be maintained in accordance with a plan or governing instrument that is covered by any part of the Employee Retirement Income Security Act for money or assets payable from or any interest in that fund or account to be exempt from claims of creditors under that paragraph.

(c) Any money or other assets or any interest in any fund or account that is exempt from claims of creditors of the owner, beneficiary, or participant under paragraph (a) does not cease to be exempt after the owner's death by reason of a direct transfer or eligible rollover that is excluded from gross income under the Internal Revenue Code of 1986, including, but not limited to, a direct transfer or eligible rollover to an inherited individual retirement account as defined in s. 408(d)(3) of the Internal Revenue Code of 1986, as amended. This paragraph is intended to clarify existing law, is remedial in nature, and shall have retroactive application to all inherited individual retirement accounts without regard to the date an account was created.

(d) Any fund or account described in paragraph (a) is not exempt from the claims of an alternate payee under a qualified domestic relations order or from the claims of a surviving spouse pursuant to an order determining the amount of elective share and contribution as provided in part II of chapter 732. However, the interest of any alternate payee under a qualified domestic relations order is exempt from all claims of any creditor, other than the Department of Revenue, of the alternate payee. As used in this paragraph, the terms "alternate payee" and "qualified domestic relations order" have the meanings ascribed to them in s. 414(p) of the Internal Revenue Code of 1986.

(e) This subsection applies to any proceeding that is filed on or after the effective date of this act.

The Bankruptcy Code section on pension and IRA accounts can be relied upon by Floridians, and also individuals whose states do not provide as much protection. The following language is from Bankruptcy Code Section 522(b)(4):

(A) If the retirement funds are in a retirement fund that has received a favorable determination under section 7805 of the Internal Revenue Code of 1986, and that determination is in effect as of the date of the filing of the petition in a case under this title, those funds shall be presumed to be exempt from the estate.

(B) If the retirement funds are in a retirement fund that has not received a favorable determination under such section 7805, those funds are exempt from the estate if the debtor demonstrates that—

(i) no prior determination to the contrary has been made by a court or the Internal Revenue Service; and

(ii)

(I) the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986; or

(II) the retirement fund fails to be in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986 and the debtor is not materially responsible for that failure.

(C) A direct transfer of retirement funds from 1 fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986, under section 401(a)(31) of the Internal Revenue Code of 1986, or otherwise, shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of such direct transfer.

(D)

(i) Any distribution that qualifies as an eligible rollover distribution within the meaning of section 402(c) of the Internal Revenue Code of 1986 or that is described in clause (ii) shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of such distribution.

(ii) A distribution described in this clause is an amount that—

(I) has been distributed from a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986; and

(II) to the extent allowed by law, is deposited in such a fund or account not later than 60 days after the distribution of such amount.

Neither the Florida Statute nor the Bankruptcy Code makes mention of retirement plans that arise under Internal Revenue Code Sections 412(i) or 419A, so it is possible that these types of retirement plans are not exempt from creditor claims unless they qualify under the Florida and Bankruptcy Code statutes discussed below.

A 412(i) plan is similar to a defined benefit plan, but simplified rules apply, and the plan must be funded only with life insurance and annuity products. Many commissioned insurance agents are not licensed to sell other types of investments, such as mutual funds, stocks and bonds, and encourage 412(i) plans. Such a plan is clearly permitted under the Internal Revenue Code as a retirement plan for employees that can be funded in a tax deductible manner, and may facilitate contributions exceeding what would normally be permitted under 401(k) plans, but clients and advisors are best served by having knowledgeable actuaries or pension lawyers and investment advisors to assure that conventional pension planning is considered.

419A plans are often referred to as Welfare Benefit Plans and it is said that the IRS challenges virtually every 419A plan as a matter of routine procedure. As a result of this they are often challenged by the IRS, and normally not recommended by conventional advisors. An excellent summary of 419A plans and their possible effect and risks can be found on the website of tax lawyer Harvey M. Katz who can be reached at (212) 878-7976 or hkatz@foxrothschild.com.

While life insurance and annuities are protected from the creditors of a policy owner who is the insured as to life insurance, or the owner of an annuity, having life insurance or annuities under a 412(i) plan or a 419A plan will not help from a Florida asset protection standpoint, because only life insurance and annuity contracts owned by Florida residents will be protected.[4]

Florida Statute Section 222.201 provides that the exemptions under Bankruptcy Code Section 522(d)(10) will apply. Subsection (10)(E) includes the following, which may protect these plans when provided for "non-insiders"[5]:

> **(E)** a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless—
>
> > **(i)** such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose;
> >
> > **(ii)** such payment is on account of age or length of service; and

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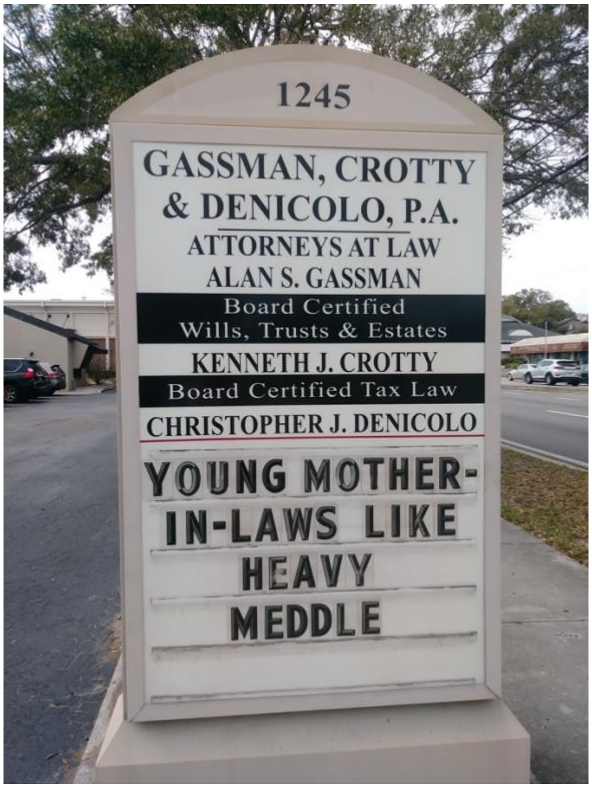
[4] *See In re Allen*, 203 B.R. 786 (Bankr. M.D. Fla. 1996).

[5] The term "insider" includes (A) if the debtor is an individual - (i) relative of the debtor or of a general partner of the debtor; (ii) partnership in which the debtor is a general partner; (iii) general partner of the debtor; or (iv) corporation of which the debtor is a director, officer, or person in control; (B) if the debtor is a corporation - (i) director of the debtor; (ii) officer of the debtor; (iii) person in control of the debtor; (iv) partnership in which the debtor is a general partner; (v) general partner of the debtor; or (vi) relative of a general partner, director, officer, or person in control of the debtor; (C) if the debtor is a partnership - (i) general partner in the debtor; (ii) relative of a general partner in, general partner of, or person in control of the debtor; (iii) partnership in which the debtor is a general partner; (iv) general partner of the debtor; or (v) person in control of the debtor; (D) if the debtor is a municipality, elected official of the debtor or relative of an elected official of the debtor; (E) affiliate, or insider of an affiliate as if such affiliate were the debtor; and (F) managing agent of the debtor.

> **(iii)** such plan or contract does not qualify under section 401(a), 403(a), 403(b), or 408 of the Internal Revenue Code of 1986.

419A plans are much more controversial than 412(i) plans, but may qualify for creditor protection under the same rationale.

In 1969, the then popular sit-com, "Bewitched" replaced the key male role of Darrin Stephens without mention or explanation to the fans of the show (Dick York who was replaced by Dick Sargent). Tens of thousands of American housewives wished that their husbands would be replaced as well. By the same token, tens of thousands of American husbands were glad that their wives were not witches…or at least not officially. Standing in front was the meanest mother-in-law of all time, Endora.



How to File Tax Returns for Disregarded Entities and Grantor Trusts

By Ken Crotty

The most common disregarded entities are single member LLCs and "defective" Grantor trusts. As a general rule, disregarded entities and

Grantor trusts are not required to obtain employer identification numbers. However, many financial institutions require employer identification numbers for income reporting purposes and will not allow the social security number of the owner or Grantor to be used.

COMMENT:

Reporting Disregarded Entities

If a disregarded entity has an employer identification number and the ownership of the entity changes so that it no longer qualifies as a disregarded entity, the disregarded entity should retain its old employer identification number.[i] For example, if a disregarded single member LLC has an employer identification number, and then a second member buys into the LLC so that it is now treated as a partnership, the partnership should continue using the employer identification number that was assigned to the LLC when it was disregarded.

Generally disregarded entities do not need to file a separate tax return.[ii] The items of income and deduction from the activities of the disregarded entity will be picked up on the owner's tax return on the following Schedules:

- Schedule C B Profit or Loss from Business (sole proprietorship)
- Schedule E B Supplemental Income or Loss
- Schedule F B Profit or Loss from Farming

The disregarded entity is treated as separate from its owner for employment tax purposes for wages paid on or after January 1, 2009 and for excise taxes reported and paid on Forms 720, 730, 2290, 11-C, or 8849 after December 31, 2007.[iii] In these situations, the employment tax and excise tax return instructions should be reviewed to be certain that the disregarded entity is reporting the necessary information.

Reporting Grantor Trusts

If a trustee is not using one of the optional methods of filing, which are discussed below, and the entire trust is a Grantor trust, the trustee need only fill in the entity information on the Form 1041 and not show any dollar amounts on the Form 1041 itself. Instead, the trustee should show the dollar amounts on attachments to the Form 1041. The attachment should not be a Schedule K-1. The trustee must give the Grantor of the trust a copy of the attachment.

If the trust is only owned partially by a Grantor trust, then the items of income and deduction for the non-Grantor portion of the trust should be reported on the Form 1041 as normally would be done and the portion of the items treated as owned by a Grantor trust should be shown on an attachment.

The attachment must show the name, identifying number, and address of the persons to whom the income is taxable.[iv] The income must be reported in the same detail as it would be reported on the Grantor's income tax return if it had been received directly by the Grantor. Any deductions or credits that apply to the income also need to be reported in the same detail as they would be if they had been received directly by the Grantor. The Grantor then reports the items of income, deductions and credits on the Grantor's personal return.

For Grantor trusts, there are three optional methods of filing, which the trustee may choose instead of filing the Form 1041. If a trust is treated as owned by one person, then the trustee may select Option 1 or Option 2 described below. If a husband and wife are treated as the owners of a trust, they will be deemed to be one person and therefore the trustee may select either Option 1 or Option 2 below. If the trust is treated as owned by more than one person, then the trustee may select Option 3 below.

Attached at the end of this memo are sample documentations that could be used to inform the IRS that a trust is disregarded for income tax purposes. There is a sample default Form 1041 which can be filed for a Grantor Trust. Also provided are samples showing the reporting necessary under Option 1 and Option 2.

Option 3 has the same reporting requirements as Option 2 but only applies in situations where there is more than one Grantor, and the Grantors are not husband and wife. In this situation the trustee needs to determine which portion of the trust assets were payable to Grantor 1 and which portion of the trust assets were payable to Grantor 2. The trustee would

then provide each of Grantor 1 and Grantor 2 with the same information as shown under Option 2.

Option 1: The trustee must give all of the payers of income during the year to the trust the social security number of the individual treated as the owner of the trust and the trust's address. To use this method, the owner of the trust must provide the trustee with a signed W-9. If the owner of the trust is not the trustee or co-trustee, then the trustee must (1) give the owner a statement showing all of the items of income, deduction, and credit of the trust; (2) identify the payer of each item of income; (3) explain how the owner takes such items into account when preparing the owner's tax return; and (4) inform the owner that these items must be included on his or her tax return. If the trustee reports under Option 1 and the trust does not have an employer identification number, the trust does not need to obtain an employer identification number to satisfy Option 1.

Option 2: The trustee must give all of the payers of income during the year to the trust the full name of the trust, the trust's address and the trust's tax identification number. The trustee also must file with the IRS the appropriate Forms 1099 to report the income paid to the trust during the tax year. These forms show the trust as the payer and the individual treated as the owner of the trust as the payee. If the owner of the trust is not the trustee or co-trustee, then the trustee must (1) give the owner a statement showing all of the items of income, deduction, and credit of the trust; (2) explain how the owner takes such items into account when preparing the owner's tax return; and (3) inform the owner that these items must be included on his or her tax return. If the trustee reports under Option 2 and the trust does not have an employer identification number, the trust needs to obtain an employer identification number to satisfy Option 2.

Option 3: The trustee must give all of the payers of income during the year to the trust the full name of the trust, the trust's address and the trust's tax identification number. The trustee also needs to file with the IRS the appropriate Forms 1099 to report the income paid to the trust during the tax year. These forms would show the trust as the payer and the owners as the payees. The trustee must (1) give each owner a statement showing all of the items of income, deduction, and credit of the trust attributable to such owner; (2) explain how each owner takes such items into account when preparing his or her tax return; and (3) inform each owner that these items must be included on his or her tax return. If the trustee reports under Option 3 and the trust does not have an employer identification number, the trust needs to obtain an employer identification number to satisfy Option 3.[V]

If a trustee has been filing a Form 1041, the trustee can change to one of the three optional methods listed above at any time. The trustee can do this by filing a final Form 1041 for the tax year immediately preceding the first tax year that the trustee elects to use one of the optional methods of filing. On the form of the final Form 1041, the Final return box in item F must be checked and the words APursuant to section 1.671-4(g), this is the final Form 1041 for this grantor trust@ should be written on the first page of the Form 1041.[vi]

The filing of the relevant 1099s by the trustee, in relation to Options 2 and 3 above depends on the type of income for the Trust. For example the trustee may be required to file a 1099-DIV for dividend income and file a 1099-INT for relevant interest income.

In relation to the reporting of income from long-term gain or loss from a partnership, S Corporation, or trust, Treasury Regulation 1.671-4(b)(5) provides that in the case of a trust that owns an interest, the distributive share belonging to the trust as a partner, shareholder, or beneficiary will not be includable by the trustee on any Form 1099 because the distributive share is reportable by the partnership, S corporation, or trust on the Schedule K-1.[vii]

Certain trusts are not allowed to use the optional filing methods. These include the following:

1. The common trust fund;
2. A foreign trust or trust that has any of its assets located outside

   of the United States;

3. A qualified Subchapter S trust;
4. A trust which is treated as owned by one or more individuals

   who have a tax year other than a calendar year;

5. A trust which is owned by one or more persons who are not

   U.S. persons; and

6. A trust which is owned by one or more persons if at least one

   person is an exempt recipient for informational reporting

purposes unless at least one other person is not an exempt recipient and the trustee reports the information without treating any of the owners as exempt recipients.viii

If the owner of a disregarded single member LLC has exempt status from federal income tax, then the LLC is not required to (1) pay federal income tax, (2) file a federal tax return, or (3) file an informational return. Any such requirement to file a federal tax return or informational return on behalf of the LLC is the responsibility of the owner rather than the LLC. A disregarded entity has the option to report and pay employment tax for its employees.

The federal income tax-exempt status of the sole owner will also apply to a disregarded single member LLC.[ix] If the owner of a disregarded LLC is claiming exempt status, the owner must treat the finances and operations of the LLC as its own for federal tax and information reporting. The LLC's disregarded status is with respect to its classification as a separate entity, but the LLC is treated as an activity of the sole owner. Any entity activities that are outside the tax-exempt purposes of the sole owner may impact the tax-exempt status of the owner, and may even create tax liability.

It is important to note that if the owner of the disregarded LLC has exempt status, the LLC should not file a Form 1023 or Form 990 exemption application. By filing this application, the previously disregarded LLC will become an organization that is treated as separate from its owner. If the owner of the LLC is concerned that transactions with or by the LLC may cause the owner to lose its exempt status, then the owner should request a private letter ruling.

If an LLC elects to be regarded as an entity separate from its owner on a Form 8832 or becomes an entity with two or more owners, then Section 508 of the Code applies to trigger the exemption notification requirements.[x] Subsequently the LLC must apply for federal tax exemption recognition, within the 27 month period after the end of the month when the LLC is no longer a disregarded entity.

ESBTs (Electing Small Business Trust)

A Grantor Trust is eligible to be a shareholder of an S corporation if all of the trust is owned by an individual. Often planners who have clients selling or gifting ownership interests in S corporations to gifting trusts that are

Grantor Trusts will also have the trust make an election to become an Electing Small Business Trust or "ESBT." By making this election, if another person contributes assets to the gifting trust causing it to no longer be a solely owned gifting trust, this will not cause the loss of the S corporation status because an ESBT is an eligible shareholder for S corporations.

An ESBT can have multiple shareholders or beneficiaries. It can also accumulate its own income, and may distribute both principal and accumulated income to beneficiaries. In order to make the ESBT election:

1. All trust beneficiaries must be individuals, estates, non-resident aliens for 2018 and subsequent tax years, and charities, or must meet other specific requirements described in §170(c)(1) or §170(c)(2)-(5), as applicable;
2. Trust interests must not be available for purchase; and
3. The Trustee of the trust must file for the ESBT election.

Certain trusts are prohibited from making an ESBT election including (1) Qualified Subchapter S Trusts; (2) Charitable remainder annuity trusts; and (3) Charitable remainder unitrusts.

Pursuant to Treasury Regulations, an ESBT has an "S Portion," a "non-S Portion," and if the trust is a Grantor Trust a "Grantor Portion."[xi]

If a solely owned Grantor Trust has made an ESBT election, then the Grantor Portion comprises 100% of the Trust. During the lifetime of the Grantor the trust is subject to the regular taxation rules that apply to Grantor Trusts. The Grantor's income tax return will reflect any income, deduction and credit that can be attributed to the ESBT which is considered to be owned by the Grantor.

After the death of the grantor, the Grantor Portion ceases to exist and the items of income and deduction for the trust need to be split between the S Portion and the non-S Portion. This point often confuses practitioners. After the death of the grantor of a wholly owned Grantor Trust, the resulting trust or trusts are not taxed as normal simple or complex trusts.

The portion of the ESBT that consists of any assets other than the S corporation stock will compromise the non-S portion. The income included in the non-S Portion will also consist of any corporation distributions classified as dividends, as well as interest accrued for installment payments for the sale of S corporation stock. For the non-S Portion of the trust, the taxation of this portion of the trust is governed by the normal tax rules applicable to non-Grantor Trusts.

This is not true for the S Portion of the ESBT. The S Portion of an ESBT, that is not a Grantor Trust, is treated as a separate trust and the taxable income is calculated separately. The income of the S Portion includes:

1. Any gains and losses on disposition of S corporation stock;
2. The items of income, loss, deduction or credit required to be taken into account by an S corporation shareholder by §1366 and the regulations thereunder, except for the items mentioned above in the calculation of the non-S Portion's income;
3. Income taxes and administrative expenses related to the assets of the S Portion of the trust and any interest expense paid or accrued on indebtedness for acquiring S corporation stock.xii

Generally, the income calculated for the S portion of the trust is taxed at the highest marginal rate for trusts. It is important to note that capital gains are not subject to tax at this highest rate.

Because assets of the S Portion of the trust are a separate part of the ESBT, the income and deductions from such items are excluded when calculating the distributable net income (DNI) of the ESBT. The S Portion is not allowed a deduction if these items are distributed to the beneficiaries and the beneficiaries may not include such distributions when calculating their personal income.

Reporting Agents for Disregarded Entities and filing Form 8655

If an LLC is a single member LLC, the entity's classification will determine who may sign a Form 8655. If the entity is classified as disregarded, then the Form 8655 must be signed by the owner or by an authorized representative who can demonstrate the authority to sign the form.

A filed Form 8655 is required for a reporting agent to have authorization. Such authorization may also be submitted on a substitute form approved by the IRS.[xiii]

The Form 8865 authorizes the reporting agent to (1) sign and file certain returns on behalf of the individual or entity; (2) make deposits and payments for certain returns; (3) receive duplicate copies of tax information, notices, and other communication regarding the individual or entity; and (4) provide the IRS with information related to penalty relief determinations for any authority granted under the Form 8655.

A Form 8655 for a corporation, including an LLC treated as a corporation, may be signed by (a) any officer with authority to bind the corporation, (b) any person designated by the governing body of the corporation, (c) any officer or employee granted written authority to sign by a principal officer, and (d) any other authorized person.

For a partnership, including an LLC treated as a partnership, the Form 8655 may be signed by any person who was a member of the partnership during any part of the tax period described in the Form 8655.

For a trust or estate, the Form 8655 must be signed by the fiduciary. Form 8858 Filing for Foreign Disregarded Single Member LLCs

Form 8858 is the information return of a U.S. person which reports activity related to foreign disregarded entities ("FDEs"). The accompanying Schedule M reports transactions between foreign disregarded entities of a foreign tax owner and the filer or other related entities. This form must be filed by a U.S. Person that is considered to be the tax owner of FDEs, or that owns certain interests in foreign tax owners of FDEs. Form 8858 is due with the U.S. persons income tax or informational returns and must be filed each year.

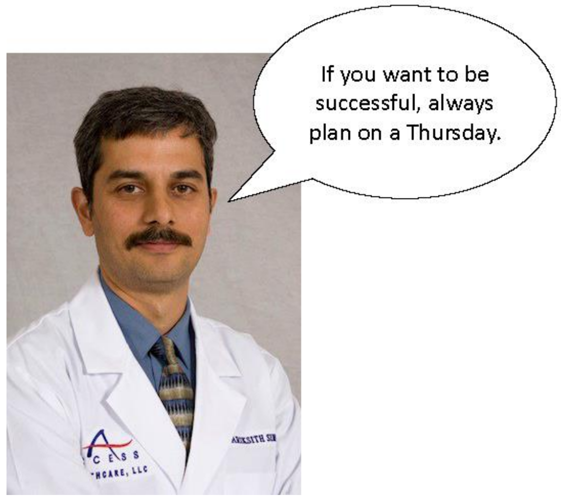
Form 8858 has three categories of "U.S. Persons" who are required to file.[xiv]

Category 1. U.S. Persons who are treated as the tax owner of a foreign disregarded entity at any point during the taxable year. A disregarded entity is not considered a U.S. person. So if a domestic or foreign parent disregarded entity owns a subsidiary FDEs, then the owner of the parent disregarded entity has the obligation to report the foreign disregarded entity.

Category 2. U.S. Persons who must file Form 5471 may be required to file Form 8858 if the controlled foreign corporation owns a FDE. Form 5471 deals with controlled foreign corporations and has various categories of filers. Only those persons who are considered to be Category 4 and Category 5 filers for Form 5471 are required to file a Form 8858. These are U.S. Persons who controlled the controlled foreign corporation for at least 30 consecutive days during the taxable year, and/or a shareholder of a controlled foreign corporation who owned at least 10% of the voting stock of the controlled foreign corporation for at least 30 consecutive days. U.S. Persons who are neither Category 4 nor Category 5 filers of Form 5471 do not have to file Form 8858.

Category 3. U.S. Persons who must file Form 8865 may also be required to file Form 8858. Form 8865 is filed to report information related to controlled foreign partnerships which are treated as the tax owners of FDEs during the taxable year. If a U.S. person controls 50% of the foreign partnership then that U.S. Person needs to file the Form 8858. If no U.S. Person controls 50% of the partnership then U.S. Persons owning 10% or more of the foreign partnership must file Form 8858.

How to Start an IPA?



by Pariksith Singh, MD

An Independent Provider's Association (IPA) is a coming together of various providers for a particular purpose, usually to gain advantage in contracting, to leverage economy of size and volume and create a platform for working as a single entity. It is only natural for any provider to aspire to start his or her own and climb up the value scale.

However, in the real world I see a lot of small IPAs coming up without the required due diligence and the necessary infrastructure. These entities create not only possible profits for themselves but also risk of failure by possible running afoul of federal and state requirements or breaching contracts or, simply, running a deficit for which they may be financially responsible.

So I compiled a loose and tentative checklist on what all to consider when creating an IPA. I realize that by sharing this information I might be reducing the growth of my own IPA, possibly. Yet, the possibility of failure and, even ruin, of fellow providers is something none of us wants as peer and fellow practitioners. That is why, in the spirit of gratitude and camaraderie towards my affiliate or un-affiliated providers, I share what little I know. These are the important checks one must have in place:

1) Know your law: The PIP guidelines from the Center for Medicare and Medicaid Services can be onerous. One must know this before contemplating creating an IPA. Also, one must know state laws regarding Financial Intermediary Service Organizations (FISO) for an IPA is one. That means, the IPA needs to register and be licensed with the state in order to function as one. Each state has different rules and it is critical to be aware of these.

2) Know your people: An IPA is more than just an organization of providers. It needs to have people running it who know accounting, management, relationship management, legal, human resources and operations. An IPA also needs subject matter experts (SMEs) in compliance, care management, credentialing, contracting, quality, information technology (IT), marketing, and sales, auditing and billing, education, care coordination centers and networking, data management and pharmacy benefit management.

In the rapidly transforming market, it is critical for the leadership in an IPA to be cognizant of the changes in the industry and adapt to it rapidly. Similarly, the consultants involved should be only the best in the business, whether they are lawyers or managed care advisers or mentors.

3) Know your products: An IPA is more than a conglomeration, a group of people holding hands due to fear or greed. It has specific offerings and a mastery of these, such as Health Maintenance Organizations (HMO), PPO, Private Fee for Service (PFFS), Medicaid products, commercial contracts, or ACO business lines. An IPA can theoretically outsource some of its products such as IT or auditing or data management to other organizations or leverage with other IPAs to use their SMEs to fill its gaps.

4) Know your services: An IPA usually serves as an entity that down-streams the contract with an HMO to providers. In this arrangement, several aspects of health care get involved. An IPA may not influence medical decision making from providers but should create a model where good medicine becomes good business. Any service such as credentialing or marketing offered by the IPA can be isolated and modular or the entire package can be offered as a back-office resource to a practice.

5) Know your platform: The big challenge in health care today is lack of interoperability of data. This starts from the electronic medical records (EMRs) to care management modules to billing reconciliations and gap analyses due to the fact that these products do not talk to each other seamlessly. Bringing all this data together is a serious challenge and the IPA needs to know its weaknesses and strengths and should try to create or leverage platforms that give it real-time data feedback and analytics.

6) Know your eco-system: Every health care environment is unique locally, influenced by the health plans, hospitals, specialists, vendors and patient populations and circumstances. An in-depth awareness of possibilities and downfalls, knowing your customer and vendor and facilities along with contracts helps in gaining insight into the parochial dynamics. One also needs to be aware of the changes in regulations, the changes in health technology and industry and the nuances in transforming relationships with the local players, some of whom may be national.

7) Know your strategy: What is the vision? How is the mission articulated? What are the objectives and how will they be reached with a clear timeline and consideration of factors critical to delivery along with directly responsible stakeholders? These have to be laid out before the leadership and preferably developed by the leadership itself.

These are the issues one must consider one by one, in a deliberate manner before embarking on the IPA journey. Each of these is critical and must be weighed carefully. Whether to build one's own expertise in the various aspects of IPA management or to leverage the SME of others is something that should be carefully considered.

Over the last few decades I have seen too many failures and near-misses. I believe, if a checklist such as this is developed and adhered to, much of the pain of failure or losses can be mitigated, reduced or even eliminated.

Richard Connolly's World

Insurance advisor Richard Connolly of Ward & Connolly in Columbus, Ohio often shares pertinent articles found in well-known publications such as *The Wall Street Journal*, *Barron's*, and *The New York Times*. Each issue, we feature some of Richard's recommendations with links to the articles.

The attached article from Forbes reports:

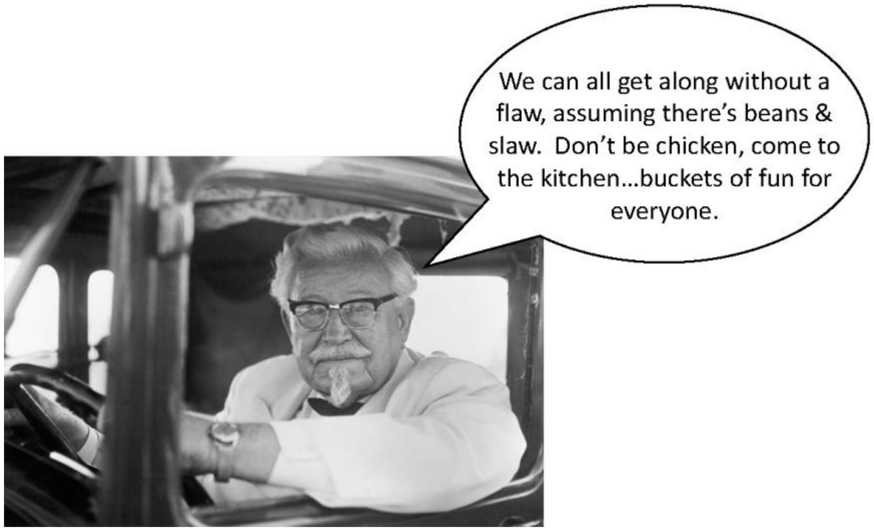
The federal tax overhaul just doubled the amount of wealth you can pass to heirs estate-tax-free--without using any trusts or planning gimmicks. Yet rather than looking for a new specialty, top trust lawyers are positively giddy about the opportunities created by the law President Trump signed three days before Christmas.

Adding to the planners' excitement: The new tax law, with its complexity, hasty drafting and last-minute giveaways, creates new opportunities to use trusts and gifting to reduce income taxes, too.

Be sure to look at the Steve Oshins and Jonathan Blattmachr income tax reduction strategies on pages 4 and 5.

To View the Full Article Click [Here]

From the 1986-1997's "Married with Children"



Some Needed Considerations of Trust Protectors

by Martin Shenkman

Summary: Trust protectors have become more commonly used in irrevocable trusts. There are good reasons to make the role ubiquitous in revocable trusts as well. The law tends to view revocable trusts as will substitutes and therefore does not give remainder beneficiaries the right to demand an accounting if a trustee is being bad. A trust protector, acting in a fiduciary capacity, might resolve that. But with all the talk of trust protectors, what might these folks do? While there can be significant variability in the duties or rights given a protector, consider some of the following:

√ Modify the trust as necessary to qualify the trust as a grantor trust to achieve the income tax objectives of the trust.

√ Modify the trust as necessary to qualify the trust as a special needs trust or to otherwise assure that a particular beneficiary can qualify for governmental benefits. This is rather important as the rules vary from state to state and may change over time. A trust crafted to qualify for governmental benefits in one state may not achieve this fundamental goal if a beneficiary moves to another state and either that beneficiary or a descendant needs to qualify for governmental benefits in that state.

√ Appoint a new general trustee, investment trustee, and perhaps even have the power to replace or appoint new persons to serve in other non- fiduciary positions. This might include a person designated to loan funds to the grantor without adequate security, or a person empowered to designate or add a charitable beneficiary (these being included to characterize the trust as a grantor trust).

√ The power to demand an audit of the trust to provide a check and balance on the trustee. The trust might specify that perhaps once per year or every two or three years such an audit could be completed at the expense of the trust itself. The protector may also be given the discretion to submit an accounting to court. It might warrant having a limit on how often this can be done to balance the protection afforded without permitting the power to become abusive.

√ The right to change the situs of the trust to any jurisdiction. This can be important to minimize state income tax. Also, if asset protection becomes more important, or if the state where the trust is based changes its law or the case law in that state develops in an unfavorable direction, moving the trust to a better state might be advantageous. The protector might expressly be permitted to rely on a written opinion of counsel for this type of action.

√ The authority to appoint successor protectors.

√ Correct scrivener's errors to avoid the need for court action.

√ Modify administrative provisions that have no effect on the beneficial interests in the trust.

√ Restrict or eliminate the right of the Trustee to apply the income of this trust to pay life insurance premiums on the life of the grantor. This might be useful to assure that the grantor trust status of the trust can be turned off.

√ Change the name of the trust.

√ Giving notice of the existence of the trust and trust financial data to beneficiaries has grown as an issue in recent years. Many state laws require beneficiaries above a certain age to generally be informed of this information. However, in some instances, such as a beneficiary with a drug or spending problem, awareness of a significant trust could be problematic. How can a trust balance the requirements of law, the protective power of having those with a vested interest in the trust have knowledge of the trust, and the possible harm to some beneficiaries of this information? Perhaps the protector can be given the power to direct the trustee as to which beneficiaries, should be excluded from the general notices given.

Other points to consider:

√ The trust should expressly state whether the protector acts in a fiduciary capacity. Watch state law on this point.

√ Should the protector be entitled to compensation (probably) and if so how should it be calculated?
√ Should the protector be required to sign the trust instrument or a counterpart to begin serving?

√ What steps should the protector take to fulfil his or her duties as protector? Review the trust. Meet other advisers annually (trustee, wealth manager, CPA, etc.). Obtain guidance from legal counsel as to what your duties should be.

Humor! (Or lack thereof!)

THE BALCONY SCENE, IF ROMEO AND JULIET WERE ATTORNEYS

JULIET: Deny thy father, and refuse thy name, and petition in chancery court for a name change, and file before the office of vital statistics.

ROMEO: My name, dear saint, is hateful to myself, because it is an enemy to thee. I will therefore show that my petition is filed for no ulterior or illegal purpose and granting it will not in any manner invade the property rights of others, according to Title VI, Chapter 68.07 (j).

JULIET: How camest thou hither, tell me, and wherefore? The orchard walls are high and hard to climb, and a person who, without being authorized, licensed or invited, willfully enters upon or remains in any property violates Title XLVI, Chapter 810.09 and the place death, if any of my kinsmen find thee here. Does thou love me? I know thou wilt say 'Aye', thou may prove false, at lover's perjuries, they say, 'Jove Laughs'.

ROMEO: Lady, by the blessed moon, I swear

JULIET: O, swear not by the moon, the inconstant moon.

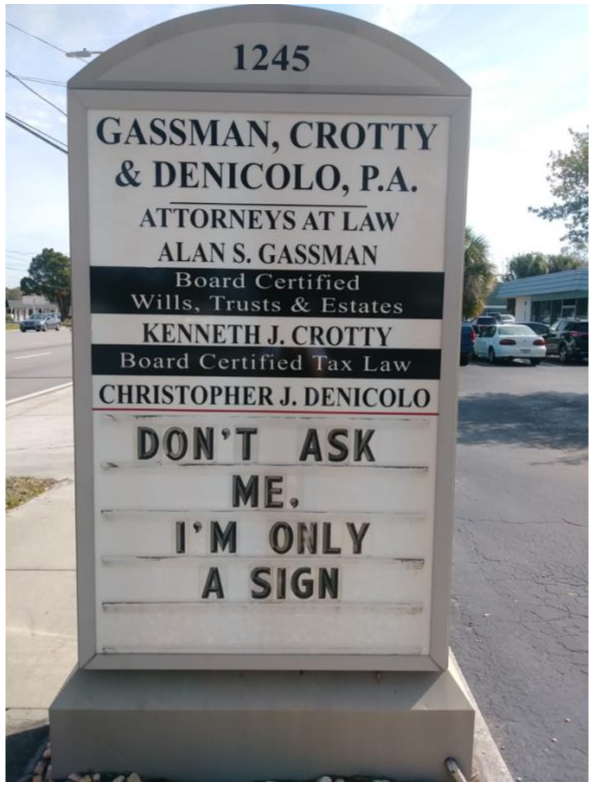
ROMEO, Then I call the judge from "Merchant of Venice" and a stenographer.

JUDGE AND STENOGRAPHER: Hello.

ROMEO: Who will now depose me, under rule 1.310 of the rules of civil procedure, recording my oath or affirmation taken or administered before an officer authorized under s. 92.50, knowing that the penalty for perjury, under s775.082, s775.083 or s775.084 may result in imprisonment for up to one year, a fine of $1,000 dollars, or both, since this is not a legal proceeding for a capital felony.

JUDGE: Ready, my lady?

(JULIET HAS FALLEN ASLEEP)



Upcoming Seminars and Webinars

Calendar of Events

Newly announced events are shown in RED

FICPA-Sandspur

Monday, February 19, 6:00 PM—8:00 PM

2501 Fowler Ave, Tampa, FL 33612

Alan will be presenting
"Trusts from A to Z" & "Demystifying the New 199(A) Deduction"
(6:00 PM—7:00 PM) (7:00 PM—8:00 PM)

The 199(A) deduction for pass through entities can be confusing. Alan and

his team have spent countless hours digging through the new tax law to help demystify the new rules and show you how to avoid common pitfalls as well as helping decide what structure is best for your clients.

Clearwater Bar Small Firm Section

Friday, February 23, 12:00 PM—1:00 PM

2680 Gulf to Bay Blvd, Clearwater, FL 33759

Alan will be presenting **"Hiring a Rock Star Employee on Your Budget"**

Any firm is only a strong as its employees. Even the best minds need help to be successful. Alan will show you how to get the best possible people on your budget to help ensure your firm's success regardless of size.

Contact Agassman@gassmanpa.com for more information on either of these educational events.

Leimberg Information Services Webinar Presentations

199A CHALLENGES AND STRATEGIES--A DEEPER DIVE

Thursday, February 22nd, 2018, 3:00 P.M.—4:00 P.M.

Please join Alan Gassman and Martin Shenkman for this advanced level presentation on some of the most important components of Section 199A planning, and related consideration which go beyond the basic provisions and planning aspects of this new statute.

Items covered will include Wage and Employee Leasing and Common Paymaster Planning, Depreciation and Qualified Property Planning, What Is A Trade or Business, Segregation of Businesses Under Related Entities, Transfer Pricing Rules, Qualified Plan Considerations, Employment Tax Planning, Complex and ESBT Trust Planning and More.

OLD TRUSTS, NEW TRICKS. NEW TRUST, ESTATE AND TAX PLANNING STRATEGIES AFTER TAX REFORM

Thursday, March 22nd, 2018, 3:00 P.M.—4:00 P.M. EST

The new tax laws change not only the playing field and strategies that will apply to estate and trust clients who are not super wealthy, but also several key trust planning rules and the tax laws, metrics planning wisdom that will apply to Electing Small Business Trusts, Complex Trusts, Charitable Lead Annuity Trusts, Homestead Trust Planning and a host of other considerations beyond what the next tax law says.

Join Marty and Alan for this interesting and useful discussion of what to do with present structures that may no longer be needed, and how to adapt existing arrangements and client situations to new opportunities and traps for the unwary that must be considered.

This presentation will assume that the viewer is generally familiar with the new tax law, and wishes to make planning opportunities and appropriate adjustments available to colleagues and clients. Over 20 useful and client friendly charts and key clauses will be included.

To register, please click HERE

Martin Shenkman

Elvis has not left the building

Alan Gassman

There are no professional advancement credits (CPE, CLE, etc.) offered for viewing this webinars.

EVENT	DATE/TIME	LOCATION	DESCRIPTION	REGISTRATION	FLYER
Representing the Physician Seminar	Friday, February 16, 2018	Embassy Suites- 1100 SE 17th St, Ft. Lauderdale, FL	Dentists are Different - Practical, Business, Regulatory and Common Forms and Language Used in the Representation of Dentists and Dental Practices	Contact: Agassman@gassmanpa.com	
FICPA-Sandspur	Monday, February 19, 2018	TGIFriday's -2501 East Fowler Avenue Tampa	"Trusts from A to Z" & "De-mystifying the New 199(A) Deduction"	Contact: Agassman@gassmanpa.com	Click Here
Leimberg Services Webinar with Marty Shenkman	Thursday, February 22, 3:00 PM – 4:00 PM	Gotowebinar.com	199A CHALLENGES AND STRATEGIES--A DEEPER DIVE	Click Here	Click Here
Clearwater Bar Small Firm Section	Friday, February 23, 12Pm – 1PM	Carrabba's 2680 Gulf to Bay Blvd, Clearwater, FL 33759	"Hiring a Rockstar Employee in Your Budget"	Contact: Agassman@gassmanpa.com	Click Here
Webinar with Jasmine Alexander	Thursday, March 8, 2018	Gotowebinar.com	"How to Motivate Your Clients to Organize Their Information"	Contact: Agassman@gassmanpa.com	
Ethics Webinar with Joe Corsmeier	Friday, March 9, 2018, 12:00 PM – 1:00 PM	Gotowebinar.com	Recent Ethical Decisions That Impact Florida Lawyers	Contact: Agassman@gassmanpa.com	Click Here
Leimberg Services Webinar with Marty Shenkman	Thursday, March 22, 3:00 PM – 4:00 PM	Gotowebinar.com	OLD TRUSTS, NEW TRICKS. NEW TRUST, ESTATE AND TAX PLANNING STRATEGIES AFTER TAX REFORM	Click Here	Click Here
Professional Acceleration Workshop	Friday, April 6, 2018. 11AM-5PM	Stetson Law School—Gulfport Campus 1401 61st Street South St. Petersburg, FL 33707	Reach Your Personal Goals, Increase Productivity and Accelerate Your Career.	Contact: Agassman@gassmanpa.com	Click Here
Ave Maria Estate Planning	Friday, April 27, 2018	Ritz Carlton Beach Resort-Naples, FL	"Asset Protection for the Everyday Estate Planning Lawyer: a	Contact: Agassman@gassmanpa.com	Click Here

Conference- With Jonathan Gopman			nuts to bolts review of asset protection techniques from simple to complex"- **presented by Alan and Jonathan Gopman.**		
Florida Bar Annual Wealth Protection Conference	Friday, May 4, 2018	Tampa Airport Marriott	Creditor Protection Planning for Business and Investment Entities and Their Owners - Including 7 Strategies you Didn't Know About	Contact: Agassman@gassmanpa.com	
2018 MER Continuing Education Program Talks For Physicians	May 17-18, 2018	Nassau, Bahamas - Atlantis Paradise Island Resort	1. Lawsuits 101 2. Ten Biggest Mistakes That Physicians Make in Their Investment and Business Planning 3. 50 Ways to Leave Your Overhead & Increase Personal Productivity.	Contact: Agassman@gassmanpa.com	
Maui Mastermind Conference	June 15, 2018	1001 N Westshore Blvd, Tampa, FL 33607	Wealth 101 for Business Owners	Contact: Agassman@gassmanpa.com	
MER Primary Care Conference	Thursday, July 5-7, 2018	Yellowstone, Wyoming	Alan will be speaking at the Medical Education Resources (MER) event	Contact: Agassman@gassmanpa.com	
Florida Osteopathic Medical Association Conference	September 13-16, 2018	2900 Bayport Drive Tampa, Florida 33607	Mid-Year Seminar	Contact: Agassman@gassmanpa.com	
Notre Dame Tax Institute	October 11-12, 2018	South Bend Indiana	Planning Under Section 199A and Associated Tax and Practical Considerations	Contact: Agassman@gassmanpa.com	
MER Primary Care Conference	November 8-11, 2018	JW Marriott Los Cabos Beach Resort & Spa	1. Lawsuits 101 2. Ten Biggest Mistakes That Physicians Make in Their Investment and Business Planning 3. Essential Creditor Protection & Retirement Planning Considerations. 4. 50 Ways to Leave Your Overhead	Contact: Agassman@gassmanpa.com	

			& Increase Personal Productivity.		