GASSMAN CROTTY & DENICOLO, P.A.
ATTORNEYS AT LAW

THE THURSDAY REPORT

Issue #241 Thursday, April 12, 2018

Re:

In This Issue:

2018- 2019 Compliance Calendar of Events

Compliance Event	Date/Deadline
Filing period for annual reports of Corporations, LLC, LLP, LP and non-profit	January 1 – May 1
Florida Corporate Income Tax Due	March 15 – April 1
Spring Break	March 21 – April 1
Hurricane Season	June 1 – November 30
Fantasy Fest in Key West	October 19 - 28
First day of Hanukkah (time to buy a gift for your Jewish tax lawyer)	December 2
Deadline for early payment of Property Taxes with a discount (check your county tax appraiser's website for the exact deadlines)	4%............November 30 3%............December 32 2%............January 31 following year 1%............February 28 following year
Property Tax deadline	Typically March 31, but check your tax appraiser's website to be sure
TRIM Notice – Right to contest an appraisal	Varies – see your tax appraiser's website immediately after you receive notice
Vehicle Tag Renewal	Annual on the owner's birthday
Open Enrollment for HMOs	Varies – Check with your Employer's human resource department
Gasparilla Pirate Festival in Tampa	January 26, 2019
Deadline for purchasing a Florida 529 Prepaid College Plan at the previous year's prices	January 31, 2019
Homestead Application Deadline	March 1, 2019
Bike Week in Daytona	March 8, 2019 – March 17

Back to Top

Send Client Letter About Self-Settled DAPTs Post Wacker- Sample language to use.

By Martin Shenkman & Alan Gassman

Some have interpreted the recent Alaska decision in *Toni 1 Trust v. Wacker*, 2018 WL 1125033 (Alaska, Mar. 2, 2018) as a death knell to using U.S.-based domestic asset protection trusts, known as DAPTs, in client planning. We believe that this interpretation is incorrect, but practitioners may choose to use this case as an opportunity to write to clients to inform them of the case and what planning options to consider. Other practitioners may feel that the negative interpretation some commentators have given to *Wacker* might make it prudent for them to communicate the negative perception to clients with DAPTs. With the new large, but temporary, estate tax exemptions, the use of DAPTs may be more important than ever. The following sample letter may be adapted by practitioners to communicate these changes to clients, and former clients, if there's a concern that they may be relying on prior advice with respect to DAPTs previously completed.

Via Regular Mail

[Date]

Re: Self-Settled Trusts and the Recent *Tony 1 Trust v. Wacker* Case
Dear Client/Former Client/Inactive Client:

We are writing to you to inform you of an important recent case that may have impact on U.S.-based domestic asset protection trusts known as DAPTs that we may have completed for you in the past. The hallmark feature of these trusts is that the person establishing the trust (referred to as the "grantor," "settlor," or "trustor") is also a named or possible addable beneficiary of the trust. This letter is written to notify former and current clients of the *Wacker* case and other developments,and has not been customized to your situation. We welcome the opportunity to speak to you specifically about your situation if you contact us.

- If you are represented by new counsel, please give this letter, and the attached article, to your current attorney to review the impact of the recent case as well as other developments affecting DAPTs, the administration of DAPTs, and the status and options of a DAPT with legal counsel. *[Practitioners might choose to attach one or more articles from various journals to the letter to provide a more in-depth discussion or to write a short memorandum summarizing the* Wacker *case and status of DAPTs. The reference in this sample letter should be modified accordingly.]*
- If you are a current client, please call our office and make an appointment to meet in person, by web conference or by phone to review the above matters.
- If you aren't a current client and don't have other counsel, please call our office and make an appointment to meet in person, by web conference or by phone to review this situation, but please understand that your file has been closed since our last meeting, and your entire plan and all documents may need to be evaluated to properly advise you in this situation.

In *Wacker*, the Alaska Supreme Court held that the law of the residence of a man who set up an Alaska trust and conveyed assets to it for the alleged purpose of avoiding creditors would apply, instead of Alaska law, for the purpose of determining whether the transfer to the trust would be set aside because it was for the express purpose of avoiding payment to a specific and imminent creditor. We believe that the case simply confirmed that the statute that purported to grant the Alaska courts exclusive jurisdiction to decide matters relating to the transfer of assets to a self-settled trust could not block other state or federal courts from deciding matters relating to such a transfer. The Court did not hold that Alaska law would allow the creditors of the grantor access to the trust's assets. Other commentators have stated that the case confirms that DAPTs do not work for those residing in non-DAPT jurisdictions (e.g., a New York resident creating a DAPT in Alaska).

The *Wacker* case is not the only recent development that might be viewed as negatively affecting DAPTs. The Uniform Voidable Transfers Act is an academic and widely accepted new model law being adopted by many states that states in a commentary (Section 4, Comment 8) that a transfer to a self-settled DAPT is voidable if the transferor's home state doesn't have legislation that allows trusts that are formed by a grantor who is a beneficiary of the trust to be immune from penetration by creditors of the grantor.

"By contrast, if Debtor's principal residence is in jurisdiction Y, which also has enacted this Act but has no legislation validating such trusts, and if Debtor establishes such a trust under the law of X and transfers assets to it, then the result would be different. Under §10 of this Act, the voidable transfer law of Y would apply to the transfer. If Y follows the historical interpretation referred to in Comment 2, the transfer would be voidable under § 4(a)(1) as in force in Y."

Some commentators have criticized this comment as not being supported by the law and point out that this is merely a comment and is not an actual proposed law. Many commentators have recommended that states that adopt the UVTA in the future should do so without adopting or endorsing this controversial comment, but there is no certainty.

As a result of this situation, every DAPT arrangement should be evaluated for possible changes. This applies not only for asset protection purposes, but also because the Internal Revenue Service may claim that a trust that is accessible to a grantor's creditors will be subject to estate tax on the grantor's death unless the creditor access is removed more than three years before the grantor's death.

There are a number of issues that may be considered:

- Existing or modified DAPTs may be helpful by using the now temporarily enlarged estate, gift and generation-skipping transfer tax exemptions. The $5.6 million per donor increase in these exemptions to $11.18 million will only be available through the end of 2025 under present law, and a future administration may reduce the exemption sooner. Thus, you should evaluate whether to use all or part of this increased exemption sooner rather than later so that growth in what is gifted can also escape estate tax while being held under a DAPT might be available for you if the estate tax were eliminated or you had the need for support in the unlikely event that other assets were no longer available for you.
- If based on *Wacker* and other developments, you now view the risks of a DAPT as too great, then you should evaluate options for modifying an existing DAPT by removing yourself as a present possible beneficiary, taking the DAPT to an offshore jurisdiction, or taking other actions that might enhance the probability of success under the intended structure.
- Many DAPTs in process will be transformed to hybrid DAPTs (as described below) or otherwise adapted using other techniques available to enhance safety and results involved in this type of planning. For any DAPT that is in process and not yet funded (or to which additional funding will be considered), "belts and suspenders" designs might be advisable.
- A "hybrid DAPT" is not a self-settled trust, a DAPT, at inception, but rather for the benefit of individuals other than the grantor (called a "third party trust"). A named person or a person some might refer to as a "trust protector" or otherwise situated who are not trustees and who are not acting in a "fiduciary role" can be given the power to appoint or otherwise add additional beneficiaries who may be descendants of the settlor's grandparents, and the grantor may not be added unless economic events occur that make this necessary from a support standpoint. Thus, unless and until distributions are

needed to the settlor, the settlor need not be a beneficiary, thereby circumventing the DAPT issue. There's a myriad of different approaches to these mechanisms.

- For existing DAPTs, consideration of having a trust protector modify the trust, or transferring (decanting) the trust into a different or new trust that is either a hybrid DAPT, or which has other mechanisms to address the possible risks, may be worthwhile. In some instances, DAPTs completed in the rush to plan before the end of 2012, when it was anticipated that the exemption might decline from $5 million to $1 million may no longer be necessary. The growth in the stock market (or other assets) since 2012 and now being six years older may have obviated the need for the settlor to have access to the trust. In such cases it might be advisable for the settlor to renounce any rights as a beneficiary. Consideration might be given to filing a gift tax return to report that renunciation as it may be considered a gift transfer to other beneficiaries, although in a discretionary trust it's not certain how that possible gift could be valued.
- We welcome coordination with and input from your CPA and any investment advisors and insurance consultants, but please keep in mind that what is shared and discussed with them may be admissible in court, so we should be careful in our approach to collaborative communications.
- Besides the trust itself, the underlying structure as to what is owned by the trust may be updated to make it much more creditor resistant, such as by having limited liability companies owned by the trust become owned mostly by the trust and in small part by another trust or family member to have the benefit of what is known as "charging order protection" if the law of a state that recognizes such protection is applicable.

For legal ethics purposes, we should point out that some might characterize this letter as constituting attorney advertising.

With careful planning, individuals in all states may be able to still maintain, or even create, a trust that can possibly benefit the grantor in a state that has a law that does not permit creditors of the grantor to pierce the trust to collect amounts owed. If the transfer to fund the trust is not "avoidable" as being for a primary purpose of avoiding the creditor, then we expect that a well-drafted trust and related plan may have a reasonable likelihood of withstanding creditor and IRS scrutiny, but there is some degree of uncertainty with respect to this. In all instances, greater care in the planning and administration of such trusts may be warranted. Obviously, modifications to existing DAPTs and the structures associated with them might make them safer.

Please consider calling to make an appointment if you are not represented by other counsel.

Sincerely,

[*Name*]
By: ________________________

[*Name, Title*]
Encls. – *[modify based on what the practitioner/firm may enclose with the letter]*

Source URL: http://www.wealthmanagement.com/estate-planning/send-client-letter-about-self-settled-dapts-post-wacker

Back to Top

A Summary of Selected Considerations After the 2017 Tax Act – part 2
by Martin Shenkman & Jonathan Blattmachr

The JCTA provides another wrinkle to traditional asset protection planning. With the new high exemption levels, clients who had pursued transfers to irrevocable trusts to facilitate estate tax minimization and asset protection planning may not have any estate tax concerns post-TCJA. That might leave the asset transfers having little other non-asset protection justification. But some of the new perspective on post-TCJA trust planning below might provide a solution.

As an example, consider a single physician who want to pursue asset protection planning. Her net worth is about $10 million. Under prior law she would have faced an estate tax. Thus, creating and funding an irrevocable trust plan would have provided valuable tax as well as asset protection benefits. Under current post-JCTA law there is no estate tax benefit, although the physician can certainly argue that she made irrevocable transfers to use the temporary exemption. The potential loss of a step-up might be viewed as a detriment to the plan.

To read more, click HERE

Back to Top

How to Avoid the "Sting" When Converting From a C-Corporation to an S-Corporation
by Alan Gassman & Brandon Ketron

When converting from a C-Corporation to an S-Corporation, the Internal Revenue Code Section 1374 "unrecognized built-in gains" rules and the Code Section 1375 "sting" tax rules must be considered. The following article provides a brief overview of each Code Section and some useful tips on how to avoid the negative aspects of each.

Under Section 1375, an S-Corporation that was formally a C-Corporation with "earnings and profits" before making the S election may be subject to a corporate level tax on passive income, such as rentals. The tax will only apply to the extent that income from passive activities exceeds 25% of the Corporation's gross receipts. Planners and/or clients will therefore want to make sure that the corporation will not receive any significant passive income after it makes the S election. This sting tax can also be avoided by making a distribution before the S election is made by making a tax deductible compensation distribution and/or dividends sufficient to eliminate any earnings and profits, or by having revenues in the company each year that the sting tax would otherwise apply that are more than 25% of the Corporation's gross receipts. Many taxpayers consider having the corporation buy a convenience store that sells gasoline because of the high revenue numbers and relatively safe economic results that a convenience store can facilitate.

The more challenging tax is under Section 1374, which provides that assets owned by a C-Corporation that are worth more than their tax basis at the time that the S election is made will be tracked and the revenues from the liquidation or sale thereof will be taxed at the S-Corporation level as if it were a C-Corporation each year for purposes of measuring the income and paying the 21% tax corporate level tax.

Examples of unrecognized built-in gain items owned by a professional corporation would be accounts receivable, furniture and equipment (including furniture and equipment that is fully depreciated and subject to depreciation recapture), and any goodwill owned by the entity.

The most common and expedient way to avoid the unrecognized built-in gain rules is to accrue a large expense on the books of the company that equals or exceeds the unrecognized built-in gain that is otherwise applicable when the S election is made.

For example, if the professional practice has $100,000 of accounts receivable, $200,000 of goodwill, and the fair market value of its furniture and equipment exceeds the tax basis thereof by $100,000, then the total of these three amounts ($400,000) can be determined to be owed as compensation to the shareholder or shareholder employees and accrued as a bonus payable to them on the last day of the last C-Corporation year, assuming that this will qualify as reasonable compensation for services that have been rendered up through the date that the bonus is declared.

This bonus must actually be paid within two and half months (75 days) of the effective date of the S election to any individual who is a 5% or more shareholder in the company.

While professional corporations are required to be on a calender year end, an S election can be effective on the first day of any calender month as long as an IRS Form 2553 is filed within 75 days of when the S election will take effect. The Form 2553 can be filed later than this with a statement that the S election was intended to have been made on the effective date and that the Corporation has reasonable cause for the failure to file within 75 days from the effective date of the S election, which needs to be something more than just an inadvertent oversight by the taxpayer or the taxpayer's advisors. Some advisors believe that the Form 2553 reasonable cause statement can be filed even if the taxpayer had not intended to make the S election until after the effective date requested, but this is not the case and a fraud penalty along with what occurs when professionals filing tax forms are dishonest could be imposed where there is no documentation or evidence that an S election was intended as of the effective date requested on the late filed Form 2553.

The above example and explanation assumes that the professional corporation is on the cash method of accounting, as opposed to the accrual method of accounting.

Another method of zeroing out unrecognized built-in gains would be to purchase assets that would yield a depreciation deduction for the corporation. In the example above, for instance, the practice corporation might purchase $80,000 worth of computer and copier equipment that can be immediately expensed via a Section 179 deduction or under the new bonus deprecation rules under Section 168, so that the bonus compensation payable to the shareholder employee would only need to be $320,000. Other assets and liabilities must also be taken into account, but are beyond the scope of this simplified example.

The furniture and equipment would have to be actually purchased and "placed in service" on or before the last day of the C-Corporation tax year for this to qualify.

Any accrued bonus should be paid within a reasonable time, and in addition to the normal compensation that shareholder employees would receive. For example, if a shareholder employee is normally paid $20,000 a month and a $60,000 bonus is declared, it would not be safe to stop paying the salary and to instead classify the $20,000 a month as a bonus, because the IRS may argue that the accrued bonus was not genuine. Many practices will therefore borrow money from a bank or shareholders, and actually pay the bonus, while then repaying the loan amounts over a period of months or years. The lender can receive a lien on the assets of the professional practice so as to stay in front of any potential future creditors of the practice. For this reason, many practices elect to keep the debt in place indefinitely, and to simply pay reasonable and tax deductible interest thereon.

Professionals who have mortgages on personal real estate that may no longer be able to deduct the interest payments (on debt up to $1,000,000 or $750,000 if incurred after December 16, 2017), due to no longer itemizing deductions and simply taking the increased standard deduction, may wish to pay such debt off with the bonus earned, because the interest owed by the corporation will be tax deductible.

While the bonus paid will be taxable to the employee shareholder, a deduction will be received on the S-Corporation tax return at the time of payment, so the bonus will "wash" for income tax purposes, but employment taxes will be payable thereon.

Many clients are unaware of these rules when considering converting to an S-Corporation; however with proper planning, both the Internal Revenue Code Section 1374 "unrecognized built-in gains" rules and the Code Section 1375 "sting" tax rules can be avoided.

[Back to Top]

Join Trusts – Sometimes Better, Sometimes Not So Better
by Alan Gassman & Brandon Ketron

In 2000-2001, the estate tax exemption was $675,000, and there was no portability that would allow you to transfer any unused portion of your exemption to your spouse if you're married.

This was up from $600,000 in 1997 and $325,000 in 1984.

Most taxpayers who were considered to be affluent would want separate revocable trusts that would capture the $675,000 exemption amount from their separated assets under a revocable trust if they resided in a community property state.

If the married couple had less than the combined exclusion amount of $1,300,000 in assets, then it was common to place more than 50% of their assets under the revocable trust of the spouse who was likely to die first, in order to make best use of the $675,000 allowance of the spouse with the shorter life expectancy (who was typically the husband), both for tax purposes and to safeguard the assets in trust for the surviving female spouse. The surviving female spouse was often considered to need protection for several reasons such as she may not be familiar with making business decisions, be less familiar with the assets themselves, and the increased threat of being taken advantage of after the death of a spouse and advancing age. The surviving spouse could become trustee of a credit shelter trust and possibly a martial deduction QTIP trust after the death of the husband spouse, or the assets could be held in trust by a trust company.

In 2017, the capital gains tax rate was 20% at the highest brackets, and the highest income tax rate on depreciation recapture from the sale of depreciated assets was 43.4%.

Pursuant to Private Letter Rulings 200101021 and 200210051, it was possible to give the first dying spouse a power of appointment over the assets of the revocable trust of the surviving spouse to establish a credit shelter trust for the benefit of the surviving spouse. Although the Private Letter Rulings did not allow for a new income tax basis on those assets from the revocable trust of the surviving spouse, if the surviving spouse could receive distributions for health, education, and maintenance. This limitation is based on the premise that this would be the equivalent of the surviving spouse giving the assets to the first dying spouse and then receiving them back outright within one year of the first spouse's death.

Joint trusts were considered to be an uncertain or often misused instrument, given that it was not clear whether assets held under a joint trust could be directed into a credit shelter trust or a marital deduction QTIP trust unless a proper power of appointment was given to the surviving spouse.

Two well respected authors, Roy Adams and Tom Abendroth, wrote an article entitled Joint Trusts: Are You Saving Anything Other Than Paper?, which was thought by many to be credible treatment of the potential abuses caused by the use of joint trusts.

We've Come A Long Way Baby.

Notwithstanding the above, taxpayers in community property states, and those who were well under the $675,000 level for total family assets in 2000 had well qualified advisors who were able to draft joint trusts to own assets outside of IRAs, life insurance, annuities, and often homestead. Joint trusts worked to simplify ownership arrangements, better or more simply situate assets for mutual convenience, and avoid the complexity of having separate revocable trusts.

In community property states (California, Texas, Washington State, Arizona, Idaho, Louisiana, Nevada, and New Mexico) joint trusts were common because assets transferred to joint trusts would receive a step-up in basis as being classified community property assets, even when only half of the property was included in the estate of the first deceased spouse. Some practitioners find it less complex to create one joint trust rather than two separate trusts for each spouse, however, this is not necessarily an advantage where gift and estate tax planning need to be considered.

In states that recognize tenancy by the entireties, creditor protection for appropriately titled joint assets can include both tangible and intangible assets (including Florida, Delaware, Pennsylvania, New Jersey, Maryland, Virginia, Mississippi, Arkansas, Alaska, Oklahoma, Missouri, Massachusetts, Rhode Island, Tennessee, Vermont, Wyoming, or Hawaii), joint trusts would often be established where the beneficial ownership of the trust and all assets held would be considered to be held as tenants by the entireties with full right of survivorship for the surviving spouse. The joint trust would further avoid probate and guardianship for the couple and the surviving spouse.

On the other hand, many joint trusts have been in-artfully drafted so that the rights of the surviving spouse are unclear after one spouse dies or becomes incapacitated. Some issues include whether the surviving spouse has the ability to alter or amend the trust agreement, has access to the trust assets, and whether the trust assets would pass into a credit shelter trust, a QTIP marital deduction trust, or to descendants after the death of the first dying spouse.

This article will describe how joint revocable trusts can be appropriately used for the benefit of spouses and their descendants, and the common errors that can be avoided by appropriate drafting and implementation with respect thereto.

The authors commonly use joint trusts in community and non-community property states for a myriad of reasons in achieving client goals. Joint trusts help facilitate obtaining a stepped up income tax basis for trust assets on the death of the first dying spouse and also on the surviving spouse's death, and work to fund a credit shelter trust after the first dying spouse's death that can avoid estate tax on the surviving spouse's death. Perhaps most important is the protection of a married couple's assets from potential loss due to mismanagement, spending, and gifting as a result of undue influence or unforseen relationships that can occur after the death or incapacity of one spouse.

In a separate revocable trust arrangement for each spouse, a married couple's assets will typically be divided one-half, or approximately one-half, between each spouse so that on the death of the first spouse, the assets held by the deceased spouse will receive a stepped up basis. The assets are then captured in a credit shelter trust for the surviving spouse. The surviving spouse's own assets and assets jointly owned with right of survivorship become held outright by the surviving spouse. The surviving spouse's assets will pass based upon his/her estate plan to the extent not expended for the surviving spouse's death.

Under Private Letter Ruling 200403094, each spouse can give a power of appointment to the assets of that spouse's revocable trust upon the death of the other spouse. This helps fund the credit shelter trust for the surviving spouse from the assets of the surviving spouse. This Private Letter Ruling did not discuss the issue of a stepped up income tax basis.

Private Letter Rulings 200101021 and 200210051 and also a Technical Advisory Memorandum 9308002 associated with joint trusts came to the conclusion that this type of power of appointment held by the first dying spouse could facilitate the funding of a credit shelter trust to benefit the surviving spouse without being subject to federal estate tax. The use of the first dying spouse's $675,000 estate tax exemption puts non-community property couples on the same standing as community property couples under applicable law.

These Private Letter Rulings have never been challenged in court or even by publicized IRS appeals. Many experts believe that this stepped up basis should apply if the trust assets pass to any trust that is separate and distinct from an outright disposition to a spouse who has owned the assets before the death of the surviving spouse, who appointed them to a trust for the health, education, and maintenance of the surviving spouse, because the statute seems to only apply for outright dispositions back to the gifting trust, and not to any variation thereof.

Much has been written about the ability to obtain a stepped up basis and full funding of a credit shelter trust from assets held in a joint trust. See JEST Offers Serious Estate Planning Plus for Spouse - Part 1 and 2 which can be found by clicking here.

Further, even if a conservative practitioner concludes that a full step-up in basis and funding of a credit shelter trust is not reliable as a result under a properly drafted joint trust, it is clear that a joint trust can be drafted to be considered as owed one-half by each of two separate revocable trusts. The separate revocable trusts are held by two separate spouses to avoid titling issues, or can be held as community property pursuant to an Alaska or Tennessee community property trust, or as tenants by the entireties if the couple resides in Florida, Delaware, Pennsylvania, New Jersey, Maryland, Virginia, Mississippi, Arkansas, Alaska, Oklahoma, Missouri, Massachusetts, Rhode Island, Tennessee, Vermont, Wyoming, or Hawaii.

The challenge is assuring that the trust agreement is properly drafted and the trust assets are properly titled. Facilitating the intended result of the trust will often be based upon state law characterizations, intentions, and titling.

In a joint revocable trust where the beneficial interest owned by a married couple is simply a right of survivorship, in a state that does not recognize tenancy by the entireties which would otherwise provide creditor protection of trust assets, or a creditor is pursuing only one spouse, it will typically be sufficient to provide that the beneficial ownership interest in the trust is considered to be a right of survivorship asset. The surviving spouse will be considered to be the sole owner of the beneficial survivorship interest with complete control over the trust after the death of the first spouse. If there are no estate tax or income tax basis step up implications, and the clients wish to have this treatment to avoid guardianship if one spouse becomes incapacitated and probate on the death of one spouse, and then the subsequent spouse or both spouses simultaneously by appropriate drafting.

By the same token, where the spouses reside in a state that does not recognize tenancy by the entireties, it should be understood that all trust assets will be subject to creditor claims of either spouse if the trust is formed in a community property state and community property is not transmuted into non-community property. The trust share of each trust, or the one-half undivided interest in the trust assets of each spouse, if not otherwise provided for, will be subject to the claims of the creditors of such spouse, in most situations.

We must point out, from years of experience, that a great many joint trusts are drafted using vague and uncertain language, which makes it difficult or impossible to determine the rights and responsibilities of a non-incapacitated or surviving spouse will be after the death of one spouse. Further, it is often hard to determine how the trust assets will pass after the surviving spouse's death because of substandard drafting.

This substandard drafting and problems associated therewith, are not the result of the use of joint trusts any more than drunk driving or texting while driving is the result of use of automobiles. The impact is frustrating and painful, and less common than what occurs when artful or attentive estate planning lawyers use separate revocable trusts.

Conclusion

When designing revocable trusts for married couples in both community and non-community property states there can be advantages which include full basis step-up, protection from undue influence or abuse after the first spouse's death, full funding of a credit shelter trust from assets that might otherwise pass or be held by a surviving spouse, and more secure management of marital assets.

While poor drafting and errors in trust design have been common in joint trust arrangement, many married couples and their descendants will be better served by an appropriate use of joint trusts. A joint trust may be appropriate in situations where the first dying spouse's estate tax exemption will exceed one-half of the value of the assets so that the assets can be held under a joint trust for the benefit of the surviving spouse while simultaneously exercising the maximum exemption of the first dying spouse to prevent estate tax at the surviving spouse's death, and also in situations where the surviving spouse might be exposed to having assets taken away or unwisely spent because they are earned outright rather than being held in trust.

Planners should consider the advantages of a joint trust which include assets appropriately held in a JEST or other trust arrangement receiving a full step-up in income tax basis and simplifying titling of assets into one trust. If the couple resides in a state that recognizes tenancy by the entireties or community property status of assets, a joint trust is often advantageous as compared to the less desirable alternative of having assets divided into separate revocable trusts that cannot provide a full step-up in income tax basis on the first dying spouse's death or full funding of a credit shelter trust.

Assuring that there is competent drafting of the most appropriate trust arrangement for a married couple should be the practitioner's main focus rather than avoiding joint trusts over negligent drafting concerns and establishing separate trusts that may not achieve the optimum planning solution for married couples.

The authors welcome any and all questions, comments, and suggestions for planners who must choose the appropriate combination of trust systems and arrangements for the unique circumstances that can apply to each married couple.

Back to Top

VARIETIES OF JOINT TRUSTS
by Alan Gassman & Brandon Ketron

Many advisors are adapting to the new tax law, absence of concern by a great many families with respect to estate tax, and the popular request for simplification with respect to funding and funding instructions when married couples prefer to work with revocable trusts to avoid probate, guardianship, and public disclosure of ownership of certain assets or activities.

While most well trained and appropriately operating tax and estate planning lawyers have been using separate trusts for each spouse for a number of reasons, the advantages of a joint trust arrangement will often now outweigh the reasons for recommending separate trusts, and many married couples having separate trusts may wish to "merge them" into a single joint trust for the reasons described in this article.

Basic joint trust arrangements that are commonly used by the authors include the following:

1. Simple tenancy by the entireties revocable trust or "land trust to own assets, as trustees, and to facilitate right of survivorship and protection of joint assets from any creditor that would be pursuing only one spouse.

2. A more complicated joint trust that can provide for assets funded under the trust to qualify as tenants by the entireties property while also facilitating a dispositive plan to apply after the death of the surviving spouse, unless changed by the surviving spouse. The trust may include additional features that facilitate funding of a separate irrevocable trust or trusts for the surviving spouse that may be funded by life insurance, annuity contracts, IRAs, pension accounts, pay on death accounts, and other items that would pass to the trust when one spouse dies.

Such a trust may also provide that half of the trust assets, or all of the trust assets that were contributed thereto by the first dying spouse may be disclaimed by the surviving spouse in order to be held in an irrevocable trust that can benefit the surviving spouse without being exposed to loss to creditors, future spouses, or federal estate tax.

3. A non-tenancy by the entireties joint trust may be established for couples who reside in states that do not recognize tenancy by the entireties, having the features set forth above, without creditor protection benefits.

4. A joint trust with one or more of the features described above may be established in a community property state to serve as a receptacle to avoid probate, guardianship, and to assure that the dispositive plan agreed to between the parties or possibly altered by the surviving spouse can be applicable.

A joint trust in a community property state under which the spouses agree to abrogate the community property status of the trust and trust assets so that a creditor of one spouse would not be able to reach all trust assets and community property of the married couple.

5. A non-TBE trust in a non-community property state that gives the first dying spouse a power to appoint the trust assets to creditors of the estate of the first dying spouse and possibly other parties so that assets can pass to one or more irrevocable trusts for the possible future benefit of the surviving spouse while receiving a fair market value income tax basis to avoid capital gains tax when assets are sold or otherwise diversified after the first death.

While such a trust may purport to be considered as a tenancy by the entireties ownership vehicle, the ability of one or both spouses to control the disposition of ownership upon the first death violates the right of survivorship requirement for tenancy by the entireties.

More discussion of these various types of trusts can be found in the following articles.

a. Gassman, Denicolo, Sweeney Selecting Revocable Trust Systems for Clients LISI Estate Planning Newsletter # 1439 (April 2, 2009).

b. Gassman, Denicolo, Hohnadell, JEST Offers Serious Estate Planning Plus for Spouses - Part 1, Estate Planning Magazine October 2013 Vol. 40 No. 10

c. Gassman, Denicolo, Hohnadell, JEST Offers Serious Estate Planning Plus for Spouses - Part 2, Estate Planning Magazine November 2013 Vol. 40 No. 11

d. Adams and Abendroth, Joint Trusts: Are You Saving Anything Other Than Paper? Trusts and Estates August 1992, Vol. 131 Issue 8, P. 39-48

Back to Top

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 the *Wall Street Journal* reports:

Dallas attorney Garry Davis plans to break up his immigration-law practice*. *One firm* *will have all the* ***lawyers. ***The other*** *will record the* ***profits.***

It's just one of many strategies businesses are exploring as they pore over the biggest rewrite of U.S. tax rules in decades. Mr. Davis's approach, which some have dubbed ***"crack and pack,"*** *seeks to get around a provision denying high-earning lawyers, doctors and other professionals a tax break available to plumbing contractors, restaurateurs and architects.*

By separating the lawyers from other parts of the business, he hopes to lower the business's overall tax bill while changing little in his day-to-day operations.

This is what clients are reading.

To View the Full Article Click Here

Back to Top

Humor

[Back to Top]

Upcoming Seminars and Webinars

Calendar of Events

Newly announced events are shown in RED

LEIMBERG Information Services, Inc.

A Leimberg Information Services Webinar Presentation

Asset Protection Trusts after Toni 1 v. Wacker: Strategies, Concerns and Important Considerations for the Conscientious Advisor

- **Topics covered will include:**
- **The Toni 1 Trust case and other cases and law that give signs of decisions yet to come, including Hansen v Denkla and its progeny.**
- **How to stop DAPT attacks in their tracks.**
- **How to use offshore trust law as a back up for existing domestic APT's without causing foreign trust filing headaches or losing S corporation status.**
- **How to avoid having creditors invade trust assets even if a state court decision is hostile to an APT situation.**
- **How the bankruptcy law and 10 year look back rules can be used to attack and defend APTs.**
- **Discussion of status and modification of Trust Protector situations and provisions.**
- **Income and estate tax planning with existing and new APTs in view of these developments.**
- **Design and use of adding offshore LLC's and other non-trust entities for protective APT trust planning purposes, including discussion of dual registered Delaware/ foreign corporation rulings, the Barber and Seargent cases, and the use of foreign foundations as an alternative to APT's.**
- **Nevis and Delaware TBE trusts for clients who reside in TBE states.**
- **Attendees will receive client letters, key provisions to include in APT trusts, and an electronic copy of Allan Gassman's 405 page book entitled Florida and Federal Asset Protection Law, which features coverage of these topics and more.**

Jonathan Blattmachr

Alan Gassman

Marty Shenkman

Friday, April 13th, 2018, 3:00 P.M.—4:30 P.M. EST

A Leimberg Information Services Webinar Presentation

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

To register, please click [HERE]

Florida Bar Annual Wealth Protection Conference

Date: May 4, 2018
Time: 8:00 a.m. – 5:00 p.m.
Location: Tampa Airport Marriott Live and Webcast

Join the top names in Florida's Wealth Protection community for this wonderful educational opportunity.

Jay D. Adkisson, Esq. **Riser Adkission, LLP**	**8:40-9:30 AM**	Lawyer Responsibility and Strategies for Keeping You and Your Clients out of Trouble with Related Recent Developments
Denis A. Kleinfeld, Esq. **Kleinfeld Legal Advisors, PA**	**9:30-10:20 AM**	The Technical and Tax End of Creditor Exempt Financial Product Planning – 529 Plans, Annuities, Life Insurance and More
Albert F. Gomez, Esq. and **Arthur C. Neiwirth, Esq.** **Johnson Pope**	**10:30-11:20 AM**	10 Things That You Probably Didn't Know About Bankruptcy Planning and Why They Are Important
Alan S. Gassman, Esq. **Gassman, Crotty & Denicolo, P.A.**	**11:20-12:10 PM**	Creditor Protection Planning for Business and Investment Entities and Their Owners – Including 7 Strategies You Didn't Know
Leslie A. Share, Esq. **Packman, Neuwahl & Rosenberg**	**1:10-2:00 PM**	Creditor Protection and Associated Planning for Immigrants – With Practical Pointers That Apply to all Floridians
Richard B. Comiter, Esq. and **Andrew R. Comiter, Esq.** **Comiter, Singer, Baseman & Braun, LLP**	**2:00-2:50 PM**	Current Federal Tax Issues, Developments and Strategies Involved in the Structuring of LLCs and Partnerships
Professor Jerome Hesch	**3:00-3:50 PM**	Hot Topics and New Developments in Tax and Associated Planning for the Wealth Protection Professional
Emily J. Phillips, Esq. **Phillips Lanier, PLLC**	**3:50-4:40 PM**	Keeping Separate Property Separate in Co-Habitation, Marriage and Divorce-Estate Planning and Marital Agreement Drafting and Defense

Sponsored by The Florida Bar Continuing Legal Education Committee and The Tax Section

For more information click HERE

EVENT	DATE/TIME	LOCATION	DESCRIPTION	REGISTRATION	FLYER
Leimberg Services Webinar with Martin Shenkman & Jonathan Blattmachr	Friday, April 13, 3:00 PM – 4:30 PM	Gotowebinar.com	Asset Protection Trusts after Toni 1 v. Wacker: Strategies, Concerns and Important Considerations for the Conscientious Advisor	Click Here	Click Here
Ave Maria Estate Planning Conference- With Jonathan Gopman	Friday, April 27, 2018	Ritz Carlton Beach Resort-Naples, FL	"Asset Protection for the Everyday Estate Planning Lawyer: a nuts to bolts review of asset protection techniques from simple to complex"	Contact: Agassman@gassmanpa.com	Click Here
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	Click Here
Maui Mastermind Business Law Webinar	Wednesday, May 9, 1:00PM-2:00PM	Gotowebinar.com	What you Need to Know About Personal and Commercial Liability and Causal Insurances. *Guest speaker with Mr. Gassman will be Holly Kerr	Contact: Agassman@gassmanpa.com	Click Here
Leimberg Services Webinar with Ken Crotty, Chris Denicolo & Brandon Ketron	Thursday, May 10, 3:00 PM – 4:30 PM	Gotowebinar.com	Trust & Estate Planning IRA and Pension Benefits - And Related Topics	Click Here	Click Here
Private CPA Firms 199A talk	Friday, May 11, 2018	Center Club, 123 S. Westshore Blvd, 8th Floor, Tampa, FL	"199A with Filet"	Contact: Agassman@gassmanpa.com	

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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	Click Here
Maui Mastermind Business Law Webinar	Thursday, June 7, 1:00PM-2:00PM	Gotowebinar.com	TOPIC: Employee Practices, Hiring, Firing and Everything in Between *Guest speaker with Mr. Gassman will be Colleen M. Flynn, Esq.	Contact: Agassman@gassmanpa.com	
Maui Mastermind Conference	June 15-17, 2018-Our Clients attend for free!	1001 N Westshore Blvd, Tampa, FL 33607	Wealth 101 for Business Owners	Contact: Agassman@gassmanpa.com	
Leimberg Services Webinar	Thursday, June 21, 3:00 PM – 4:30 PM	Gotowebinar.com	Asset Protection Opportunities You May Not Know About	Click Here	Click Here
Leimberg Services Webinar	Thursday, June 28, 3:00 PM – 4:30 PM	Gotowebinar.com	Asset Protection for Businesses and Their Owners	Click Here	Click Here
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	Click Here
Maui Mastermind Business Law Webinar	Wednesday, July 11, 1:00PM-2:00PM	Gotowebinar.com	Corporate and LLC Structuring - Business, Creditor, Tax and Family Planning Considerations	Contact: Agassman@gassmanpa.com	
Professional Acceleration Workshop	Friday, September 7, 2018. 11AM-	Stetson Law School—Gulfport Campus 1401 61st	Reach Your Personal Goals, Increase	Contact: Agassman@gassmanpa.com	Click Here

	5PM	Street South St. Petersburg, FL 33707	Productivity and Accelerate Your Career.		
Florida Osteopathic Medical Association Conference	September 13-16, 2018	2900 Bayport Drive Tampa, Florida 33607	Mid-Year Seminar	Contact: Agassman@gassmanpa.com	
FBA Trust & Wealth Management Conference	Thursday, September 27, 2018	Sarasota		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 & Increase Personal Productivity.	Contact: Agassman@gassmanpa.com	
Mote Vascular Foundation Symposium	November 30 – December 2, 2018	The Westin-Sarasota, 1175 N. Gulfstream Ave, Sarasota, FL 34236		Contact: Agassman@gassmanpa.com	

Back to Top