

GASSMAN LAW ASSOCIATES
ACTION CHECKLIST

1. Confirm clients' asset, entity, life insurance, liability insurance, and family circumstances.

Prepare projections using appropriate spreadsheet or computer programs so that clients understand that their assets may well exceed available exemptions based upon historical growth and the CPI probably being less than inflation. You can read more on this topic by viewing our Thursday Report from January 24, 2013.

2. Review the terms of the client's revocable living trust to maximize credit shelter trust funding.
 - (a) Evaluate what degree of funding on the first death will be necessary in view of portability.
 - (b) Should each spouse have a power of appointment over the revocable trust of the other to obtain a full step-up of all assets on death? Review issues associated therewith.
 - (c) Consider whether to implement a joint trust with full credit shelter trust funding, and possibly a complete stepped-up basis on all joint assets on the first dying spouse's death.
 - (d) Consider whether to establish a promissory note owed by one spouse to the other's revocable trust in order to facilitate credit shelter trust funding. Under the OID rules, you have to pay interest or report interest, but it washes on a joint return.
 - (e) Consider an Alaska community property trust.
 - (f) Consider drafting revocable trusts to provide that a committee of "independent fiduciaries" could have the power to bestow a general power of appointment on the surviving spouse to cause a step-up in basis on assets that might not otherwise receive such a step-up.
3. Consider strategies to cause a step-up in the income tax basis of assets on the death of a client.
 - (a) Determine whether to restructure entities that would cause a valuation discount on death – it may now be preferable to have no discount and a full stepped-up income tax basis for appreciated assets.

- (b) Consider amending operating agreements and partnership agreements to reduce or remove the restrictions that generate discounts so that on the death of the grantor the step-up in basis on these assets will be greater.
 - (c) Consider distributing assets out of LLCs or partnerships to the members and partners so gifting trusts established as grantor trusts could possibly get a full step-up in basis on these assets on the death of the grantor.
- 4. Reconsider creditor protection trust planning with the business purpose of funding to complete a gift to take the assets and future growth out of the grantor's estate, notwithstanding that the grantor may be a discretionary beneficiary.
 - (a) Consider whether to use a Nevada trust to hold assets that presently would only be protected under charging order rules.
 - (b) Combine effectiveness of a Nevada trust for credit shelter and creditor protection purposes.
- 5. Consider implementing a gifting program for the \$14,000 annual exclusion allowance, plus the \$130,000 exemption increase. Will exclusion gifting be done annually, every other year, or at some other regular frequency to avoid having to file gift tax returns every year?
- 6. Calendar additional gifts once the gift tax statute of limitations has run on returns filed for large 2011 and 2012 discounted gifts to make use of remaining credit exemption amounts.
- 7. Lock in discounts now on remaining entity interests by installment sale or GRAT or CLAT transactions, just in case the administration wipes out discounts.
- 8. Run through the possible financial and tax implications of real estate values recovering, particularly for clients with substantially leveraged real estate—is it time to gift to a Nevada trust?
- 9. Consider charitable giving.
 - (a) Make sure the clients understand the opportunities offered by a charitable lead annuity trust.
 - (b) Is the client over 70 ½ with an IRA? Consider the \$100,000 (or less) charitable transfer opportunity.
 - (c) Show the client charitable lead annuity trust or unitrust numbers.
 - (d) Show the client charitable remainder trust numbers? Does it avoid the 3.8% tax?

10. Also re-evaluate year-end wages and dividend situations.
 - (a) Wages are now subject to the 6.2% employee share, plus the 1.45% employee Medicare share, and an extra 0.9% Medicare tax for high earners.
 - (b) Keep in mind the IRS' recent victories in *David E. Watson, P.C.*, 714 F. Supp. 2d 954 (S.D. Iowa 2010) and *JD & Assocs., Ltd.*, Case No. 3:04-cv-59 (D.N.D. 2006) for unreasonable compensation and S corporation dividend situations.
 - (c) Are we protecting the wages of the head of household for creditor protection purposes?
 - (d) Dividends paid to tenancy by the entireties owners will be protected from creditors of one individual spouse who might be sued.
 - (e) Is there an employment agreement in place that properly verifies wages to the extent needed under Florida Statute Section 222?
 - (f) Place equipment or rental property under an LLC partially owned by children to have income under the children's brackets.
 - (g) Review pension law opportunities in view of a 39.6% income tax and a 3.8% Medicare tax that may be reduced by pension contributions.
 - (h) Make children work, and put them on the payroll. The same may apply for in-laws and other family members.
 - (i) Are there family or others who would be best served by having independent contractor relationships with S corporations that would compensate them? Review independent contractor rules and liability insulation advantages.
11. Adjust rental arrangements.
 - (a) Increase or decrease rent to take into account the 3.8% Medicare tax, 7% sales tax, and passive loss rules.
 - (b) Consider combining real estate with business operations by having separate companies under the same tax identity to attempt to eliminate sales tax and the 3.8% Medicare tax.
 - (c) Be sure that lease agreements have appropriate provisions to help insulate the landlord from potential liability caused by tenant usage.
12. Consider toggling off the grantor trust status of some irrevocable trusts so that the income of the trust will no longer be taxable to the grantor but instead will be taxable to the beneficiaries or the trust.

If you are going to toggle off the grantor trust status of a trust, have the grantor replace the low basis assets of the trust with high basis assets before the status of the trust is changed.

13. Elect a November year end for estates and revocable trusts where possible to have 11 months of 2013 income not be subject to the 3.8% Medicare tax and the 39.6% tax bracket, as well as other 2013 tax increases.
14. Divorce your spouse and marry someone like Mitt Romney or go into the hedge fund business to take advantage of the tax benefits of “carried interests.”
15. Good Reasons for Floridians to get divorced:
 - (a) Each spouse could have a separate creditor protected homestead.
 - (b) Each spouse could become the head of household for wage exemption purposes for creditor protection as long as they each support someone else in their household - thus a reason to date after the divorce.
 - (c) Under the 2013 Medicare tax rules, a married couple will be responsible for the 3.8% tax on all investment income to the extent that their taxable income exceeds \$250,000. This threshold is \$200,000 per person for an unmarried couple, so a \$400,000 effective threshold can apply.
 - (d) Each spouse can remarry an individual who has large net operating losses and then give that person a salary to absorb the net operating losses while sharing the income.