THE THURSDAY REPORT

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Making Thursday a Better Day for Most of Humanity

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IRS PPP Loan Guidance

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REVENUE PROCEDURE 2021-20 HELPS FISCAL YEAR PPP BORROWERS AND GIVES HINTS AS TO PROBABLE TREATMENT OF CALENDAR YEAR BORROWERS.

On April 22, 2021, the IRS released Revenue Procedure 2021-20 in order to provide guidance to fiscal year taxpayers (generally C corporations, S corporations, partnerships, trusts, and estates which have taxable years that do not end on December 31st), if the tax return for the 2020 fiscal year was filed before December 27, 2020.

An example of taxpayers that this may affect would include an S corporation that received permission to file its tax return with a July 31st year-end because its business is seasonal, or a C corporation with an October 31st year-end, that filed their 2020 returns before December 27, 2020.

The Revenue Procedure basically provides that the vast majority of these fiscal year taxpayers who did not take PPP expenses as a deduction on their 2020 income tax return can elect to either (1) amend their return and take the deductions in 2020, or (2) take the deduction for expenses paid during the 2020 tax year on their 2021 income tax return, which may be a large benefit if they are in a higher tax bracket for the fiscal year ending in 2021.

The only exception to the above is that the Revenue Procedure provides that the taxpayer may not move the deduction for any of the new categories of expenses that were added by the December 27, 2020 Economic Aid Act to their 2021 tax return if paid in 2020. These expenses consist of "covered operational expenditures", "covered property damage", "covered supplier costs", and "covered worker protection expenses", and are defined below .

Since these categories were added after December 27, 2020 (the date the return must have been filed by in order to use the Revenue Procedure), it is likely that most taxpayers were already deducting these expenses since the taxpayer would not be including such expenses in their PPP Forgiveness calculations. If for some reason these expenses were not deducted in 2020, then it would be necessary to amend the 2020 tax return to deduct them.

An important tea leaf from the Revenue Procedure is whether the entity has sufficient tax basis to allow for the deductibility of all expenses if the entity is treated as a partnership or S corporation for income tax purposes.

While the general rule on this is that a PPP loan that is forgiven will be considered to increase a taxpayer's basis, it appears that the loan must have either been forgiven, or the taxpayer must have had a "reasonable expectation" that the loan would be forgiven on the last day of the tax year in order for the basis increase to apply.

The Revenue Procedure mentions that the IRS's previous position was that a reasonable expectation of loan forgiveness would have caused the expenses to be non-deductible before Congress clarified the law on December 27th to make PPP forgiveness expenses deductible.

This Revenue Procedure helps to show that the IRS can be expected to allow for PPP loan forgiveness amounts to be added to a taxpayer's basis in 2020 unless there are unusual circumstances that would make it unlikely that the loan will be forgiven. As a practical matter it is best to file the forgiveness application without delay and get receipt of the forgiveness verification from the SBA before filing the 2020 tax return.

The owners of S corporations and partnerships, and beneficiaries of trusts and estates having fiscal year ends that received PPP loans may have differing interests with respect to whether to take the deductions in 2020 or 2021.

For example, the 51% owner of an S corporation may be better off if the deductions come through to her 2021 tax return, while the 49% taxpayer may be better off if the deductions come through on the 2020 tax return. On

the other hand, there may be a breach of fiduciary duty if the 51% shareholder takes an action to her advantage.

The deductions need to be “all or nothing” - for example, the Revenue Procedure does not permit the taxpayer to take one-half of the deductions in 2020 and one-half of them in 2021.

More detail on the above and some of the technical requirements to use the Revenue Procedure to deduct expenses on the 2021 tax return as discussed below:

In order for a fiscal year taxpayer to be eligible to deduct the PPP associated expenses incurred in 2020 on the 2021 tax return, the taxpayer must satisfy all of the following requirements:

1. The taxpayer received an original [“first draw”] PPP covered loan in 2020;

2. The taxpayer paid or incurred original eligible expenses during the taxpayer’s 2020 taxable year;

3. On or before December 27, 2020, the taxpayer timely filed, including extensions, a Federal income tax return or information return, as applicable, for the taxpayer’s 2020 taxable year (which generally would only occur if the taxpayer’s fiscal year ended on November 30th, 2020 or any preceding calendar month in 2020); and

4. On the taxpayer’s Federal income tax return or information return, as applicable, the taxpayer did not deduct the original eligible expenses because–

A. The expenses resulted in forgiveness of the original PPP covered loan; or

B. The taxpayer reasonably expected at the end of the 2020 taxable year that the expenses would result in such forgiveness.

If the taxpayer chooses to follow this procedure and make the election to deduct such expenses in 2021 rather than amending their 2020 tax return, the taxpayer must include a statement on their 2021 return creatively titled “Revenue Procedure 2021-20 Statement” and include the following information:

1. The taxpayer’s name, address, and social security number or taxpayer identification number;

2. A statement that the taxpayer is applying the safe harbor provided by section 3.01 of Revenue Procedure 2021-20;

3. The amount and date of disbursement of the taxpayer’s original PPP covered loan; and

4. A list, including descriptions and amounts, of the original eligible expenses paid or incurred by the taxpayer during the taxpayer's 2020 taxable year that are reported on the Federal income tax return or information return, as applicable, for the taxpayer's 2021 taxable year.

It is noteworthy that the only taxpayers that are eligible to use this Revenue Procedure are taxpayers that filed their return for the 2020 tax year prior to December 27, 2020. Therefore this Revenue Procedure only applies for taxpayers that use a fiscal year for tax reporting, or possibly taxpayers that had a short tax year in 2020 whose tax returns were due prior to December 27, 2020.

Section 304(b)(1)(A) of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (the "Economic Aid Act") that was enacted on December 27, 2020 overruled the IRS's position that expenses paid with forgivable PPP funds were non-deductible, and provided in relevant part that "no amount shall be included in the gross income of the eligible recipient by reason of forgiveness of indebtedness [on an original PPP covered loan]," and "no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of [that] exclusion from gross income." Therefore, taxpayers that report on a calendar year basis (most taxpayers) will be able to deduct such expenses on their originally filed 2020 tax return, and will not need to use this Revenue Procedure as their return is not due until March or April of 2021 depending on how the entity is taxed.

While this Revenue Procedure is of limited utility for most taxpayers, it does provide relief and a method to deduct expenses that were not deducted by reason of the IRS's now overruled position that expenses paid with forgivable PPP funds were non-deductible without having to amend returns. These taxpayers can still amend their 2020 returns, so advisors will need to analyze whether the taxpayer, or its owners, are better off amending the 2020 return or deducting the expenses on the 2021 tax return. If the Biden Administration increases the tax rate applicable to the 2021 year, then it will probably be more beneficial to deduct these expenses in 2021, as a greater benefit will be realized if the expenses offset income at a higher tax rate.

It is noteworthy that this Revenue Procedure only applies to the original PPP eligible expenses which includes, payroll costs, mortgage interest, rent, and utility expenses. The Procedure does not apply to the additional eligible expenses added by the Economic Aid Act which consist of covered operational expenditures, covered property damage costs, covered supplier costs and covered worker protection expenditures. If the additional eligible expenses were not deducted in 2020, then the taxpayer will have to amend the 2020 tax return to include the deduction for the additional categories of eligible expenses.

These new categories of PPP forgivable expenses are defined as follows:

"Covered operations expenditures" are "payment[s] for any business software or cloud computing service that facilitates business operations,

product or service delivery, the processing, payment, or tracking of payroll expenses, human resources, sales and billing functions, or accounting or tracking of supplies, inventory, records and expenses."

"Covered property damage costs" are those costs "related to property damage and vandalism or looting due to public disturbances that occurred during 2020 that was not covered by insurance or other compensation[.]"

"Covered supplier costs" are "expenditure[s] made by an entity to a supplier of goods for the supply of goods that:" (a) "are essential to the operations of the entity at the time at which the expenditure is made;" and (b) is made pursuant to an order, a purchase order, or a contract that is (1) "in effect at any time before the covered period with respect to the applicable covered loan[,]" or (2) "with respect to perishable goods, in effect before or at any time during the covered period."

"Covered worker protection expenditure" is the most complex of the new categories. This category refers to "an operating or a capital expenditure to facilitate the adaptation of the business activities of an entity to comply with requirements established or guidance issued by the Department of Health and Human Services, the Centers for Disease Control, or the Occupational Safety and Health Administration, or any equivalent requirements established or guidance issued by a State or local government, during the period beginning on March 1, 2020 and ending the date on which the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et 8 seq.) with respect to the Coronavirus Disease 2019 (COVID–19)." The list of qualifying activities include expanding drive-through capabilities, creating physical barriers (such as a sneeze shield), and indoor or outdoor air filtration systems.

This Revenue Procedure, or any other guidance for that matter, unfortunately did not directly address when basis is considered to be increased by reason of PPP loan forgiveness, but does mention the IRS's previous position that a reasonable expectation of loan forgiveness would cause the expenses to be non-deductible. Therefore, taxpayers should be able to take the same position that a reasonable expectation that the loan will be forgiven should allow for the basis increase to apply at the time the taxpayer has such reasonable expectation of loan forgiveness.

Stay tuned as we will continue to write and inform as further developments occur.

Article 2

A Florida Fraudulant Transfer Decision - Not Ready for Prime Time Draft

(Part 1)

Jonathan Gopman

Jonathan Gopman has substantial experience in assisting high net worth families with international and domestic estate planning, implementing foreign trust structures, business planning and general tax planning. Jonathan has been interviewed for, and quoted in, a number of articles published in well known publications such as Bloomberg Magazine, Forbes Magazine, Wealth Manager Magazine and Elite Traveler. Jonathan is a commentator on asset protection planning matters for Leimberg Information Services, Inc. ("LISI"), a member of the legal advisory board of Commonwealth Trust Company in Wilmington, Delaware, and a member of the Society of Trust and Estate Practitioners ("STEP"). He is AV rated by Martindale Hubbell.

Alan Gassman and Wesley Dickson

<u>EXECUTIVE SUMMARY:</u>

In the April 9th, 2021 Florida Second District Court of Appeal decision in *Clampitt v. Wick* (*Clampitt v. Wick*, 46 Fla. L. Weekly D799b (Fla. 2nd Dist. 2021)) a debtor-husband transferred life insurance policies and real estate to his wife after a $4.1 million judgment had been entered against him.

The case has been remanded to the trial court to have at least one full evidentiary hearing, and further provides guidance and review for advisors who may advise individuals and married couples before or during troubled times.

Brief Summary

Ronald and Gina Clampitt owned four life insurance policies on the lives of their children, a life insurance policy insuring Mr. Clampitt that had Mrs. Clampitt as the beneficiary and five real properties.

During the marriage, Mrs. Clampitt paid for many of Mr. Clampitt's expenses, including paying to receive interests in the above-mentioned properties, helping to pay Mr. Clampitt's medical and legal bills, which were substantial following Mr. Clampitt's stroke in 2003 and the $4.1 million judgment levied against him in 2007, and paying the premiums on each life insurance policy at issue.

According to Mr. Clampitt's appellate brief, it was apparent under his 2003 and 2004 income tax returns that he liquidated more than $4,000,000 "of his cash assets, transferring the bulk of the same to a number of third parties."

The Crystal River property had an estimated value of $160,000 according to the plaintiff's brief, and was transferred during the collection litigation on June 6, 2006, from the debtor to the debtor and his wife by quitclaim deed using the words "tenants by the entireties" after their name.

The other three Florida properties were transferred to tenancy by the entireties by quitclaim deed on the same date.

The Colorado property worth approximately $20,000 was deeded on June 15, 2006, from the debtor to his wife, presumably because Colorado does not recognize tenancy by the entireties.

Marie Wick sued Mr. Clampitt on March 16, 2000 "based on loans to Ron Clampitt, and his misrepresentations concerning the collateral for such loans[.]". In 2007, the court gave Wick a judgment in the amount of $4.1 million. As of March 2017, that judgment had grown to $7.8 million because of the interest that had accrued.

FL Stat. Section 56.29 reiterates the FL Fraudulent Transfer Statute by providing as follows:

> When any gift, transfer, assignment or other conveyance of personal property has been made or contrived by the judgment debtor to delay, hinder, or defraud creditors, the court shall order the gift, transfer, assignment or other conveyance to be void and direct the sheriff to take the property to satisfy the execution.

The facts in this case were somewhat extreme because the transfer by the husband to the wife took place while Mr. Clampitt had a $4.1 million judgment against him, and there was apparently no written agreement between them that the wife's payment of medical and legal fees were considered to be in exchange for interests in the real property. Mr. Clampitt, in the above-referenced brief, noted that due to his incapacitation, many of the expenses became Mrs. Clampitt's responsibility:

> As the parties are well aware, Mr. Clampitt suffered a massive stroke in 2003 that required several months of hospitalization and rehabilitation, and still severely impacts his memory and abilities, requiring full time care. Prior to the stroke and the Clampitts' marriage shortly thereafter in 2003, Mrs. Clampitt owned and operated a successful twenty-year mental health counseling practice. At the time of her marriage, Mrs. Clampitt had substantial resources of her own in excess of one million dollars from her practice, personal investments, and family gifts. As a result of Mr. Clampitt's incapacitation at the start of their marriage, Mrs. Clampitt was forced to pay for many of his medical bills and other obligations from her own premarital assets, including improvement and upkeep for the real properties such as regular maintenance, back taxes, current taxes, and liens. Mrs. Clampitt paid all premiums on the life insurance policies at issue since 2009 or 2010 after Mr. Clampitt's assets were exhausted. At the time of his stroke and for about seven years after, Mr. Clampitt's assets were managed solely by his power of attorney, Mr. Bayless, who made no contributions to any of Mr. Clampitt's medical expenses or other personal expenses. Those expenses fell solely to Mrs. Clampitt to satisfy for her newlywed husband with her personal premarital funds.

The brief continued:

> In her sworn statement, she carefully detailed the expenses she paid on each property and provided documentation supporting the payments. She further described the loans she made to Mr. Clampitt to pay his bills and the calculations they used to pay her back for some of the money she loaned Mr. Clampitt, again with supporting documentation.

The brief goes on to indicate that there were almost 450 pages of documentary evidence disputing the material facts, including that "on the Crystal River Property," she paid six years of back taxes as well as "$137,632.75 for maintenance, repairs, and improvements (including the building and replacement of a home, dock, deck, fencing, and cargo rift) solely from her personal premarital assets." *Id.* at 16.

The court found that Mr. Clampitt created a tenancy by the entireties when he conveyed the property to him and his wife jointly, citing the following from *Joint Ownership, in Basic Estate Planning in Florida* by Jeffrey A. Baskies:

> Under common law, an owner of real property could not execute a deed conveying real property to oneself and one's spouse as tenants by the entireties because the unities of time and title would not be satisfied. Typically, in order to satisfy these requirements, the owner would transfer the property to a third party (a "straw person") who would then immediately transfer

> the property back to the original owner and her or his spouse as tenants by the entireties. Florida statutorily eliminated the need to use a straw person to satisfy the unities of time and title when creating tenancies by the entireties as to real property with the amendment of F.S. 689.11(1). Ch. 71-54, § 1, Laws of Fla.

It is not fully correct to say that a straw person is no longer required because of Florida Statute 689.11(1) for real estate, because the Florida common law has long permitted the transfer of assets from one spouse to tenancy by the entireties without a straw man. This is a common misconception. Unfortunately, when the Florida legislature applied the common law in drafting 689.11(1) they failed to mention that this should also apply to personal property, but the common law remains.

Under Florida law, monies earned by a spouse during the marriage are considered to be marital assets, but from a creditor law standpoint, monies earned by one spouse and transferred to another spouse can be considered a fraudulent transfer of the entire amount, even though the recipient spouse would be entitled to half of the amounts earned in the event of a divorce, and the full amount if one spouse were to die. This may seem counter-intuitive, however, as TBE assets are generally not reachable by creditors in a bankruptcy situation.

In this situation, Judge St. Arnold, who was the judge presiding over the trial court decision, concluded that the transfer from Mr. Clampitt to his wife constituted a fraudulent transfer, in part because Mrs. Clampitt was not able to overcome her burden of proof with regards to the legitimacy of the transfers.

ROCK, PAPER, SCISSORS:

Anyone who ever played the game rock, paper, scissors knows that priority of power can vary based on circumstances. It is clear that in a summary judgment motion, the moving party bears the burden of proof. It is also clear that, under Florida Statute 56.29, a judgment debtor claiming a right to any personal property bears the burden of establishing at trial "that such transfer or gift was not made to delay, hinder, or defraud creditors." Fla. Stat. § 56.29(3)(a).

The appellate court determined that the evidence on which Judge St. Arnold based his summary judgment was insufficient to satisfy the burden of proof required for summary judgment proceedings.

The burden of proof for a summary judgment is placed on the moving party, despite the fact that the burden at trial is placed on the *non-moving party*, and is a high burden to meet. The Court is required to look at the evidence in a light most favorable to the non-moving party. In this case, the trial court determined that Mrs. Clampitt's affidavit did not constitute sufficient evidence to oppose the above-mentioned proceedings. The Florida Second District Court of Appeals overturned this decision, noting that:

> It may not be conclusive proof to win at trial, but for summary judgment [the affidavit] creates a factual question as to the underlying source of the payments of certain expenses as well as Mr. Clampitt's intent. It appears that the court's decision that Mrs. Clampitt's affidavit was insufficient to meet her burden was driven by its professed belief that the circumstances are inequitable. However, the court impermissibly weighed the evidence and determined issues of credibility. *Clampitt v. Wick*, at 12.

Under this summary judgment standard, the claimant must prove that there exists no evidence with which a jury could find for the non-moving party. This is a much higher burden than is applicable in most civil trials, which utilize a "greater weight of the evidence" burden of proof in Florida. Under this lower burden, the moving party must show that a particular fact or event was simply more likely than not to have occurred, or a 50.1% chance it occurred.

The creditor argued, in her brief, that: [IS THIS TRUE?]

> [T]he overarching concept of a statutory proceedings supplementary action is that transfers that occur during the litigation to an insider such as a spouse are presumed fraudulent as a matter of law. Additionally, an insider recipient of such a transfer accepts the same subject to the equities of a creditor's lawsuit, i.e. equitable lien. *Clampitt v. Wick,* 2020 FL. APP. CT. Brief for the Appellee.

The appellate court's analysis of Florida's exemption laws as applied to life insurance and tenants by the entireties, along with previous case law, is instructive.

WHERE THE HECK WERE THE LAWYERS?

Where were the lawyers to tell the Clampitts to document that Mrs. Clampitt was making loans and advances that she would be re-paid for? Where were the lawyers who should have told the Clampitts to transfer the properties contemporaneously with the loans? Where were the lawyers who should have told the Clampitts to sign promissory notes when advances were made? Where were the lawyers who should have told the Clampitts to pay documentary stamp tax on a deed that is made in exchange for good and valuable consideration?

Where is the lawyer who would have had a typewriter, so the deed didn't need to be hand-written?

Pay us now, or pay us later.

IN MORE DETAIL:

In *Clampitt v. Wick*, 46 Fla. L. Weekly D799b (Fla. 2nd Dist. 2021), appellants, husband ("H") and wife ("W"), appealed a summary judgment in

favor of a judgment creditor ("C"). After disposing of a procedural issue in favor of W the appellate court examined issues that should be of interest to estate planners assisting clients with asset protection planning. The trial court held that H transferred interests in certain property to W during the course of litigation. The trial court ruled that W did not successfully establish that the transfers from H to W were made without the intent to delay, hinder, or defraud C. Thus, the trial court ruled that the transfers were fraudulent transfers and the assets transferred to W could be seized to satisfy the judgment. The trial court holding rejected H and W's arguments that the property transferred by H to W was exempt from seizure for four reasons.

In 2000, C filed a lawsuit against H and recovered a $4.1 million judgment against him in 2007. In 2017, C initiated proceedings supplementary to attempt to collect on her judgment. C sought to apply the cash surrender value of certain life insurance policies that H transferred to W in 2016 and real estate in satisfaction of her judgment. The life insurance policies consisted of insurance on H and policies insuring H and W's children. C argued that she was entitled to an interest in these assets under Florida Statutes Section 56.29(3)(b), which subjects property to levy and sale under execution "[w]hen any gift, transfer, assignment or other conveyance of personal property has been made or contrived by the judgment debtor to delay, hinder, or defraud creditors."

H and W asserted that the cash surrender values of the life insurance policies were protected from "attachment, garnishment or legal process in favor of any creditor of the person whose life is so insured" under Florida Statutes Section 222.14 and that the real estate (other than a property located in Colorado) was exempt from attachment as tenancies by the entireties ("TBE"). H and W also contended that the subject transfers were made without any intent "to delay, hinder, or defraud creditors."

In opposition to C's motion of summary judgment W filed an affidavit in which she stated that she "paid reasonably equivalent value for the interests [she] received" in the real estate. To support her claims W detailed expenses that she had paid related to each property and provided documentation as evidence of such payments. W also stated that she lent funds to H so that he could pay expenses that included significant medical and legal bills. According to W, the transfer of interests in the real estate was for repayment of the loans. W also provided calculations regarding the value of the real estate and the value of the interests in it that were transferred to her. Additionally, W noted that she paid premiums on each of the insurance policies in this case since 2009 or 2010. H also filed an affidavit that he transferred an interest in the real estate to W in consideration of the medical expenses and legal bills she paid on his behalf.

The trial court correctly held that the cash surrender values of the insurance policies were not exempt from execution under Florida Statutes Section 222.14 because that exemption only protects the cash value of policies in which the insured and the owner is the same person. Regarding the real estate, the trial court held that the interests in the properties transferred

were not exempt from process as TBE assets, because the title to such properties did not possess the unity of time. The trial court also ruled that W did not establish her burden that the transfers of real estate life insurance policies were made without the intent to delay, hinder, or defraud creditors.

***Part 2 of this article will be provided in the next Thursday Report, which will probably be on a Thursday.**

Article 3

President Biden's Executive Order on Russia - A Dangerous Net?

Howard S. Fisher

Howard S. Fisher is one of the most well respected trust and estate planning lawyers in the United States, despite his affiliation with the Thursday Report. He and his son Alexander J. Fisher practice in Beverly Hills, California. Howard is a past chair of the California State Bar's Taxation Section and of the Beverly Hills Bar Association's Taxation Section, a former member of the Board of Trustees of the Los Angeles County Bar Association *and* a former secretary of the Western Division of the United States branch of the International Fiscal Association.

President Biden released Executive Order "Blocking Property with Respect to Specified Harmful Foreign Activities of the Government of the Russian Federation" on April 15, 2021 providing for the U.S. Goverenment to have the authority to seize assets of United States persons that have been used associated with Russia and Russian activities. This has caused more than one client to be concerned that almost anyone could accidently be caught in the net that might be cast be the government to investigate people who have had innocent and legitamate dealings.

We asked our friend and well respected international tax lawyer Howard S. Fisher for his thoughts on Executive Order "Blocking Property with Respect to Specified Harmful Foreign Activities of the Government of the Russian Federation" and he had the following to say:

"The potential for mischief is really terrifying… but the question is how will it be used. And no one knows. And there are serious issues about the constitutionality of this EO. So it's really tough to advise anyone.

I've had a Belgium client for 15+ years, who has a small hotel on Miami Beach…. What if he had a Russian cousin (he does not), who now loans him $ to see the operations through the pandemic, and someone in the administration doesn't like the cousin, e.g., he gave money to a right-wing republican candidate – is that influencing 'political stability…. that can trigger a freeze of my client's US assets…. That's one way of reading the EO.

Just 2 of the prohibited activities that can trigger the sanctions are:

(F) activities that undermine the peace, security, political stability, or territorial integrity of the United States, its allies, or its partners; or

(G) deceptive or structured transactions or dealings to circumvent any United States sanctions, including through the use of digital currencies or assets or the use of physical assets;

F – is beyond nebulous what do any of those terms mean. And G has no commercial exception. So if we do anything, e.g., a 'foreign corporate blocker' for a NRA client to shield them from the US estate tax – a mundane transaction, that could be viewed a circumventing the US sanctions….

A great time to live in America!

I've never supported the notion that 'big government is going to come after me' – but it's easy to see how people are starting to feel like that. This may generate a unique type of supercharged asset protection planning that could be a cross between the traditional planning and survivalists (e.g., convert cash today to gold [creditors cant attach what they cant get their hand on + stashes of dry food + plans to go off grid [not only a 2nd passport but a 2nd identity..].

On a separate note, I'm starting to see a lot of delegation to administrative agencies' of punitive powers, with minimal due process. Which is somewhat inline with the concern you have over the EO.

I've a client with a house on the beach, there is a 5-foot easement along the side for public access. The prior owner built a staircase

24" into the easement about 15 years before my client bought the property, 8 years ago. As a practical matter, the easement is useless, for there is a 12+ ft drop on the side of the house just after the staircase, so there is no practical way to gain access (especially if the state had to make it ADA compliant). And if fact, after my client removed the staircase, the State put up a gate so the public could not access the easement due to the danger imposed by the drop. The Coastal Commission recently was empowered to impose fines. Because the Commission didn't like that my client didn't 'jump' when the Commission told him to remove it incursion, he was fined $4+ million. The house is not a mansion and is worth about $8 mill.

Welcome to California – that's why California's are leaving the state!"

Article 4

Get your SLAT - That's Where It's At (Part 1)

Alan Gassman and Christopher Denicolo

FLEXIBILITY IN UNCERTAIN TIMES-EXPLAINING THE SPOUSAL LIFETIME ACCESS TRUST TO CLIENTS

A Spousal Lifetime Access Trust ("SLAT") is a trust established by one person that is held for the benefit of his or her spouse in a manner that will not be subject to the creditor claims of the spouse and other beneficiaries of the trust and also will not be subject to federal estate tax in the estates of such beneficiaries. The SLAT has its roots under the common law of all 50 states of the United States, and has been fine-tuned and augmented by creative planners over the years to comply with and take advantage of guidance set forth under applicable state statutes. Given the present uncertainty and possible changes with respect to the federal estate and gift tax laws, the

SLAT offers clients flexibility while making use of what might be a vanishing lifetime gifting exclusion.

Under the federal estate and gift tax system, there is presently an $11,700,000 unified estate and gift tax exclusion amount. This allows a person to make large gifts which reduce the exclusion amount for both estate and gift tax purposes without paying gift tax unless or until the entire exclusion amount is exhausted. Current law provides for the unified estate and gift tax exclusion amount to be reduced to $5,000,000, plus increases for inflation as a result of the changes to the "Chained Consumer Price Index" since 2012 (which many estimate to be approximately $6,500,000) effective January 1, 2026.

There has been much discussion and ink spilled regarding the possibility of decreases to the federal estate and gift tax exclusion amounts prior to 2026. Most notably is Bernie Sanders' recently proposed "For The 99.5% Act," which calls for a reduction in the estate tax exclusion amount to $3,500,000 and a reduction to the lifetime gifting exclusion amount to $1,000,000. Under this Bill, any gifts made by an individual exceeding $1,000,000 would result in a gift tax that would be based upon graduated rates beginning at 45% and increasing up to 65%, depending on the amount of the gift. Therefore, many wealthy clients are faced with the prospect of a vanishing exclusion amount, which has caused them to consider making gifts of assets to utilize an increased gifting exclusion amount that may not be available in the near future. Nevertheless, while many clients recognize that they want to use their vanishing lifetime gifting exclusion, they may not be inclined to part with the dominion, control, and access to assets that would otherwise be used for gifting purposes.

For married couples, the SLAT is an excellent tool to help achieve the balance between gifting assets to make use of lifetime gifting exclusion and retaining the possibility of assets to such assets because it involves one spouse establishing a trust for the other spouse whereby the beneficiary spouse can receive distributions as needed for his or her health, education, maintenance, or support ("HEMS"). The other spouse also can be the sole trustee or a co-trustee of the SLAT, and the assets of the SLAT should not be subject to the beneficiary/spouse's creditors or subject to estate tax in the beneficiary/spouse's estate.

This is based upon the federal estate tax law in this area, which was enacted to run parallel to a fundamental tenet of the common law with respect to "third-party irrevocable trusts."   If a "third-party irrevocable trust" is formed by one person for the benefit of another person who can only demand or effectuate withdrawals to the extent needed for HEMS, the assets of the trust will not be subject to federal estate tax in the estate of the beneficiary (which typically would not be subject to the creditors of the beneficiary), unless there are certain strings attached or arrangement in place.

It is very important that a beneficiary of a trust (such as the beneficiary/spouse) not have the right or power to demand payment or distribution what is needed for his or her HEMS (such as distributions determined to be for the best interest of the beneficiary). A trustee other than the beneficiary may have the power to distribute the assets of the trust

to the beneficiary beyond what is needed for HEMS, and this will not cause the assets of the trust to be subject to federal estate tax in the beneficiary's estate or subject to the beneficiary's creditors, so long as there is not an understanding between the beneficiary and the trustee that the trustee will make such distributions in excess of what is needed for HEMS.

As with much of the tax law and estate planning techniques, it can be a challenge to explain complex topics such as the federal estate and gift tax law and the SLAT to the clients in an easily understandable format that allows them to make an informed decision in view of the salient benefits and limitations. It is the authors' experience that even sophisticated and business-savvy clients can have difficulty with abstract concepts if they are not explained in layman's terms in writing and in a format that can be referenced at a later time. Clients can be better educated and have many of their questions answered by a well-drafted letter explaining the mechanics of a SLAT, the planning opportunities associated therewith, and the implications and limitations of the technique. Such a letter can be invaluable in communicating the complex ideas associated with the federal estate and gift tax law and the SLAT in simple terms.

The authors recently prepared such a letter to a sophisticated retired CPA client that was largely similar to the following, although without the authors' annotations in the footnotes, which provide considerations regarding the design of a SLAT to reader of this article...

***The informative client letter with footnotes will be featured in the next Thursday Report, which will probably be on a Thursday.**

Featured Events

How to slice your SLAT in 35 minutes flat!

SPOUSE LIMITED ASSET TRUSTS

HOW TO KEEP YOUR SLAT FROM GOING KERSPLAT!

Saturday, May 1st, 2021
11:00 AM to 11:35 AM EDT (35 minutes)

UPCOMING FREE WEBINAR!

Presented by:

Alan Gassman
agassman@gassmanpa.com

ATTORNEYS AT LAW

1245 Court Street, Clearwater, FL 33756

Saturday, May 1st

11:00 AM to 11:35 AM EDT

Register Here

Go Seminoles!

We are proud to participate in the 2021 FSU Accounting Conference without even having to drive to Tallahassee, FL. Please consider supporting this momentous event for all of history.

Florida State University
Accounting
Conference
May 13-14, 2021
Location: Virtual, Interactive
CPE: Up to 16
FICPA.ORG/FSUAC
FICPA

JOIN US AT THE 2021 FSU ACCOUNTING CONFERENCE

The Florida State University Accounting Conference brings together CPAs to learn and shared ideas. Our 2021 agenda brings together a great line-up of topics and thought leaders, all providing you with the latest information you need to succeed. From economic and legislative updates to CARES Act, fraud case studies and forensic accounting, explore what is in store for this year and beyond in the comfort and safety of your own home or office. Go 'Noles!

FEATURED SPEAKERS

Bret Hood
Director, 21st Century Learning & Consulting, LLC
Building a Better Internal Control Environment

Alan S. Gassman
J.D., LL.M., Partner, Gassman Crotty Denicolo, P.A.
The Florida CPA's Practice Guide to Effective Creditor Protection Planning

WHY YOU SHOULD ATTEND

- Receive updated information on how the COVID-19 pandemic has impacted Florida's economy
- Explore a practice guide to effective creditor protection planning
- Learn the latest in A & A – both public and nonprofit
- Examine how Covid-19 has changed valuation and audit considerations
- Hear about internal control environments and how they can lead to fraud

AGENDA AT-A-GLANCE *Agenda subject to change.*

Thursday, May 13, 2021

8:00am – 8:50am	Economic Outlook-National Perspective (1TB)
9:00am – 9:50am	Florida Economic Development Snapshot-The impact of COVID-19 (1TB)
10:00am – 10:50am	Update on Accounting and Auditing Standards (1AA)
11:00am – 11:50am	Not-for-Profit Update (1TB)
12:50pm – 1:40pm	Fine tuning and Improving Estate and Asset Ownership Planning for all Categories of Clients (1TB)
1:50pm – 2:40pm	The Florida CPA's Practice Guide to Effective Creditor Protection Planning (1TB)
2:50pm – 3:40pm	Non-Profit Accounting and Auditing Update (1AA)
3:50pm – 4:40pm	AL, Data Analytics and Big Data (1TB)

Follow the FICPA on Twitter @ficpa and use #ficpaFSUAC to tweet about this conference.

FICPA-FSU Spring Accounting Conference

Thursday, May 13th

from 12:50 to 2:40 PM EDT

Register Here

Upcoming Events!

Register for all future free webinars from Gassman, Crotty & Denicolo, P.A. using this link

Saturday, May 1, 2021	**Free webinar from our firm**	**Alan Gassman presents:** SPOUSE LIMITED ASSET TRUSTS - HOW TO KEEP YOUR SLAT FROM GOING KERSPLAT! **from 11:00 to 11:35 AM EDT**	**Register**

Monday, May 10, 2021	**Paralegal Association of Florida: Pinellas Chapter**	**Alan Gassman presents:** *Making Your Job Better and Your Firm More Successful - the Legal Assistant's Guide to Liberation and Effectiveness* **from 12:00 to 1:00 PM EDT**	**Coming soon**
Thursday, May 13, 2021	**FICPA-FSU Spring Accounting Conference**	**Alan Gassman presents:** *Fine Tuning and Improving Estate and Asset Ownership Planning For All Categories of Clients* **from 12:50 to 1:40 PM EDT** & *The Florida CPA's Practice Guide to Effective Creditor Protection Planning* **from 1:50 to 2:40 PM EDT**	**Register**
Wednesday, May 19, 2021	**Free webinar from our firm**	**Alan Gassman and Dr. Luz D. Randolph present:** *Private Foundations from A to Z. How Private Foundations help Donors help Public Charities and Causes* **from 12:30 to 1:30 PM EDT**	**Register**
Thursday, May 20, 2021	**Michigan ICLE Annual Probate & Estate Planning Institute**	**Alan Gassman presents:** *Prebankruptcy and Bankruptcy Avoidance Strategies for Challenging Situations* **from 11:15 AM to 12 PM CT**	**Register**
Tuesday, June 15, 2021	**Association of Insolvency and Restructuring Advisors' Pre-conference Bankruptcy Tax Toolbox**	**Alan Gassman and Christopher Denicolo present:** *Tax Planning for Troubled Companies Involving CODI*	**Coming soon**

Wednesday, June 16, 2021	**Free webinar from our firm**	**Alan Gassman, Professor Jerry Hesch, and Dr. Luz D. Randolph present:** *Life Insurance Planning, including Term Life Insurance for Charitable and Non-Charitable Purposes* **from 12:30 to 1:30 PM EDT**	**Register**
Wednesday, July 21, 2021	**Free webinar from our firm**	**Alan Gassman, Dr. Luz D. Randolph and Michael Lehmann present:** *Charitable Planning for the Business Owner* **from 12:30 to 1:30 PM EDT**	**Register**
Thursday, July 26-29, 2021	**AICPA & CIMA ENGAGE 2021 in Las Vegas, NV**	**Jerry August, Alan Gassman and Kevin McGraw present:** *Ready for a Sale Panel on Business in Distress* **from 9:30 to 10:45 AM PT**	**Register**
October, 2021	**Notre Dame Tax and Estate Planning Institute**	Topic TBD	**Coming Soon**
Thursday, November 4, 2021	**Estate Planning Council of Birmingham**	**Alan Gassman presents:** *Hot Topics In Estate Tax And Creditor Protection* **from 8:00 AM to 10:00 AM CT**	**Coming soon**
Thursday, November 4, 2021	**Alabama Banker's Association**	Topic TBD	**Coming Soon**

Forbes Corner

Senate Estate And Gift Tax Bill Will Reduce Exemption To $3,500,000 And Take Away Many Opportunities

Mar 27, 2021

Senator Bernie Sanders released his proposed estate and gift tax reform legislation on Thursday, March 25, to the displeasure of a great many

American families and their advisors. Senators Kirsten Gillibrand, Jack Reed and Chris Van Hollen reportedly co-sponsored this plan... **Continue reading on Forbes**

All There Is To Know About The Restaurant Revitalization Stimulus Rules

Mar 18, 2021

The American Rescue Plan Act authorized and allocated $28.6 billion to the Restaurant Revitalization Fund program. Monies from this fund are to be paid as tax-free grants to restaurants, bars, and associated food and beverage related businesses in order to provide them with compensation for... **Continue reading on Forbes**

Bonus Article

Coming Soon to Bloomberg Tax

Alan and Wesley Dickson have written an article entitled:

The 501(c)(6) Noncompliance Problem – How Many Industry and Professional Organizations Are Out of Compliance and Should Not Have Qualified for PPP Loans

*This article will be published in the Bloomberg Tax: Tax Management Memorandum on May 3rd, 2021. For a copy, you can email agassman@gassmanpa.com or subscribe to Bloomberg Tax at https://pro.bloombergtax.com/.

Want to Help your Direct Reports Grow?

David Finkel

Ask any small business owner what they spend the majority of their time on, and you will likely hear something along the lines of:

“I spend it putting out fires.”
“I spend it answering employee questions and helping them do their jobs.”
“I spend it helping my team with problems and challenges.”

You are probably pretty accustomed to having direct reports come to you for help with problems and challenges. It takes up the bulk of your day and is often spent on fixing issues that don’t have a direct impact on the growth of your company. And I bet you often give them the answers --

"Sure, Tina. Here's what you should do….."

While it may seem easier (and quicker) to just help your team members get over any hurdles that they face along the way, you are better off letting them answer their own questions and fix their own problems.
So the next time Tina comes to you and asks what she should do, flip the question on her. Ask, "What do you think we should do?"

A Better Way

Allowing your team members to fix their own problems, takes a little bit of faith and a whole lot of professional coaching. Everyone on your team has different strengths and weaknesses, and it is important to remember that when using this method. If a team member is mature and experienced in their role I might say, "I trust that you can handle this yourself." I'll ask her how she thinks she should handle it and then encourage her to try doing that.

If a team member is less experienced, I might try a slightly different approach. "Well Jim, I've got some specific thoughts for you that I'll share in a moment. But before I do, tell me what you think you should do here? If I wasn't around, how would you handle this?"

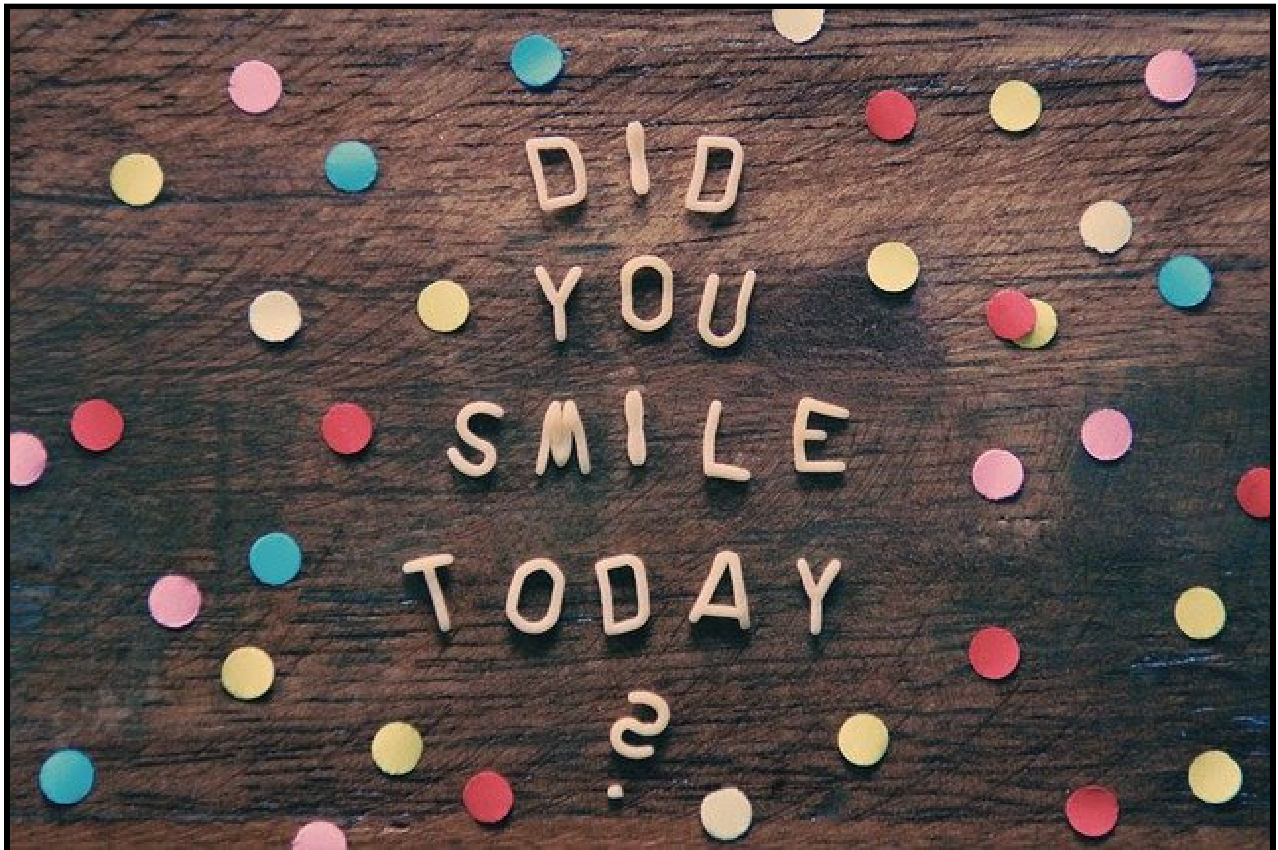
Of course, if he has a great answer, then you can say something like, "Wonderful, go ahead and make that happen. I can't wait to hear how you do with that." And if he comes up with a crazy, outlandish idea, ask him why he thinks that's the best approach. Consider questions like, "If you weren't able to do that, then what would you do? Why would you do that instead? Have you taken these other ideas into consideration?"

Approaching the question this way not only helps you come to the best solution possible, but allows the team member to grow and develop within

their role in the company. Over time they will begin to feel more confident in their decision making skills, and take on more within the business. And rely on you less to help them do their day-to-day tasks.

Once you get into the habit of having your team members answer their own questions, you will find that they will begin to take ownership of the process and come to you for the things that they truly need your input on. Thus, allowing you to create a scalable business that is owner-independent.

Humor



Younger Readers may not have heard of Samuel Clemens, who was a Broadway actor in the 1970s and became a popular comedian in the 1980s.

Here's some of our favorite Samuel Clemens sayings:

"Giving up smoking is the easiest thing in the world. I know because I've done it thousands of times."

“I can teach anybody how to get what they want out of life. The problem is that I can’t find anybody who can tell me what they want.”

"Travel is fatal to prejudice, bigotry, and narrow-mindedness, and many of our people need it sorely on these accounts. Broad, wholesome, charitable views of men and things cannot be acquired by vegetating in one little corner of the earth all one's lifetime."

"The secret of getting ahead is getting started."

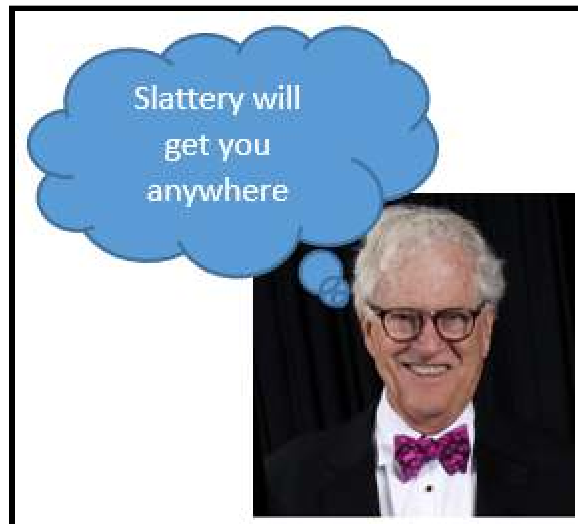
“Never argue with stupid people, they will drag you down to their level and then beat you with experience.”

"Do the right thing. It will gratify some people and astonish the rest."

"Get your facts first, and then you can distort them as much as you please. We do not deal much in facts when we are contemplating ourselves."

- Samuel Clemens

5 Star Reviews from Readers like You!



David Howell

"I should have long ago taken a moment to tell you how much I enjoy your Thursday Reports! Good stuff. Candid. No fluff. Funny."

- David Howell

"I soak up your posts, and appreciate your knowledge & enjoy your humor! If I ever win the lottery, you'll be the 1st guy I call. My husband will be the second."

- Stacey Miller

Stacy wins a free lifetime subscription to the Thursday Report and front row tickets to Samuel Clemen's next comedy show at Capitol Theatre in Clearwater.

"Just an incredible amount of useful information in this week's newsletter! It will take some time to digest it all."

- Anonymous

Did you like our Thursday Report? Send your thoughts and comments to info@gassmanpa.com for a chance to be our next featured 5 star review!

Gassman, Crotty & Denicolo, P.A.

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Clearwater, FL 33756

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