ROCKLAND ESTATE PLANNING COUNCIL
Heckerling Review 2015

February 3, 2015

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Introduction

I. Where are we as Estate Planners today?

A. $5,430,000 federal exemption, affects 0.2% of the population

B. Relative stability in estate tax for the first time since 2001

C. Uncertainty of tax or tax changes are no longer the driving force for clients

1. New Jersey and New York estate planning ($675,000 and $2,062,000[1] exemptions respectively, are still tax motivators)

2. New York is scheduled to increase its exemption to the federal level by 2019, but if assets exceed the exemption the exemption is phased out. Gifts within 3 years of death are added back.

D. Income tax issues, including basis issues are a new tax focus.

1. Particularly important in planning for estate taxes, where maximum estate bracket is 16% and income tax bracket is 25%

2. Gifts of high basis assets and cash are important.

II. Legislative Developments

A. Not likely this year, although Obama has proposed a capital gains tax of 28% on appreciated assets passing from the very wealthy at death

B. Tax Extenders

1. $100,000 charitable gift directly from IRAs (enacted December 2014 and terminated December 31, 2014)

2. Bottles of milk last longer than this legislation.

C. New York Throwback Rule for Trust Distributions

1. Until last year, if Trust had no New York Trustee, no New York tangible property and no New York real estate or other source income, the Trust paid no New York taxes and no New York taxes on distribution.

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[1] Increasing to $3,125,000 in a few months

2. After 2014, new throwback rule in New York will tax New York residents on the accumulated income from the above sources when it is distributed. Therefore, deferral is still possible.

III. Transfer of Corporate Goodwill (Bross Trucking, Inc. v. Comm) TC Memo 2014 – 17

A. Facts

1. Dad owns company

2. Kids form new company doing the same business

B. IRS Position:

1. Corporate goodwill of old company is a taxable dividend to Dad, followed by a gift by Dad to the kids' new company.

C. Issue: Is the goodwill personal to Dad or is it corporate goodwill?

1. Was there an employment agreement between Dad and his company with covenants not to compete?

2. Other factors courts will look to:

a) Was it Dad who forged the customer relationships?

b) Was Dad involved in managing the new company?

c) Was it Dad or the kids who managed the customers of old company?

d) Need to show the kids developed the customer relationships

IV. Sales to Grantor Trusts – Woelbing – (docketed case not yet decided)

A. IRS argument identical to the arguments raised in Karmazin (TC Docket No. 2127-03)

B. IRS Position

1. Note has zero value under Section 2702. Note is equity and not a debt.

2. The interest on the Note is a non-qualified annuity as in the case of a GRAT. Trust, however, does not qualify as a GRAT.

3. Purchase price was too low.

4. IRS disregarded the formula clause.

5. Gift tax is asserted during taxpayer's lifetime.

6. Estate tax asserted on value of Note plus enhanced value of the Trust assets over face amount of the Note.

7. Major disadvantage to gift splitting

C. Sale to Grantor Trust requires careful planning

1. No safe harbor rules, as in the case of GRATs

2. The Woelbing defined value clause was not designed so that excess value passed to charity (similar to Wandry clause).

3. Clients should be aware of risks involved.

Curing Obsolete Planning

I. Why consider "undoing" previous estate planning transactions?

A. In 2000, $675,000 exemption, maximum estate/gift tax rate of 55% (plus 5% surtax on certain large estates), GST rate of 55%, and no portability.

B. After ATRA, $5,430,000/2015 exemption (indexed for inflation), maximum estate/gift/GST tax rate of 40%, and portability.

C. Current income tax rates:

1. Federal: Up to 43.4% on ordinary income (with 3.8% surtax on net investment income), and 23.8% on long-term capital gains.

2. When combined with state/local rates (in states such as NY and NJ), can be more than 50% on ordinary income and more than 35% on long-term capital gains.

D. More estate tax returns are being filed (up 18% in 2013), but most likely due to the filing requirement for electing portability.

E. Tension between estate tax reduction and income tax reduction through basis step-up at death.

F. When determining whether to change an existing estate plan, must take into account:

1. Income Taxes
2. Transfer Taxes
3. Fiduciary Duties
4. Ethical Duties
5. Administrative Matters
6. Effects on Creditor and Spousal Claims

II. Base Case: The Existing Credit Shelter Trust

A. For estate tax, the residence of the decedent matters. For income tax, the residence of the beneficiaries matters. For examples below, assume same state for both unless otherwise described.

B. **Bypass trust has $3 million of assets with an income tax basis of $1 million. Surviving spouse has $2 million of assets in the surviving spouse's own name.**

1. Florida (no income tax or estate tax). 2 children receive the bypass trust assets upon the death of the surviving spouse.

   a. Bypass trust paid out to surviving spouse: $0 estate tax, $0 income tax after death

   b. Bypass trust remains until death of surviving spouse: $0 estate tax, but $476,000 (23.8% x $2M) federal income tax on the bypass trust assets when sold by the children.

2. New York

   a. Bypass trust paid out to spouse: $391,600 NY estate tax, $0 income tax

   b. Bypass trust retained: $0 Estate tax, $628,000 income tax (Fed and NY, combined 31.4% rate)

3. New York, but bypass trust assets have a $2 million basis

   a. Bypass trust paid out: $391,600 NY estate tax, $0 income tax

   b. Bypass trust retained: $0 estate tax, $314,000 income tax

4. California (no estate tax, high income tax). Assets have a $1 million basis.

   a. Bypass trust paid out: $0 estate tax, $0 income tax

   b. Bypass trust retained: $0 estate tax, $660,000 income tax (combined 33% rate)

5. Washington State (high estate tax, no income tax)

   a. Bypass trust paid out -- $381,900 estate tax, $0 income tax

   b. Bypass trust kept -- $0 estate tax, $476,000 income tax (Federal)

   c. However, If the assets have a $2 million basis instead of $1 million, "keeping" the bypass trust becomes the better option (similar to NY state).

6. Surviving spouse in NY, one child in California, one child in Washington State.

   a. Bypass trust paid out -- $391,600 estate tax, $0 income tax

   b. Bypass trust retained: $0 estate tax, $330,000 income tax (child 1), $238,000 income tax (child 2)

C. Have to note which assets are appreciated, and which ones aren't . Vastly different effects of distributing out trust assets vs. retaining within bypass trusts.

III. Avoiding Valuation Discounts

A. The IRS may start arguing for discounts instead of against them, if the income tax consequences of a lower basis exceed the estate tax savings of a lower asset value.

B. Minority interest in an entity

C. Restrictions on transfer, distributions, liquidation and withdrawal; lack of marketability

D. Compare transfer tax savings to income tax costs.

1. **Example**: Client owns a 25% interest in an FLP. FMV of the 25% interest (discounted) is $2.5 million, while a 25% interest in the underlying assets would be $4 million (37.5% discount). Value of the client's other assets is $1.43 million (in 2015).

   a. Upon Client's death, there will be no Federal estate tax. However, the beneficiaries now have an asset with a $2.5 million basis and $1.5 million of potential capital gain, for a potential federal income tax of $1.5M x 23.8% = $345,000

      1) If no discount, there will still be no Federal estate tax, and no potential Federal capital gain tax/NIIT.

   b. If Client is a New Jersey resident:

      1) With discount: The client's estate would owe $273,120 of NJ estate tax, and the children would have a potential federal/state income tax in excess of approximately $450,000 (assuming a sale right after death).

      2) Without discount, the client's estate would owe total tax of $723,000 of NJ estate tax, but the children would have no

Federal or state income tax (assuming a sale right after death)..

E. Eliminating Partnership Valuation Discounts (Best for Florida residents)

1. Purchase additional partnership interests to gain control

    a. If not from grantor trust, potential income tax recognition.

    b. Fiduciary duties of partners to each other

2. Amend the partnership agreement with "value-adding" provisions

    a. Allow partners to withdraw at will

    b. Redefine "fair value" on withdrawal as going concern value without discounts

    c. Require annual distributions to the partners, with deceased partner having administration rights alone or with others

    d. Allow liquidation without liquidation vote (for example, convert an LLC into a general partnership)

3. Redeem a partner's interest at market value. Be wary of:

    a. Income tax considerations (potential gain recognition),

    b. Fiduciary duties of the partners to each other

    c. Administrative issues (does the partnership agreement allow the redemption)

    d. Creditor and marital issues (substituting an undesirable asset, the partnership interest, for more desirable assets)

4. Liquidate the entire partnership (substituted basis of assets). Need to know what the partners' outside basis is.

    a. Beware of 704(c)(1)(B) (the 7 year rule for appreciated property distributed out to a different partner)

    b. Beware of distributions of marketable securities, treated like cash (can potentially cause taxable gain if in excess of outside basis)

    c. Mandatory inside basis adjustments (734(b))

F. Eliminate Fractional Discounts

1. Merge fractional interests by purchase, sale swap or gift.

2. Transfer fractional interests to a general partnership that gives each partner the right to force a sale.

3. Draft a co-owners' agreement that allows each co-owner to force a sale at FMV.

IV. <u>Cause Inclusion of Trust/Gifted Assets in Settlor's Estate</u>

A. Exercise swap power with a grantor trust, substituting high basis assets for low basis assets of equivalent value.

1. Trustee has duty to ensure that values are equivalent.

2. Using a defined value clause may avoid an IRS challenge.

3. Rev. Rul. 2008-22: As long as Trustee has duty to ensure property swapped is of equal value, no estate inclusion.

4. Grantor can consider exchanging a promissory note for the trust's low basis assets. However, there exists some uncertainty regarding the income tax consequences of the termination of grantor trust status while the note is outstanding.

a. Preferable to borrow cash from a third party and contribute the cash in exchange for the low basis assets.

B. Purchase low basis assets from a grantor trust.

1. Unlike the swap power, the Grantor cannot unilaterally undertake the sale without the Trustee's consent.

2. Trustee therefore has more fiduciary duty with respect to the prudence of the sale transaction.

C. Settlor becomes trustee of a trust not subject to an ascertainable standard.

D. Invoke the reciprocal trust doctrine.

E. Settlor purchases a remainder interest in a GRAT or QPRT.

1. If the income annuitant purchases the remainder interest for FMV using the 7520 tables, you get the appreciating assets back in the estate because the income and remainder interests merge.

2. GRAT

   a. Prohibition on commutation, but no prohibition on annuitant buying out remainder.

   b. Be careful of spendthrift provisions.

   c. If the remainder beneficiary is a grantor trust, no income tax consequences.

   d. Example: 7 annuity payments left, $112,495 each. GRAT property worth $1,250,000. PV of annuity at a 2.2% discount is $722,502. Grantor buys the remainder for $527,498 ($1,250,000 - $722,502).

   e. Terminating the GRAT:

      1) Transfers future appreciation to the grantor (for basis step-up); and

      2) Provides the remainder beneficiaries with high basis assets.

3. QPRT

   a. No commutation allowed.

   b. Some commentators suggest reacquiring the residence.

      1) However, might be risky for trustee to do something that the trust says you can't do. Get releases from everyone.

      2) Also implies a retained power to repurchase the residence, which could mess up the initial gift (wait 3 years?).

      3) Also could cloud the grantor's title and make it difficult to sell later on.

   c. Alternatively, purchase remainder interest in the QPRT from the remainder beneficiary. Grantor would then own the term interest and the remainder interest.

F. Move a self-settled asset protection trust from a state that provides creditor protection to a jurisdiction that doesn't provide creditor protection (Delaware to New York).

G. Cause Section 2036(a)(1) Application

1. "Made a transfer (except a bona fide sale…) by trust or otherwise, under which he has retained for his life .. the possession.. enjoyment..or right to .. income…"

2. Partnership formalities ignored, minimal assets retained, disproportionate distributions, no non-tax purpose

3. Grantor doesn't pay rent after QPRT term ends

4. Donor uses artwork, jewelry, etc… that donor gave away. Implied agreement.

V. <u>Take a Different Basis Position than on Decedent's 706</u>

A. Lower generation beneficiaries have flexibility with basis; doesn't necessary have to match the 706 value (as of yet, the consistency proposal is still out there). Can possibly even argue different basis if no 706 is filed. Nothing requires 706 filing currently.

B. General Rule: Beneficiary (other than Executor who is a beneficiary) can obtain higher basis where appropriate (obtain new appraisal as of date of death).

VI. <u>Cause Inclusion of Trust Assets in Beneficiary's Estate</u>

A. Trust distributes low basis assets to the beneficiary.

1. Basis step-up, but increases taxable estate and subjects the beneficiary to potential creditor issues.

B. Trust cashes out a beneficiary

C. Current beneficiary purchases the remainder interest in a bypass trust or other non-QTIP trust.

D. Terminate the trust.

1. For all of the "distribution" solutions, be wary of:

a. Income tax: carrying out trust DNI

b. Fiduciary duties to other beneficiaries

c. Creditor protection (loss of) when assets are distributed out

d.

E. Make the beneficiary the trustee. If there is no ascertainable standard for distributions, would be considered to have a general power of appointment (estate inclusion).

1. Some states have saving statutes that impose an ascertainable standard on trustee-beneficiaries.

F. Do not fund smaller bypass trust (Olsen v. Commissioner, TCM 2014-58).

1. In Olsen, hadn't separated out bypass and marital trust. Executor son went back and pieced together how much was property in each trust. Executor said all in bypass trust, IRS said all in marital trust. Court allocated some to bypass and some to marital. Don't let that happen.

2. Potential avenues for not funding:

a. Family settlement agreement

b. Judicial reformation of the trust

c. Judicial modification or termination of the trust

3. Would still consume the DSUE (Ahmanson v. U.S., 9th Circuit). Would not get full marital deduction even if all assets came out to surviving spouse. Not going to get marital deduction if friendly family settlement agreement.

G. Decant to a trust where the beneficiary has a general power of appointment.

H. Beneficiary exercises a special power of appointment to grant someone a general power of appointment (the Delaware tax trap). Section 2041(a)(3).

I. Make a late QTIP election for a bypass trust, if the bypass trust is QTIP-able and the decedent's estate did not yet file an estate tax return.

VII. Cause Inclusion in a Third Party's Estate

A. Gift appreciated property to an elderly or ill family member more than 1 year before death, and then elderly person leaves property back to donor under his/her will.

1. More than 1 year prior avoids Section 1014(e).

2. Or, have the elderly family member leave the assets to someone else (other than the donor) upon the family member's death.

3. Trusts for Donor and otherwise

B. Exercise a non-general power of appointment in favor of an elderly or ill family member.

1. Does this avoid Section 1014(e)? It's not technically a gift, but would it be deemed so for 1014(e) purposes?

C. Exercise a non-general power of appointment in favor of spouse, who leaves the property to the one who exercised the power.

D. Add or change trust beneficiaries.

1. Is a trust protector or power-holder appointed? If not, may not be able to add/change trust beneficiaries.

VIII. Shift Assets Between Spouses

A. Appreciated assets to ill spouse, depreciated assets to healthy spouse.

1. Be wary of Section 1014(e). If assets from ill spouse pass to discretionary trust upon death, and surviving spouse is a discretionary beneficiary, does 1014(e) apply?

B. Spouses in a community property state partition community assets, with appreciated assets going to ill spouse and loss assets going to healthy spouse.

C. Spouses in a community property state convert separate property assets into community property.

1. Double basis-step up for any property not considered gifted as the result of the conversion from separate property to community property.

D. Spouses in separate property states can form Alaska or Tennessee Community Property trusts.

IX. Avoid the 3.8% NIIT on Trust Income

A. Appoint a trustee who is active in the business. Aragona Trust v. Commissioner, 142 TC No. 9 (2014).

B. Distribute, sell or swap the passive activity to a family member who is active in the business.

1. Potential income tax if a sale.

2. The business is now subject to the family member's creditors, and is includible in the family members taxable estate.

C. Toggle grantor status on or off depending on whether the grantor or the trustee materially participates in the trust's activity.

1. If trustee materially participates, can be a non-grantor trust and avoid the NIIT at the trust level.

2. If trustee is not, must be a grantor trust in order to avoid the NIIT at the trust level. If the grantor materially participates, then NIIT avoided altogether.

D. Manage distributions to the beneficiaries up to the $200,000/$250,000 NIIT threshold.

X. <u>Turn Off Grantor Trust Status</u>

A. May not desire grantor trust status anymore, either because:

1. The grantor's payment of income taxes consumes assets that would have received a step-up at death (grantor forced to sell appreciated assets during lifetime)

2. The overall income tax liability may be lower with managed distributions to non-grantor trust beneficiaries than with all income taxes paid by grantor.

B. Release the power that causes grantor trust status.

C. Replace the trustee with an independent trustee if the trust allows unlimited discretionary distributions.

D. Relinquish the power to distribute income to grantor's spouse.

E. Use trust principal (not income) to pay premiums on a life insurance policy, if that is the only reason the trust is a grantor trust.

F. **Consequences**

1. When turn off grantor trust status, grantor considered to have transferred ownership of the property to the trust, now a separate taxable entity.

2. Unanswered question: If there has been a sale or exchange to a grantor trust, when grantor trust status is toggled off are there income tax consequences?

Portability vs. Traditional Planning

I. Portability Generally

A. The addition of the portability regime, rather than making planning simpler, has instead added another tax election that requires analysis in each client's case of its potential advantages and disadvantages. In essence, portability has made planners' decisions more complicated.

B. Purely relying on portability is not ideal in all circumstances. Income tax vs. transfer tax.

C. Made permanent in ATRA at the end of 2012, with regulations issued subsequently.

D. Portability Election – Not Automatic

1. Must be elected on a timely filed estate tax return (including extensions). Until 12/31/14, could automatically be granted a portability election even on a late-filed return (Rev. Proc. 2014-18). Has expired, so only manner of relief is Treas. Reg. § 301.9100 discretionary relief. Filing for portability is regulatory not statutory.

2. *The portability election is automatic with a timely filed Form 706.* Temp. Reg. § 20.2010-2T(a)(3).

   a. To elect out of portability, an affirmative statement electing out must be attached to the Form 706 (if one is filed). Temp. Reg. § 20.2010-2T(a)(e).

   b. The current Form 706 contains a box with an opt-out statement (Section A of Part 6).

3. The portability election is irrevocable after the time for filing an estate tax return (including extensions) has passed. Temp. Reg. § 20.2010-2T(a)(4).

4. Election must be made by the appointed executor. IRC § 2010(c)(5)

   a. If multiple executors appointed, all must sign. Treas. Reg. § 20.6018-2.

   b. If no executor appointed, then by any person in actual or constructive receipt of the decedent's property. IRC § 2203; Temp. Reg. § 20.2010-2T(a)(6). Might be tough for such a "non-appointed executor" to have sufficient information to put together a 706 that is "completely and property-prepared."

c. If a non-appointed executor files and makes a portability election, it cannot be superseded by another non-appointed executor, unless the second non-appointed executor is the successor to the first.

5. IRS has not issued a 706EZ for those filing a 706 solely for portability purposes. Likely due to need for sufficient information for the calculation of the deceased spousal unused exclusion (DSUE), etc..

a. Without a full 706, it would be difficult for the IRS to see the computation of the amount of DSUE ported to the surviving spouse.

E. **Special Valuation Rule.** For estates not otherwise required to file a Form 706, the return need not report the value of most assets transferred pursuant to the marital or charitable deduction (since they have no bearing on the amount of exemption used or the resulting DSUE). This rule does not apply to marital/charitable property if:

a. Value of the property affects the value of property passing to a nonmarital recipients (formula nonmarital gift)

b. Value is needed to determine estate eligibility for Sections 2032 (alternate valuation), 2032A (farms, etc..) or 6166 (extension to pay estate tax (though why would you need if electing portability?))

c. Less than an entire interest in the property passes to charity or marital

d. Partial disclaimer or partial QTIP election made with respect to the property

e. Executor fails to exercise due diligence to estimate the FMV of the gross estate including the marital/charitable property. Instructions to the 706 will eventually provide value ranges. Until then, estimate within a $250,000 range.

F. Noncitizen Surviving Spouses

1. A U.S. decedent may pass his/her DSUE to a noncitizen surviving spouse. However, if property is left to a noncitizen in a QDOT (the only way to qualify for the estate tax marital deduction), the

computation of the DSUE is delayed until the estate tax on the QDOT is paid in full (either by principal distributions to the surviving spouse or upon the death of the surviving spouse). Temp. Reg. § 20.2010-2T(c)(4).

2. So, a noncitizen surviving spouse with a QDOT generally cannot use the DSUE against the surviving spouse's gift tax liability, except to the extent that QDOT principal has been distributed to the surviving spouse.

3. Example: H dies in 2015 with a taxable estate of $2 million, and leaves $1.5 million in a QDOT for W, a U.S. resident but noncitizen. H's preliminary DSUE is ($5.43M - $500K) = $4,930,000. No QDOT principal is distributed to W during her lifetime. Upon W's death, the QDOT is worth $1.8 million. H's DSUE is redetermined to be ($5.43M - $500K - $1.8M) = $3,130,000.

G. Other Credits

1. The Code does not address whether the DSUE is computed before or after the application of the credit for tax on prior transfers (Section 2013), the credit for foreign death taxes (Section 2014) and the credit for death taxes on remainders (Section 2015). Treasury has reserved the issue for further study and guidance.

H. Merely remarrying has no effect on the identity of the "last deceased spouse." Temp. Reg. § 20.2010-3T(a)(3).

1. Mere remarriage does not affect DSEU amount from 1st deceased spouse. The surviving spouse can gift the DSEU amount from 1st deceased spouse, until 2nd spouse dies.

2. However, in the event of remarriage, consider placing a clause in the surviving spouse's premarital agreement with a new spouse to guarantee compensation for the potential DSUE amount that the surviving spouse can lose if new spouse dies.

3. Or, have a provision obligating the new spouse to preserve the same amount of DSUE that surviving spouse currently has (if not too late)

I. Ordering rule for lifetime gifts by surviving spouse

1. DSUE used first, then surviving spouse's own basic exemption amount. Temp. Reg. § 25.2505-2T(b)(1).

2. Use it or lose it.

II. Portability – Advantages and Disadvantages

A. Advantages

1. Simplicity (arguably)

2. Income tax basis adjustment upon death of surviving spouse

a. Over a 5 year time horizon, a single stock with a zero basis needs more than a 19.81% <u>annualized</u> return to make a lifetime gift more beneficial than a testamentary transfer (with basis step up). With a single stock, the probability of this occurring is estimated to be 9.06%.

3. Solution to IRD, which isn't amenable to being in a credit shelter trust (since income taxes on the IRD will erode the credit shelter trust).

4. Decoupled states

a. Having a full Federal credit shelter trust exposes the first spouse's estate to state estate taxation if the state exemption is lower than the Federal exemption (as in NJ and (until 2019) NY).

b. Having assets pass via the marital deduction avoids the state estate tax on the first death. The surviving spouse can then plan with the assets during his/her lifetime to potentially avoid state estate tax (and Federal estate tax, and income tax).

5. A conventional testamentary credit shelter trust is not a grantor trust.

a. Income taxation at the trust level at high rates (top ordinary income rate begins at under $13,000).

1) Can mitigate with distributions to beneficiaries in lower brackets (to utilize the wider individual brackets), but this may frustrate the other purposes of the credit shelter trust (such as flow of assets, creditor protection and shelter from future estate taxation).

b. With portability, a surviving spouse can create a lifetime grantor trust with marital deduction assets, and reap the income tax benefits during the surviving spouse's lifetime:

1) Surviving spouse's payment of income taxes on trust income. In substance, a tax-free gift to the trust (Rev. Rul. 2004-64).

2) No income tax recognition of transactions between the surviving spouse and the grantor trust (Rev. Rul. 85-13).

3) However, with a lifetime grantor trust, surviving spouse generally loses access to the assets.

6. Avoiding the potential complexity (administrative and calculation) of marital deduction funding formulas.

B. Disadvantages of Portability

1. Loss of first spouse's GST exemption (if no QTIP).

2. Creditor claims over the surviving spouse's assets (including subsequent spouses)

3. Potential for unwise financial decisions over surviving spouse's assets.

4. The DSUE, unlike the Federal estate/gift tax exemption, is not indexed for inflation.

   a. Appreciation on marital exemption assets is not covered by the DSUE, whereas assets in a credit shelter trust and all appreciation are fully exempt from future estate tax.

5. Potential loss of DSUE by remarriage and death of the new spouse.

6. Second marriage situation: Unless a QTIP is used, the first spouse's asset disposition intent may be frustrated (if different sets of children, etc…)

7. Loss of income tax planning, as in the case of a 'spray' Credit Shelter Trust among spouse, children, and grandchildren.

8. Death of survivor can trigger an audit of 1st spouse's estate, since there is not statute of limitations on the DSEU.

C. Overcoming Some of the Disadvantages of Portability

1. Use a QTIP to preserve first spouse's GST exemption, preserve some creditor protection

2. Use post-mortem gifting (into a grantor trust established by surviving spouse) to preserve the leverage of the DSUE.

   a. Protect subsequent asset appreciation and utilize income tax advantages during the life of the surviving spouse.

   b. Generally sacrifices surviving spouse's access to the assets.

3. In lieu of a gift of conventional assets, surviving spouse with a QTIP can trigger Section 2519 by gifting any part of the surviving spouse's QTIP income interest.

   a. Will be treated as a gift of the entire QTIP, utilizing the surviving spouse's DSUE.

   b. If a gift of only a portion of the income interest, Section 2036(a)(1) may apply to include the QTIP principal in the surviving spouse's taxable estate.

      1) This prevents any trust appreciation over the DSUE amount from being shielded from estate tax, but provides a potential income tax basis step-up upon the death of the surviving spouse.

      2) Estate tax vs. income tax analysis required

III. <u>Maintaining Flexibility</u>

A. Disclaimers by the surviving spouse.

1. Make sure that the trust into which disclaimed property flows gives the surviving spouse fewer property rights than if no disclaimer.

2. Example: Leave assets outright to spouse. If disclaimed, assets flow into a QTIPable trust. If spouse further disclaims assets, they flow into a traditional credit shelter trust.

3. Risk: Relying on the surviving spouse to disclaim.

B. Partial QTIP elections

1. Leave assets to QTIPable trust, then the executor elects to qualify all, part or none of the trust for the marital deduction.

2. Gives the executor 15 months to make the optimal decision as to how much of the assets will pass via the marital deduction and how much will utilize the first spouse's exemption.

3. Potential downside: All income must pass to the surviving spouse, thereby potentially eroding the credit shelter portion of the trust, but in a low interest rate environment, this may not be a large leak.

C. Clayton QTIPs

1. Decedent's Will may dictate that to the extent that the executor elects QTIP over certain assets, those assets pass into a QTIP trust. To the extent the QTIP election is not made, the asset pass into a traditional credit shelter trust.

2. Unlike a trust into which assets are disclaimed, the surviving spouse may have more control over the Clayton credit shelter trust assets (such as a lifetime power of appointment over the trust assets).

3. The surviving spouse should not be the executor empowered to make the QTIP/non-QTIP election determination, as he/she may be deemed to make a gift to the extent that the marital deduction is not elected.

D. "Supercharged" Credit Shelter Trust

1. Creation of a lifetime QTIP trust by one spouse for the benefit of the other spouse.

2. By the terms of the lifetime QTIP or pursuant to the exercise of a special power of appointment by the beneficiary spouse, the lifetime QTIP will become a credit shelter trust using the beneficiary spouse's exemption.

   a. Basis step-up on death of 1st spouse

   b. Grantor Trust treatment when assets pass to Credit Shelter Trust

IV. <u>Five Potential Strategies</u>

A. <u>Using portability with no further planning</u>

1. Avoids allocation of exemption to declining or consumed assets

2. Permits a potential double basis step-up

3. GST exemption of first spouse lost (if no QTIP)

4. May not address second marriage and other complex family situations

5. Essentially sacrifices the first spouse's state estate tax exemption.

B. Using portability with an immediate gift by the surviving spouse of the DSUE amount to a grantor trust

1. Fully shelters assets from estate tax, but GST exemption of first spouse lost.

2. Can avoid state estate tax with lifetime gifts by surviving spouse in states such as New Jersey and New York (subject to current three-year lookback in New York).

3. Potentially sacrifices double basis step-up on assets transferred by surviving spouse into grantor trust.

   a. Substitution power can remedy this problem, if surviving spouse has sufficient high basis assets to substitute into grantor trust (and does so).

   b. If insufficient high basis assets, grantor can borrow from third party and substitute cash into trust.

C. Traditional credit shelter trust upon the first spouse's death

1. Full use of estate/gift and GST exemption of both spouses.

2. Access to credit shelter trust assets by surviving spouse

3. However, loss of income tax basis step-up upon death of surviving spouse.

D. Supercharged Credit Shelter Trust

E. Using spouses' exemptions as early in lifetime as possible

1. Protects against future elimination or reduction of exemptions.

2. Fully shelters gifted assets from transfer tax (including GST)

3. However, sacrifices donor access to gifted assets.

   a. Can be remedied somewhat if both spouses create trusts for each other, but must avoid reciprocal trust doctrine.

4. Also, generally sacrifices double basis step-up, unless grantor trust with substitution power (and sufficient high basis assets to substitute into the trust prior to death).

V. <u>Comparing Results Among Plans</u>

A. 50% appears to be the psychological tipping point for fear of the Federal Estate tax.

B. A couple's spending rate has a significant effect upon whether active estate planning is necessary (or if portability can be relied upon).

C. <u>Couples between $1 million and $10 million</u>

1. Per JP Morgan data: relying on portability might be the best situation (with a QTIP to prevent loss of first spouse's GST exemption) if:

a. Couple doesn't expect asset growth to outpace inflation

b. Residents of a state <u>without</u> an independent death tax.

c. Surviving spouse will carry out the plan without changes

d. Surviving spouse does not need non-tax benefits of a trust

2. In the <u>median</u> case with a balanced portfolio, no estate tax is due.

3. *Positives*:

a. Assets are available for use during both lives

b. Full step-up in basis at first and second deaths

c. Estate tax liability only if assets appreciate beyond median expectations.

4. *Negatives*:

a. If appreciation is not managed with annual exclusion and/or freezing techniques in estate of surviving spouse, can have estate tax.

b. If QTIP created to protect GST exemption of first spouse, difficult to ensure that the DSUE is applied to the QTIP and not to other assets.

D. Couples between $10 million and $50 million

1. What is the likelihood of having a taxable estate?

2. What is their gifting capacity, and what kind of assets do they own?

3. Assumptions: $30 million of assets, two children, $5 million financial cushion goal. $750,000 annual spending, inflation adjusted. Balanced portfolio, Florida resident, 20 year analysis, 40% estate tax rate, effective income tax rate of 43.4%, effective capital gains rate of 23.8%.

   a. Husband dies in year 5, wife in year 20.

   b. If no planning (even with QTIP), the median outcome results in more than $13 million of transfer taxes and GST exemption "coverage" of only 53%. Remaining assets = $34.4 million

4. Comparison of Planning Techniques to No Planning

   a. Credit Shelter Trust – Remaining assets of $37.0 million and 55.7% GST exemption "coverage"

   b. Supercharged CST -- $38.1 million, and 76.3% GST exemption "coverage"

   c. Immediate gifts of $5,430,000 to non-grantor, GST exempt trusts -- $41.0 million, and 72.4% GST exemption "coverage"

   d. Surviving spouse creates grantor trusts after death of first spouse with full exemption and full DSUE -- $41.7 million, and approximately 61% GST exemption "coverage"

   e. Both spouse immediately create grantor trusts with their full exemptions -- $43.2 million and approximately 82.6% GST exemption "coverage"

   f. **The balanced portfolio assumption and Florida residency assumption accentuate the benefits of the "active planning" techniques. If low basis assets make up a large part of the equation, the income tax benefits inherent in estate inclusion may shift the results more in favor of portability-based planning.**

<u>SCINs and Private Annuities</u>

I. Used for clients who are not expected to live normal life expectancies

A. First meeting with client – discuss health issues in addition to financial issues and other estate planning objectives

B. Due to recent developments, clients need to be cautioned when considering SCINs. Therefore, private annuities may become more popular.

II. SCINs

A. A sale of assets from senior family member to junior family member or Trusts. Note provides for stated term including principal and interest, but cancels upon death.

1. Estate Tax Benefits

Cain – No estate tax consequences if the Note is based upon bargained for considerations (increased interest or principal or a combination) historically using actuarial tables to determine life expectancy.

2. Income tax issues on death of seller – *Frane* case.

a) Deferred gain is recognized on decedent's final income tax return or on fiduciary income tax return – Tax Court Opinion vs 8^{th} Circuit Opinion

b) Dissenting opinion in *Frane* – no income tax consequences if payments are conditioned on survival of seller

B. New Development – SCINs (2013 CCA 233)

1. For litigation purposes, IRS position is that actuarial tables do not apply to SCINs to determine life expectancy.

2. Also, the parties to the SCIN must demonstrate an intent to pay.

C. *Davidson* case. Docketed Tax Court Case. Case is not yet decided.

1. Wealthy individual sells corporate stock and interests in other family entities to children for SCINs which are designed as interest only and cancellable in 5 years (within the actuarial life expectancy of the seller).

2. Seller dies within 6 months of sale.

3. Medical experts, including taxpayers' experts, IRS experts, all opine the decedent had more than a 50% medical probability of living 1 year or more at the time of the transaction.

4. IRS Arguments

   a) SCINs are not bonafide sales. There was no intent to repay.

   b) If they are bonafide, then the increased principal or interest of the Note is to be determined at the value that a willing buyer and seller would determine, and not under the actuarial tables, as in the case of annuities.

   c) Per IRS, SCINs are debt and not annuities, and therefore Annuity Tables do not apply.

   d) Note that IRS publications for valuing annuities specifically set forth values of transactions designed at the lesser of life or a specific number of years. This is identical to a SCIN.

5. If this case settles (as may be the case) there will be no real judicial guidance on the validity of the SCIN and all we are left with is the IRS position.

III. Private Annuities

A. When to consider

1. Client not expected to live a normal life expectancy.

2. Client objective is to obtain and generate cash flow.

3. Shifting future appreciation from client to purchaser

4. Avoidance of Gift Tax

5. Avoid Estate Tax

6. Avoid GST Tax

B. Disadvantages

1. Seller outlives his normal life expectancy

2. Proposed 2006 regulation: income tax recognition on date of sale for entire capital gain (value of annuity less basis)

a) Regulation states that the effective date will be retroactive to transactions after April 2007

b) Prior to proposed regulations, IRS position was that payments of the annuity are treated as part return of capital, part capital gain, and part ordinary income.

c) There is no interest deduction to the payor.

C. 3 Significant Private Annuity Issues

1. Estate Tax Inclusion – 2036/2038

2. Use of Section 7520 valuation table

3. Exhaustion Test

D. Estate Tax Inclusion – 2036/2038

1. Will purchaser have sufficient assets to satisfy payments?

a) Initial seed funding to a Trust

b) Guarantees

c) Avoid limiting the annuity amount to the income of the Trust

E. Section 7520 Actuarial Tables

1. Tables must be used if there is greater than a 50% medical probability of seller surviving at least 1 year.

2. Use of physician letter

3. *Kite* Case – 2013. Decedent sold assets from private annuity and deferred payments for 10 years. Decedent's life expectancy was 12.5 years. Held: Private Annuity was respected.

a) Actuarial compensation of the deferred annuity was correct.

b) Intent to pay and interest to be paid was intended

F. Exhaustion Test

1. Trust must be funded with assets sufficient gifted assets and purchase assets to satisfy the annuity assuming the seller lives until

110. If insufficiently funded, IRS position is that a gift exists to the extent of the deficiency.

2. Defenses against the Exhaustion Test

a) Is the regulation valid? (Is age 110 arbitrary?)

b) Initially fund the Trust with gifted assets, added assets after the purchased assets sufficient to satisfy the Exhaustion Test

c) Personal Guarantees by beneficiaries (see *Trombetta* where Judge Cohen gave no validity to the personal guarantees because the guarantee was not called upon. Does this make sense?

d) Instead of a lifetime annuity, limit the annuity term to the shorter life expectancy of a stated term. This will result in a higher annuity payment but should avoid issues regarding the Exhaustion Test.

<u>Planning for Retirement Benefits</u>

I. Planning for 'Youth' (under age 59.5)

A. Best – Roth IRA because of the tax free withdrawal rights after age 59.5

B. Second Best: 401K – taxable withdrawals after 59.5, but ability to borrow in order to gain access

C. Worst – IRAs – money is held hostage until 59.5 with no ability to borrow.

II. Ultra Wealthy – More than $1,000,000 in IRA

A. IRS is becoming more attentive to these individuals and plans.

B. Annual check-ups required.

1. Was Form 1099R filed to report distributions?

2. Form 5949 – hard-to-value assets in the plan (e.g., non-publically traded securities real estate). It is optional in 2014 to 'check the box' to advise the IRS the plan has hard-to-value assets. IRS, of course, can use the information on audits.

3. Consider distributing the hard-to-value assets before it becomes required to check the box.

4. If Trust is a beneficiary of retirement plan assets, file Form 1041 even if the only asset is the IRA and even if there are minimum or no distributions. This will start the running of the statute of limitations for MRD audit purposes, etc.

5. File Form 5239 to start the statute of limitations on penalties. If this form is not filed, IRS can look back forever to assert penalties.

III. Choice of Beneficiary of Retirement Assets

A. Good Choices

1. Young individuals using their longer life expectancies and stretch-out period

2. Surviving Spouse

a. SS can roll to his/her own IRA and take advantage of the 'trifecta.'

i. No withdrawals required until age 70.5.

ii. RMDs using uniform Life Table as opposed to the shorter single Life Table

iii. No Credit Shelter Trust is necessary with the advent of portability.

3. Charity – Income and Estate Tax Benefits. Potential avoidance of taxes totaling approximately 65% (income and estate). Therefore, charity bequest 'costs' family only 35%.

A. Don't use Roth IRAs to satisfy charitable bequests.

B. Bad choices of Beneficiary Designations

1. Older beneficiaries (shorter time period and larger distributions)

2. Trust for Surviving Spouse

a. Lose the benefit of spousal rollover

b. If goal of the Trust is to preserve Trust assets for ultimate distribution to children of (say) first marriage, the use of the Trust will preclude use of Uniform Life Tables, thereby requiring assets to be distributed sooner, and thereby losing the effect of preservation for children.

C. Better Plan: Split the IRA between spouse and children or purchase life insurance on life of IRA Account owner and name the children.

3. If IRA is the only asset to fund a Credit Shelter Trust to avoid the New Jersey/New York estate tax ($675,000/$2,000,000 currently) compare the state estate tax savings (16%) to the additional income tax cost of larger RMDs.

IV. Individual approaching 70.5

A. IRAs – must withdraw whether or not working

B. Company Plan Exception: If individual continues to be employed and owns less than 5% of the employer, no requirement to withdraw at 70.5.

1. If plan permits, such an individual can rollover his/her IRA to the company plan before he/she attains age 70.5

C. Individuals with both pre-tax and after-tax dollars in the same IRA

1. Each distribution comes out proportionately between pre-tax and after-tax dollars

2. New 2014 Rule:

A. Send pre-tax money to the 401K Plan and certify to the Trustee and Administrator that the funds are in fact pre-tax (qualified plans cannot accept rollovers of post-tax funds).

B. Convert remaining IRA funds to a Roth IRA.

3. Caveats on above:

A. Determine whether client needs creditor protection (would be better in a qualified plan).

B. IRAs may have better death benefit options than qualified plans.

C. Examine qualified plan options to determine other 'good deals' the qualified plan may have over IRAs.

D. Pay estimated taxes with RMD.

1. IRA provider sends RMD directly to IRS with Form W-4P.

2. This payment can be made in December in place of estimated taxes which are otherwise paid quarterly. It's treated as though paid quarterly.

3. E.G., assume clients' RMD is $150,000. Assume his estimated income tax for the year is also $150,000. Normally, he pays $37,500 per quarter. With this plan, he holds on to the quarterly funds until December. If the plan assets (and assets outside the plan) earn (say) 10%, client has added $37,000 to the plan by reason of the deferral.

E. Avoid 60-day rollovers if possible. Reason: only one 60-day rollover is permitted every 12 months (although recent authority interprets this limitation to one 60-day rollover per IRA Account). Instead, do a direct transfer from IRA to IRA.

1. What to do if client exceeds the more than one 60-day rollover.

   a. Roll second rollover from IRA to qualified plan.

   b. Convert the second rollover to a Roth IRA and later recharacterize as a traditional IRA.

F. Qualified Charitable Contributions from Qualified Plans

1. The statute permitting this was enacted December 14, 2014 and expired December 31, 2014. It may or may not be renewed next year.

2. Despite uncertainty, client can pay the charitable contribution in 2015 directly from the IRA to the charity. If the law is not renewed, client will have taxable income and a charitable deduction. If the law is renewed, then the client can benefit.

V. Inherited IRAs Bankruptcy – Clark v. Rameker

A. Pay to Trust with individual Trustee, and design Trust as Spray Trust with ascertainable standards

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Jerome is a nationally recognized estate planning attorney and tax litigator. He focuses his practice in individual, corporate and estate planning, real estate and taxation. Jerome has appeared before the U.S. Tax Court in cases involving complex and timely estate and gift tax issues, including:

- The *Karmazin* case that dealt with a family limited partnership and sale to a grantor trust;
- The *Hackl Stewart* case that involved a family limited partnership and sale for a private annuity; and
- The *Kohlsaat* case that entailed an exercise of "Crummey" withdrawal rights in a trust that permitted use of the gift tax and annual exclusion for life insurance premium payments

Jerome has secured numerous notable Private Letter Rulings from the National Office of the IRS involving partnership interests and charitable lead trusts and the formation of a partnership to hold life insurance, real estate and marketable securities in a manner that significantly reduced estate tax consequences for his clients.

He has also been involved with innovative and significant tax techniques, including the formation of limited liability companies in connection with a $300-million estate in order to obtain the benefit of alternate valuation by distributing limited liability company units within six months of death to beneficiaries.

Jerome has appeared as an expert witness in probate litigation matters involving defense of attorney malpractice in rendering estate planning advice.

Before Fox Rothschild

Prior to joining the firm Jerome was the senior partner and managing partner of Deener, Hirsch & Shramenko, P.C., which he founded in 1980. He began his career in 1968 in New York as a Senior Tax

Practice Areas
Taxation and Wealth Planning
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Bar Admissions
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LL.M., New York University Law School, 1971
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B.S., Pennsylvania State University, 1965

Court Admissions
U.S. Tax Court
U.S. Federal District Court

Memberships
Bergen County Bar Association
New Jersey State Bar Association
New York State Bar Association
American Bar Association
American College of Trust and Estate Counsel (Chair, Business Planning Subcommittee)
Bergen County Bar Association (Past Chair, Probate Committee)
Estate Planning Council of Bergen County (Past President)

Accountant with a "Big 8" accounting firm.

Jerome was also an adjunct professor of taxation at Fairleigh Dickinson University in the Graduate School of Business.

Beyond Fox Rothschild

Jerome recently chaired the New Jersey Tax Day seminar sponsored by the New Jersey Institute for Continuing Legal Education and also recently presented a seminar on 2011-2012 Estate Planning Opportunities sponsored by New Jersey Institute for Continuing Legal Education. A frequent lecturer, Jerome has presented many programs on taxation and estate planning before the New Jersey Institute for Continuing Legal Education and other professional groups, including the New Jersey State Bar Association; the Minnesota State Bar Annual Convention; the Bergen, Union and Passaic County Chapters of the New Jersey State C.P.A. Society; and various chartered life underwriting groups. He has also served as chairman of the Fairleigh Dickinson Tax Seminar for the benefit of tax professionals in the Northern New Jersey Region. Jerome is an ACTEC Fellow and serves as chairman of the Business Planning Subcommittee for drafting LLC Operating Agreements, incorporating current developments. Additionally, he has appeared before national institutions, including the NYU Institute of Taxation, as well as other professional groups in New Jersey and throughout the United States.

Jerome regularly speaks to the media and has been quoted in articles in such publications as *The New York Times, The Wall Street Journal* and *Forbes Magazine*.

Jerome has authored the first, second and third editions of the *Estate Planning Strategist* (2007), a treatise published by the Institute for Continuing Legal Educating for attorneys and accountants on sophisticated tax and estate planning topics, including recommended forms. The treatise includes articles and updates that were originally published in the *Estate Planning Newsletter*, including:

- "Planning with Qualified Subchapter S Trusts and Electing Small Business Trusts," November 1997
- "Is the Sale to Grantor Trust Superior to the Use of a GRAT?," July 1997
- "Estate Planning for Divorce and Remarriage," February 1997
- "Recent Developments Create Planning Opportunities for Spousal Joint Property," December 1996
- "Charitable Remainder Trusts," April 1996
- "Planning With Charitable Lead Trusts," January 1996
- "Family Limited Partnerships," September 1995
- "Planning With Life Insurance Trusts," May/June 1995
- "Self Canceling Installment Note (SCIN): The Bet to Die," February 1995
- "Transferring Future Appreciation Without Transfer Tax Consequences (use of short term GRAT)," November/December 1994
- "Use of GRATs to Transfer Control of Family Owned Businesses and Real Estate," August 1994
- "Qualified Personal Residence Trust . . . A Rare Opportunity!," May 1994

In addition, Jerome has authored other articles on estate planning and tax topics including:

- "IRS Now Taking a Bite of Gifts of Family Businesses" *New Jersey Law Journal* (May 13, 2002)
- "Kohlsaat Confirms Viability of Crummey/Cristofani Trusts --- and More," Volume 23 of *ACTEC Notes* (1997)
- "How To Deal Effectively with Expanded IRS Attacks on Crummey/Cristofani Trusts," Volume 22 of *ACTEC Notes* (1996)
- "Hitting a 'Home' Run with a Residential Trust," Real Property Probate and Trust Law Section Newsletter, *NJSBA* (Spring/Summer, 1993)
- "GRATs Great for Giving Closely Held Business Interests to Family," Real Property, Probate and Trust Law Section Newsletter, *NJSBA* (Spring 1992)
- "Combining Partnership Freezes with GRATS Can Produce No Lose Estate Plan," *New Jersey Law Journal* (September 7, 1992)
- "Transferring Control of Family Owned Businesses," *New Jersey Lawyer* (September/October 1991)

Honors and Awards

- Martindale-Hubbell "AV" rated
- Named "Hackensack Area Trusts and Estates Lawyer of the Year," by *Best Lawyers* (2011)
- Recipient of the 2005 Distinguished Service Award for his many years of dedication and contributions to the field of continuing legal education as a lecturer and author for the Institute for Continuing Legal Education.
- Included in the list of "Top Tax Lawyers" in New Jersey by *New Jersey Monthly Magazine*
- Included in the list of "Top Lawyers" in the New York/New Jersey area by *New York Magazine*
- Listed in "Who's Who in American Law"
- Included in the list of "*The Best Lawyers in America*" in the areas of Tax and Trusts & Estates (1995-2015)
- Included in the list of "Super Lawyers" by *New Jersey Monthly Magazine* and *Law & Politics Magazine* (2011, 2012 and 2014)
- Included in a list of "New Jersey's Best Lawyers" in the area of Trusts and Estates (2011)
- Listed as one of "Bergen's Top Lawyers" by *(201) The Best of Bergen Magazine* (2012)

In The News

- Featured, "63 Fox Attorneys Named to 2015 "Best Lawyers in America" Guide," (August 18, 2014)
- Featured, "Fox Tax Attorneys Release 4th Edition Estate Planning Strategist," (March 4, 2014)
- Featured, "53 Fox Attorneys Named "Best Lawyers" for 2014," (September 2013)
- Featured, "Fox Rothschild Attorneys Give Presentation in New Jersey on Estate Tax Exemptions ," (December 22, 2011)

- Featured, "Succession Planning," *Smart CEO* (November 1, 2010)
- Featured, "Area Law Firms Boosting Their Estate, Tax Practices," *Bergen County Record* (August 12, 2010)
- Featured, "Fox Rothschild Adds Bulk of N.J. Tax and Estates Boutique," *New Jersey Law Journal* (August 4, 2010)
- "Fox Rothschild Continues Expansion in New Jersey With Addition of Tax & Estates Group," (August 3, 2010)

Articles / Publications

- Co-author, "Estate Planning Strategist (Fourth Edition)," New Jersey Institute for Continuing Legal Education (December 2013)
- Co-author, "Self-Cancelling Installment Notes and Private Annuities: The Bet to Die," *Notre Dame Tax and Estate Planning Institute* (October 2013)
- "New Portability Rules: A Cure for the Incomplete Estate Planning," *Journal of Accountancy* (July 2012)
- "Estate and Gift Tax Exemptions in the Tax Relief Act," *Accounting Today* (September 2, 2011)
- Author, "Window of Opportunity for Business Succession Planning," *New Jersey Business* (July 2011)
- Co-author, "No Federal Estate Tax Creates Planning Opportunities, Potential Confusion and Litigation," *New Jersey Law Journal* (March 8, 2010)

Speaking Engagements / Presentations

- Speaker, "37th Annual Tax and Financial Planning Seminar Series 2014-2015," Fox Rothschild LLP, Roseland, NJ (May 18, 2014)
- Speaker, "37th Annual Tax and Financial Planning Seminar Series 2014-2015," Fox Rothschild LLP, Roseland, NJ (October 20, 2014)
- Speaker, "Flexible Estate Planning: Strategies That Work," New Jersey Institute for Continuing Legal Education, West Orange, NJ (October 1, 2014)
- Speaker, "37th Annual Tax and Financial Planning Seminar Series 2014-2015," Fox Rothschild LLP, Roseland, NJ (September 22, 2014)
- Speaker, "Flexible Estate Planning: Strategies That Work," New Jersey Institute for Continuing Legal Education, New Brunswick, NJ (September 10, 2014)
- Speaker, "36th Annual Tax and Financial Planning Seminar Series 2013-2014," Fox Rothschild LLP, Management Planning, Inc, and LifeSpring Financial, Roseland, NJ (May 19, 2014)
- Speaker, "Drafting Estate & Income Tax Planning in Light of Federal "Permanency" and NJ Issues," New Jersey Institute for Continuing Legal Education, Fairfield, NJ (November 20, 2013)
- Speaker, "36th Annual Tax and Financial Planning Seminar Series 2013-2014," Fox Rothschild LLP, Management Planning, Inc, and LifeSpring Financial, Roseland, NJ (November 18, 2013)
- Speaker, "Drafting Estate & Income Tax Planning in Light of Federal "Permanency" and NJ Issues," New Jersey Institute for Continuing Legal Education, New Brunswick, NJ (November 8, 2013)

- Speaker, "36th Annual Tax and Financial Planning Seminar Series 2013-2014," Roseland, NJ (October 21, 2013)
- Speaker, "Thirty-Ninth Annual Notre Dame Tax and Estate Planning Institute," University of Notre Dame, South Bend, IN (October 17-18, 2013)
- Speaker, "Recent Developments in Self-Cancelling Installment Notes and Private Annuities," Notre Dame Tax Law Institute (October 2013)
- Presenter, "Recent Developments in Self-Cancelling Installment Notes and Private Annuities," American College and Trust and Estates Counsel, Estate Planning Committee (October 2013)
- Speaker, "What Your Clients Need To Know About Financial, Income Tax, Gift and Estate Tax Planning," Fox Rothschild LLP, Roseland, NJ (April 25, 2013)
- Speaker, "35th Annual Tax and Financial Planning Seminar Series," Fox Rothschild LLP, Saddle Brook, NJ (December 17, 2012)
- Speaker, "CPE Classes for CPAs: Ensuring Domicile of Choice," Fox Rothschild LLP and Primepoint, Mount Holly, NJ (November 8, 2012)
- Speaker, "Taxation and Wealth Planning Webinar," Fox Rothschild LLP (October 24, 2012)
- Speaker, "Client Taxation and Wealth Planning Seminar," Fox Rothschild LLP, Roseland, NJ, (October 4, 2012)
- Speaker, "Estate Planning, Seven Months and Counting," Fox Rothschild LLP, Roseland, NJ, (May 21, 2012)
- Speaker, "Recent Developments in Taxation and Wealth Planning for Delaware Valley Professionals," Fox Rothschild LLP, Lafayette Hill, PA, (May 3, 2012)
- Speaker, "Drafting, Planning and Electing Efficiently When Dealing With NJ $675,000 and Federal $5,000,000 Estate Tax Exemptions," NJICLE North CLEfest, East Rutherford, NJ (December 20, 2011)
- Speaker, "Tax Issues in Divorce and Separation and 2010 and 2011 Estates," Fox Rothschild's 24th Annual Tax and Financial Planning Seminar Series, Saddle Brook, NJ (November 21, 2011)
- Speaker, "Income and Estate Tax Issues Involved In Matrimonial Matters," Fox Rothschild's 34th Annual Tax and Financial Planning Seminar Series, Saddle Brook, NJ (October 17, 2011)
- Speaker, "Working With Legislative Changes for Gift, Estate, Generation Skipping and Income Tax Planning," Fox Rothschild's 34th Annual Tax and Financial Planning Seminar Series , Saddle Brook, NJ (September 19, 2011)
- "33th Annual Tax and Financial Planning Seminar Series," Fox Rothschild LLP, Saddle Brook, NJ (June 20, 2011)
- "33rd Annual Tax and Financial Planning Seminar Series," Fox Rothschild LLP, Saddle Brook, NJ (May 16, 2011)
- "The Tax Relief Act of 2010: Impact on Estate Planning Strategies," Fox Rothschild LLP, Roseland, NJ (February 24, 2011)
- "The Tax Relief Act of 2010: Impact on Estate Planning Strategies," Fox Rothschild LLP, Saddle Brook, NJ (February 23, 2011)

- "33rd Annual Tax and Financial Planning Seminar Series," Fox Rothschild LLP, Saddle Brook, NJ (January 24, 2011)
- "33rd Annual Tax and Financial Planning Seminar Series," Fox Rothschild LLP, Saddle Brook, NJ (December 20, 2010)
- "33rd Annual Tax and Financial Planning Seminar Series," Fox Rothschild LLP, Saddle Brook, NJ (November 15, 2010)
- "33rd Annual Tax and Financial Planning Seminar Series," Fox Rothschild LLP, Saddle Brook, NJ (October 18, 2010)
- "33rd Annual Tax and Financial Planning Seminar Series," Fox Rothschild LLP, Saddle Brook, NJ (September 20, 2010)