



THE BACK BAY ADVISOR

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Keep Your Estate Plan Flexible

Estate planning has become more difficult in recent years due to changing estate tax laws. Estate tax rates and exemption amounts keep changing, increasing to \$3,500,000 this year. Next year, the estate tax will be repealed, but it will be reinstated the following year based on 2001 tax laws. All these changes can make it difficult to determine whether your estate plan should be revised due to new changes. Thus, it is increasingly important to build flexibility into your estate plan. Some points to consider include:

- **Find ways to incorporate changing exemption amounts in your estate plan.** Many estate planning documents indicate that trusts should be funded with assets equal to the estate tax exemption amount or generation-skipping transfer tax exemption amount. Evaluate whether those amounts are still appropriate considering their current high levels. Those amounts may leave more than intended to certain heirs or may place so much in a credit shelter or other trust that your spouse may receive very little of your estate outright. You may want to set a cap on the amounts placed in trust, even if that means you won't fully utilize your exemption amounts.
- **Make sure you have enough solely owned assets to fund these trusts.** Once you have

decided how much should be placed in trust, make sure you have sufficient assets titled in your own name. Assets that you own jointly with your spouse or another individual may automatically go to that person, rather than to the trust, after death.

- **Consider adding a disclaimer provision to your estate planning documents.** This provision details what happens if one of your heirs disclaims his/her

inheritance. That way, your heirs may control after your death how much should be placed in various trusts. For instance, a husband can leave all of his assets to his wife with the condition that any disclaimed assets go into a trust paying her income for life, then passing the principal to their children after her death. This gives the wife the opportunity to divide assets based on her needs

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Gift Giving Considerations

Deciding whether you should give a significant asset to an heir during your life or after your death has typically involved weighing potential estate tax costs against capital gains taxes that would be due when the asset is sold.

You can make annual gifts, up to \$13,000 in 2009 (\$26,000 if the gift is split with your spouse), to any number of individuals without paying federal gift taxes. There is also a lifetime gift tax exemption of \$1,000,000 (\$2,000,000 if the gift is split with your spouse). The basis of any gifts made during your lifetime equals your basis plus any gift taxes paid on the gift.

The estate tax exclusion is \$3,500,000 in 2009, with a 45% estate tax rate. The basis of any assets distributed to heirs after your death is stepped up to fair market value on

the date of your death. With such a large exclusion amount, you can transfer assets with fairly significant values to heirs without paying estate taxes, while still stepping up the basis to fair market value. However, keep in mind that the estate tax will be repealed in 2010, with special rules in effect for basis adjustments in that year. In 2011, the estate tax will be reinstated based on 2001 tax laws, with a \$1,000,000 estate tax exclusion amount.

Thus, when making gifts, you have historically had to evaluate whether it was better to make the gift after death so your estate will pay estate taxes on the value or during your lifetime so your heirs will pay capital gains taxes when the asset is sold. With much larger exclusion amounts, many individuals

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Estate Plan

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and wishes at the time of her husband's death.

- **Review your gifting strategies.** You may still want to continue gifting strategies to utilize your annual gift tax exclusion (\$13,000 in 2009, or \$26,000 if the gift is split with your spouse) and your lifetime gift exclusion amount. For those with estates large enough to be subject to estate taxes, these strategies remove assets from your taxable estate without paying any gift taxes. When using your lifetime exemption amount of \$1,000,000, look for ways to maximize your tax-free gift. For instance, individuals who transfer noncontrolling interests in businesses, farms, real estate, and other assets during their lifetime may be able to assign a discount to the gift's value. By gifting assets to certain types of trusts, such as grantor retained annuity trusts, you can place an asset in trust now, retain use of the asset for a period of time, and assign a discounted value to the gift.
- **Consider making charitable contributions during your lifetime.** While charitable contributions made upon death are free of estate taxes, that may not be a consideration due to higher exemption amounts. Charitable contributions made during your lifetime will still lower your taxable estate, and you receive an income tax deduction currently.
- **Reevaluate your life insurance needs.** Since the estate tax will only be repealed for the year 2010, you may still want life insurance to help your heirs pay estate taxes. Even if you die in the year 2010, any inherited assets may not receive a step-up in basis, perhaps leaving your heirs with a large capital gains tax burden.
- **Review how specific assets are distributed.** In 2010, inherited property will have a basis equal

Painful Lessons about Saving for Retirement

First, the stock market declines in 2000 and during the past year removed substantial gains from individuals' net worths. Now, the decline in housing values has reduced people's net worths even more. For instance, the Center for Economic and Policy Research estimates that the average net worth of individuals between the ages of 45 and 54 is 25% less than it was in 2004, due to declining home prices. For individuals facing retirement in the near future, it has been a double whammy for their retirement savings. What lessons can be learned from these events?

- **Don't overload on hot investments.** By the time the average individual notices that a particular investment has become hot, it's often too late to take advantage of that knowledge. Many individuals invested in technology stocks just as they were peaking. Scared by stocks, many then started investing in homes and real estate. Instead of focusing on one hot area, make sure your investments are diversified among a variety of investments that you are

comfortable holding.

- **Gains do not equal savings.** As stock and housing values went up in value, it caused a phenomenon called the "wealth effect." Because the increases in value made people feel wealthier, they felt less need for saving and more comfortable spending. While that fueled the economy for several years, it also meant that many individuals cut back on saving for retirement.
- **Excessive debt just makes things worse.** Whether it's a margin loan used to purchase stocks or a mortgage used to purchase a home, the dangers of too much debt become readily apparent once the value of the assets underlying those loans decreases. For many homeowners, it has become difficult to justify struggling to make a mortgage payment they can barely afford on a home that is decreasing in value.

Please call if you'd like to review your retirement plan and find ways to increase your savings.



to the lesser of the decedent's adjusted basis or the property's fair market value at the decedent's date of death, with three exceptions: 1) \$1,300,000 of basis can be added to assets. 2) Unused capital losses, net operating losses, and certain built-in losses can increase this cap. 3) An additional \$3,000,000 of basis can be added to assets inherited by a surviving spouse. Due to these exceptions, you may want to specifically allocate assets with low basis to your spouse and assets with a higher basis to other heirs to ensure the step-up in basis is maximized.

- **Go over your entire estate plan at least every three years.** No

matter how much flexibility is built into your estate plan, you should still thoroughly review your plan every three years or so. Even if there are no major changes in the estate tax law or your personal situation, such as a marriage, death, divorce, or birth, gradual changes in your situation, such as an increasing net worth or a decline in your investment portfolio, may make changes to your estate plan necessary.

Please call if you'd like to discuss strategies to increase flexibility in your estate plan. ■

Gifting Considerations

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do not need to focus on estate taxes. Instead, gifts should be made in a manner that will reduce overall income and capital gains taxes for the family. Some strategies to consider that may help accomplish this objective include:

- **Transfer low-basis assets after death.** When heirs receive an asset that has increased significantly in value after your death, its basis is stepped up to market value. They retain your basis when it is received during your lifetime, so significant capital gains taxes may be due when the asset is sold. However, if you plan to sell the asset in the near future, you should evaluate the tax impact if you own the asset or your heirs own the asset. Especially if you are going to use the proceeds for your heirs' benefit anyway, there may be a lower capital gains tax bill if your heirs sell the asset. Capital gains taxes are currently 15%, but through 2010, taxpayers in the 10% or 15% tax bracket pay no capital gains taxes.
- **Consider using an estate defective trust (EDT) to transfer significant, low-basis assets.** Once the asset is placed in trust, any income from the asset is allocated to the trust or the trust beneficiaries, who will typically be in a lower tax bracket. However, the asset is still considered part of your estate, so beneficiaries will receive a step-up in basis after your death.
- **Reevaluate buy-sell agreements for businesses.** Often, buy-sell agreements are funded with life insurance. If one owner dies, the other owners use the life insurance proceeds to purchase the deceased owner's shares. If the life insurance is owned by the

Probate is the legal process for handling a deceased person's estate. It involves proving that a will is valid, identifying all property, appraising the property, paying debts and taxes, and distributing assets to heirs. The executor named in the will performs most of these functions with the court's direction. If there is no will or other estate planning document directing asset distribution, the probate process will distribute assets in accordance with state law.

Some of the disadvantages of the probate process include:

- Long delays can occur before heirs receive assets. The probate process usually takes at least a year to complete, often longer when estate taxes must be paid. This can cause problems when the estate has assets that require active management, such as a business or real estate.
- Probate costs, including executor fees, attorney fees, court fees, and appraisal fees, must be paid.
- The probate process is a matter of public record.

Due to the disadvantages, it may be preferable to transfer assets to heirs outside the probate process. Some methods to accomplish this include:

- **Review discounting techniques carefully.** Many estate planning strategies have involved the use of discounts to reduce the fair

The Probate Process

- **Joint ownership of assets** — Assets that are jointly owned will pass to the remaining owner after the first owner's death, without going through probate.
- **Designated beneficiaries** — Assets with named beneficiaries, including insurance policies, annuities, 401(k) plans, and individual retirement accounts, will transfer directly to named beneficiaries without going through the probate process.
- **Bank accounts and securities** — Payable-on-death bank accounts and transfer-on-death registration of securities allow you to designate who will receive those assets after your death. On joint accounts, these designations take effect after both owners die.
- **Revocable living trusts** — One of the primary purposes of revocable living trusts is to distribute assets outside the probate process.
- **Other types of trusts** — Assets held in trusts are not considered part of your estate for probate purposes. However, depending on the type of trust, the assets may or may not be considered part of your estate for federal estate tax purposes. ■■■

company, the proceeds are paid to the company, and the remaining owners do not receive a step-up in basis. If each owner owns life insurance on the other owners, the proceeds will be paid to each remaining owner. Those owners can then use the proceeds to purchase shares from the company at fair market value, in essence receiving a step-up in basis.

Please call if you'd like to discuss this topic in more detail. ■■■

In the News

Amidst all the market volatility this past quarter, many national and local media outlets have sought out BBFG's expertise as a sound source of information regarding areas of wealth management, financial planning and investment strategies.

Jeanne Gibson Sullivan was recently interviewed by Fox 25 News and



featured in a segment on unemployment.

She was also quoted in the *Christian Science Monitor* in an article about investment fraud.

National Public Radio and WBUR broadcasted on-air interviews with **John LeBlanc** discussing reverse mortgages. John's knowledge of advisor-run blogs was also quoted in *InvestmentNews*.

MarketWatch featured **Susan Brown** in an article on bond sales and the *Wall Street Journal* quoted **George Padula**

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on tax-loss harvesting. George was also quoted in the *Financial Times*.

Client Services

Mandy Magee, Ed Childs and **John LeBlanc** traveled to the Fidelity Advisor Service Center in Smithfield, R.I. to discuss new products, technology and client services.

The Marketing Committee, consisting of **Rainey Lennon**, Ed Childs and John LeBlanc, traveled with **George Padula** to Ward Hill to meet with COCO+CO. and discuss 2009 marketing strategy and opportunities.

Erik Gudim, Bob Siefert and other members of the Investment Committee visited the offices of Breckenridge Capital Advisors to receive an update and 2009 outlook for the municipal bond market.

Erik took part in the Barclays Global Investors Insights Forum in Boston, which focused on current fiscal environments, emerging and frontier markets and the future of portfolio construction. Bob and Erik attended an alternative investment fund presentation and dinner event

Company News

More than 90 clients, friends and family attended the firm's open house to



celebrate the firm's new office. Everyone enjoyed the good company and a special private performance by the Boston Children's Chorus.

Thank you to all who stopped by!

focusing on the current economical environment and future opportunities.

Technology

Mandy Magee implemented a new payroll system, which upgraded office technology.

Technology Analyst **Becky Martz**, focusing on improving clients' overall experiences, created the 2009 technology budget. Becky also implemented Assemblage software to streamline the distribution of quarterly reports.

All Work and No Play...

Kevin Sweeney and his wife celebrated the Christmas Holiday with family in New Hampshire and Cape Cod. He also hosted his former "Little Brother" of the Big Brother Big Sister program.

John LeBlanc enjoyed the holidays from his new, oceanfront townhouse in Winthrop, while **Rainey Lennon** spent hers with family visiting from California.

Susan Brown visited with extended family during Thanksgiving and Christmas, and **Emily O'Hara** used the Thanksgiving holiday as an opportunity to visit family in Oregon. She spent Christmas in Boston.

Now closer to reaching his goal of hiking all 48 mountains in New Hampshire that are taller than 4,000 feet, **Phil Lee** hiked and snow-shoed Mt. Field, measuring 4,340 feet.

Continuing Education

Recently, Boston hosted the three day Financial Planning Association (FPA) conference. **Jeanne Gibson Sullivan, Mary Evans, Ed Childs** and **Kevin**

And, to **Emily O'Hara, Mandy Magee** and **Rainey Lennon**, who spent much of October planning this event.

Erik Gudim recently received his Accredited Wealth Management AdvisorSM designation from the College of Financial Planning.

Congratulations to **Jeanne Gibson Sullivan** for being elected Director of Consumer Awareness for the Massachusetts Financial Planning Association.

Sweeney had great opportunities to attend sessions covering the economic downturn, investments, retirement withdrawal rates and efficient tax-loss harvesting.

George Padula and Kevin took part in a Schwab Institutional training program focusing on business development.

Susan Brown attended a meeting of the Massachusetts Study Group of the National Association of Personal Financial Advisors where she heard Kim Corwin speak on the topic of working with high-income, debt-burdened clients.

Phil Lee attended the Lifestyle and Investing Conference at Boston University, bringing together academic researchers, expert practitioners and public policy makers to discuss the best practices in the development of new financial products and future public policies in relation to retirement.

Giving Back

Jeanne Gibson Sullivan and **Susan Brown** hosted a workshop for first-time homebuyers sponsored by the Mount Holyoke College Alumnae Club. Helping students and alumni, **Mary Evans** participated in a mock interview skills night at Bentley College.

George Padula and **Kevin Sweeney** provided pro bono consulting to cancer patients as part of a program between the Dana-Farber Cancer Institute and the FPA.

Erik Gudim was invited to the Private Industry Council holiday party where he networked with other professionals in the Boston community, sharing employment and educational opportunities for young adults.