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ABSTRACT

When the 2001 Economic Growth and Tax Relief Reconciliation Act expired in 2010, Congress extended the law through the end of the year 2012 and increased the estate tax exemption. The American Taxpayer Relief Act of 2013 raised the exemption and made it permanent. However, without careful planning for large estates, taxation could still jeopardize the continuity and financial well-being of many family businesses, and threaten the financial well-being of many Americans.

This article outlines key elements necessary to ensure an estate planning process is successful.

Estate Planning – Purposes and Techniques

By Norman L. Dalsted & Eric A. Peterson

Introduction

In 2001 with the passage of legislation entitled “Economic Growth and Tax Relief Reconciliation Act” (P.L. 107-16), many thought the law would eliminate estate tax and the need for estate planning for most people. However, there was a sunset provision to the legislation which would activate if Congress did not place the provisions of the Act into permanent law. With the events occurring in the period prior to the sunset date, Congress failed to put the 2001 legislation into its final form, i.e., become a part of the permanent tax code addressing estate/inheritance taxes. (Note: This act had a number of provisions to include a lower individual tax rate, reduced marriage penalty, increased contribution limits for individual retirement accounts and other retirement accounts, enhanced education incentive, and partially limited the reach of alternative minimum tax.)

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When the 2001 legislation expired in 2010, President Obama and Congress extended the 2001 law to the year 2012 – another two years. Thus the new sunset date was December 31, 2012. The individual exclusion was \$5 million until the end of 2012 and then the deduction reverts back to the 1997 law passed during the Clinton Administration. But Congress did not act in December 2012. The current law, as part of the American Taxpayer Relief Act of 2012, left the individual exclusion at \$5 million. However, the maximum estate and gift tax rate is now 40 percent as opposed to 35 percent in 2012.

According to the Congressional Research Service Report on this Act (February 15, 2013), “The estate tax is imposed on bequests at death as well as inter-vivos (during life) gifts. A certain amount of each estate, \$5 million in 2011, indexed for inflation, is exempted from taxation by the federal government. With indexation, the exemption is \$5.25 million in 2013. The taxable estate is taxed at 40 percent. The exemption applies to total bequests and gifts (separate from the annual inter-vivos gift exemption of \$14,000 per donee). Transfers between spouses are exempted, and any unused exemption can be inherited by a surviving spouse. Other elements of the tax remain, including deductions for charitable bequests and a number of special provisions for farms and small businesses.”

“The estate tax is a highly progressive tax, with about three-fourths collected from estates in which decedents are in the top one percent of the income distribution. At a \$5 million exemption, less than 0.2 percent of estates will be subject to the tax. Although concerns have been raised about the

effects of the tax on small businesses and farmers, estimates indicate that only a small share of these decedents would be affected.”

There are many reasons for good estate planning in addition to minimizing estate taxes. Because of the recent changes in the estate and gift taxes, and the drastic nature of these changes, however, the primary focus of this article is to prepare individuals and their families for these changes. The following will provide an outline of the key elements that will enhance the estate planning process.

Preparation for Estate Planning

For many individuals and their immediate family members, the assembly of information for estate planning purposes is intensive, particularly in cases where documents and information have not been kept or are not well organized. Often when working with an estate attorney clients will be sent forms which helps complete the needed information. (An example form is contained in Appendix A.)

It is critical for the individual(s) in the planning process to accurately assemble the information associated with assets of their estate. Any item that has a title including real estate, recreational vehicles, automobiles, trailers, and machinery should be identified and a valuation made in some appropriate manner. Other key items include life insurance policy information, retirement account values and beneficiaries, investment account information, and so on. This is not a simple exercise but one that requires a significant amount of time and energy to ensure there is a solid foundation upon which the plan can be constructed.

Reliable valuations for assets are critical for the success of many estate planning transactions. For example, when making gifts to children, the donor needs to know the value of a share of a certain company's stock to calculate the number of shares equal in value to the annual gift tax exclusion of \$14,000 (2013). And in giving a percentage of a piece of real estate, one needs to know the value of the whole parcel, and whether giving only a portion of it qualifies for any valuation discount. Such information also comes into play in forming partnerships (or limited liability companies), or making installment sales to children, or at the time of death when an estate tax return may be necessary.

As a general rule, whenever a change of ownership of an asset is to take place, an accurate valuation must be obtained from some source.

The degree of effort and cost which is reasonable to devote to an appraisal under any of these circumstances should be discussed with the estate planner. There should be some relationship to the approximate size of the transaction, and the IRS views on the type of transaction intended. Any plan to use valuation discounts should be approached with care, and the advice of reputable, experienced advisors and appraisers.

Who should one use for different kinds of appraisals? Ask your attorney or accountant, for starters. Different people appraise real estate from those who do business valuations. Similarly, certain kinds of real estate can be safely appraised by a Realtor, but for purposes of real estate with special characteristics (e.g., a farm with an integrated

feeding operation) you may want to use a MAI appraiser with the resources to estimate a value based on capitalized income.

Objectives and Issues

Estate planning goals can be quite varied and may be different even among the various generations and individuals of the family involved in the estate planning process. Any differences in these goals need to be addressed early in the process.

Some common goals of estate planning include:

- Minimize income taxes during one's lifetime
- Minimize estate taxes upon death
- Provide protection of assets from claims of potential creditors
- Provide for continuity of the family business
- Provide fair division of assets among beneficiaries
- Carry out charitable interests
- Provide for payment of bills and taxes upon death
- Encourage development of good character on the part of children
- Create a legacy in some way

Issues that can complicate the achievement of goals include:

- Health problems.
- Poor management skills.
- Intra-family distrust or hostility.
- Alcohol and/or drug abuse by beneficiaries.
- Risk of divorce.
- Citizenship in a nation other than United States.
- Blended families.
- Business failure risk.

- Loss of future insurability.
- Risk of nursing home expenses depleting family assets.
- Ownership of assets in states with high probate costs.

Once the entire estate has been inventoried, goals and issues identified and addressed, the estate plan can now take form.

Advisors

A team approach to the estate planning process helps move the estate plan along faster. No one member has all the expertise, experience, or education needed for the many areas of a successful plan. For example, one may need a financial expert to address investment objectives, while an accountant can address the income tax strategies, and an attorney to address the entity formation such as a limited liability partnership. On occasion, it may be useful to engage a counselor or mediator to address family dynamics and communication.

Members of the team vary with the facts of the situation, but may include the following:

- Family accountant
- Attorney with emphasis on estate planning in his or her practice
- Trust company representative, if professional trustees are indicated
- Financial planner
- Appraiser
- Others could include a business consultant and life insurance agent

In Colorado, ethical rules require attorneys to explain in writing the basis for legal costs before

beginning work. If any doubt arises, consulting an attorney may be money well spent. Estate attorneys can in many circumstances provide an estimate of the costs associated with the various components of an estate plan.

Normally the documents an attorney will prepare include:

- A will (or trust)
- Powers of attorneys for financial matters
- Powers of attorney for health care matters
- Personal property memoranda (who gets family heirlooms for example)
- Transfer documents (such as deeds)
- Beneficiary forms for retirement plans

Once an estate plan is completed it is essential that the plan be revisited any time there is a change in any of the circumstances surrounding the plan. Assets appreciating in value may justify modifying an estate plan; other reasons for a change include a divorce, change in the health or employment of a beneficiary, purchase or sale of significant assets, birth of a child, and others. For example, if a person's will makes a gift of a parcel of ground, and that land is sold after the will is signed, it may be desirable to specify a different parcel to be given to the beneficiary. It is recommended that a person's estate plan be reviewed at least annually, and whenever a significant event pertaining to the estate occurs.

Estate Planning Tools/Techniques

Once the individual(s) for whom an estate plan is to be completed has dealt with the psychological issues associated with planning the future once death occurs, the tools and techniques are rather

straight forward. To fully understand the pros and cons of the various tools and techniques, it is recommended a qualified attorney who specializes in the estate planning be consulted. Estate laws and regulations are quite dynamic and require an expert who is aware of changes, additions, and findings associated with estate planning.

This section will provide a brief introduction to some of the tools/techniques that are available and useful in the planning process.

Trusts

Testamentary Trusts. Part of estate planning strategy may involve establishing a trust for the benefit of a surviving spouse in a person's will or living trust which will not be taxed when the surviving spouse dies later. The names given such a trust are commonly as follows:

- Family trust
- Credit shelter trust
- Bypass trust
- Exemption equivalent trust
- Non-marital trust
- "B" trust (as in the traditional A-B wills or living trusts)

All these trusts have one thing in common. They allow for the surviving spouse to take full advantage of the exemption. Currently the exemption is \$5.25 million per person (indexed for inflation annually). Congress has established a permanent exemption or at least as permanent as tax laws ever can

be. If both husband and wife die after December 31, 2012, assets owned by the last of them to die (to the extent these assets exceed \$10.5 million) would be subject to estate taxes at the rate of 40 percent. To those families with estates exceeding this exemption amount, it will be quite important to have an effective estate plan in place.

Unless assets intended to be used for the benefit of a surviving spouse are directed into a trust for him or her, they will be taxed in the survivor's estate when the survivor dies later on. Assets held in joint tenancy by a married couple, for example, will transfer to the surviving spouse free of estate tax. The problem arises when the surviving spouse dies, as that person has only one exemption. Had the half of the account owned by the first spouse to die been directed into one of the trusts described above, the exemption of the first decedent could have been applied, preventing taxes on this amount when the beneficiary of the trust (the surviving spouse) died later on. In this way, the family benefits from two exemptions, not one.

Congress added a "portability" option for married couples, allowing a surviving spouse to add the unused federal estate tax exemption of a deceased spouse to his or her own exemption. This, instead of creating a trust. The results are not as good as those from the trust approach, especially for a survivor with substantial remaining life expectancy. And action is needed in the form of filing a federal estate tax return within nine months from a person's death to take advantage of the new law.

Marital Trusts/Gifts. There are five main options for a gift to a marital partner which can reduce the taxable portion of a decedent's estate. The five options are:

- Outright gift of the amount above the exemption
- Right of withdrawal trust, which allows the surviving spouse to take out all the assets in the trust during his or her lifetime
- Power of an appointment trust, which allows the surviving spouse to designate the beneficiaries of the trust upon when he or she dies
- Qualified terminable interest property trust, which does not allow the surviving spouse to designate the beneficiaries of the trust when he or she dies
- Qualified domestic trust, which is necessary for a spouse who is not a citizen of the U.S.

All these options are treated the same for tax purposes but as you go down the list the surviving spouse has less control over distributions.

Lifetime Gifts

There are lifetime gifts which have the advantage of shifting income to someone in a lower tax bracket. That is, the maker of the gift is usually in a higher income tax bracket than the recipient. For a taxpayer who can do without the foregone income from the asset being given away, there can be a considerable savings in taxes over the balance of the donor's life. Another advantage of lifetime gifts is that any growth in the value of the transferred asset escapes gift or estate taxation. Thus, the donor avoids estate taxes on the date of death which would be higher than the gift taxes on the date of the gift.

Care must be taken when selecting gifts for transfer, as asset values can go down as well as up. For example, if mineral rights currently worth \$1,000,000 are given to children during lifetime, and they decline in value and are worth only \$200,000 at the time the donor dies, some of the donor's exemption will have been wasted. Further care must be taken when gifts with a low cost basis are transferred. If the assets are sold by the recipient, capital gains will result in income taxes. Had the same assets been left in the donor's will to the recipient, they would have been eligible for an increase in basis to the market value at the date of the donor's death, and a subsequent sale by the recipient would not be subject to as much income tax.

Annual Exclusion Gifts. Currently (2014) the law allows annual gifts up to \$14,000 per year to each beneficiary of a donor without any gift tax consequence. In the case of a married couple, both individuals can give \$14,000 each to any beneficiary. There is no tax on these gifts as long as the gift is \$14,000 or less; there is no requirement to report these gifts to IRS; and the gifts may be in cash or just about any kind of property. If one decides to make a gift exceeding the \$14,000 per donor exclusion, a U. S. Gift Tax Return (Form 709) will be required to be filed for the calendar year in which the gift was made.

It is possible that a program of making gifts on an annual basis can serve as the only estate planning option needed to reduce an estate below the federal estate tax exemption level. A frequent issue is completing the gifts within the calendar year. Thus

having a gifting plan and implementing it carefully is quite important to meet the objective of reducing the taxable value of the estate.

Lifetime Exemption Gifts. Over and above the annual gift tax exclusion amount of \$14,000 per year per beneficiary, a person has a lifetime gift tax exemption amount. The lifetime gift exemption for 2014 and beyond is \$5.34 million, indexed for inflation. If large gifts are made, a U.S. Gift Tax Return (Form 709) must be filed with IRS. For transfers of land or real estate a qualified appraisal is vital. This option/technique can be combined with other options to reduce the size of the taxable estate. Donors can make transfers of substantial assets, in a manner arranged to cover a period of years (to maximize use of the annual gift tax exclusion amounts).

Charitable Gifts (Outright). One can make lifetime gifts to charitable organizations (qualified tax exempt organizations) for tax savings as well as personal satisfaction. The tax benefits for making a lifetime charitable gift is that there is a charitable deduction for income tax purposes, and the asset is removed from the donor's estate for estate tax purposes. Also, special provisions encourage lifetime charitable gifts form IRA accounts, tax deferred annuities, or 401K plans.

These gifts can also be arranged in one's will or trust. A charitable gift made after one's death is reported in the estate tax return, but the amount gifted qualifies for a charitable deduction.

Gifts of Life Insurance. Gifts of life insurance do have some distinct qualities that may be beneficial to

an individual's estate plan. Typically an Irrevocable Life Insurance Trust (ILIT) provides for transfers of cash to a trustee who in return purchases a life insurance policy on the life of the donor. A variation of this would be to purchase a "last to die" insurance policy in the case of a married couple.

The benefits of a properly created and maintained ILIT include:

1. The value of the life insurance collected on the insured's death is not subject to estate tax
2. The trust fund is the source of liquidity to pay estate taxes
3. By proper drafting in the trust agreement, the donor gets an annual gift tax exclusion for the contributions into the trust
4. If the donor were to die shortly after trust is set up, the life insurance proceeds will be far greater than the premiums paid, which is a potentially valuable leverage of the funds contributed

There are a number of rules that must be followed to receive the benefits of an ILIT. The rules include the following:

1. The donor cannot be a trustee
2. Donor cannot retain any rights to income or principal distribution from the trust
3. The donor should not contribute an existing insurance policy to the trust, because if this is done, if the donor dies within three years from having made the gift the proceeds will be included in his or her taxable estate

Life insurance trusts are a good alternative to giving children annual cash gifts and asking them to purchase a life insurance policy on the donor's life. In this example the donor has more control of

the situation, and no judgment creditor or divorce situation involving a child can affect the policy. The trust agreement is also a means of providing an alternative disposition of the proceeds if a child were to die before the donor. Lastly, if the donors have no foreseeable need for life insurance if only one of them dies, joint life insurance may be considered. These “last to die” life insurance policies are less expensive than single life policies on both husband and wife. If effective use is made of the marital deduction and exemptions in the wills or living trusts of the couple, there will be no need to pay estate taxes until both are deceased.

Gift of Existing Insurance Policies. A transfer of an existing life insurance policy is not recommended if the potential donor might need the policy for his or her own use during lifetime. It is reasonable to transfer an insurance policy to another person or to a trust if the proceeds of the policy can reasonably be expected to be removed from the owner’s estate for tax purposes. But, under IRC 2035 (d), if the donor dies within three years of the policy being given away, the proceeds will be taxed. So, the health and life expectancy of the insured should be carefully assessed before any such gift.

Cost of Sharing Insurance Premiums. It is possible to divide up the responsibility for payment of the premiums on a policy, even if the policy is held in an ILIT. The benefits are also divided based on the cost sharing arrangements associated with the policy. Such agreements are called “split dollar funding”. There two primary reasons to share costs. They are, first, to fund business buy-out agreements and secondly, minimize the gift-tax costs of contributing

to an irrevocable life insurance trust. For example, if the premiums for a policy in an ILIT are \$20,000 per year, and the creator of the trust contributes \$10,000 and his employer contributes \$10,000, the creator has made gifts to the trust beneficiaries of only his share of the combined contributions.

In a large estate, a donor with few children may find split dollar funding quite helpful.

Partnership Ownership of Insurance Policies.

It may be useful to own life insurance policies in a partnership. Some people perceive the requirements for holding life insurance policies in an irrevocable trust as too complex. The entire life insurance policy can be placed in a partnership and fractional interests in the partnership given to family members. The downside of this option is the proportionate part of the policy equal to the deceased partner’s interest will be included in his/her estate. Thus at least some portion of the partnership assets would be taxed in the estate of the insured, if the insured is a partner.

Charitable Gifts with Retained Benefits

Under IRC Section 664, a donor can establish an irrevocable living trust for a charity and reserve the right to receive income from the trust during his or her lifetime. Upon the donor’s death, the trust assets remaining are distributed to the charity named in the trust. This type of trust is called a charitable remainder trust. Often, ranch or farm owners who have no children to whom they want to leave the farm or ranch can benefit from such a trust, because the charitable trust can sell the property and pay no capital gains income tax. The trust would provide a

certain level of income from the trust to the donors. The amount to be taken as a charitable income tax deduction will depend on the value of the initial contribution, and the value of the income rights specified by the donor in the trust agreement.

There are a number of options and conditions one can consider with a charitable remainder trusts.

Elements of the trust to consider:

1. The payout rate must be at least 5 percent per year
2. Donors may be trustees of the charitable remainder trusts
3. Charities to receive the trust assets upon death of the donor can be changed, even after the trust has been signed
4. Payments of specified amounts can be effectively deferred

There are two types of charitable remainder trusts, as follows:

Annuity Trusts

- Provides a fixed payment amount.
- Favored by those desiring income security.
- Once established no additional contributions can be made to this type of charitable trust.

Unitrusts

- Allows the payout to float with the fair market value of the assets (likely to change from year to year)
- Appeals to younger donors, or those willing to bear some risk with the trust
- Additional contributions can be made after the original establishment of this trust

Advantages of charitable remainder trusts include:

1. Current income tax deduction
2. Estate tax deduction upon donor's death
3. Sale of assets from the trust have no capital gains tax
4. Tax free accumulation of income in the trust
5. Absence of requirements applicable to retirement plans

Grantor Retained Annuity Trusts. These are irrevocable trusts set up like charitable remainder trusts in many respects, and which have distinct advantages. These include allowing a valuable asset to be given to non-charitable beneficiaries at a relatively modest cost to the donor; if the donor dies before the specified termination date, little is lost except the expense of establishing the trust and the loss of the opportunity to do something else with the asset. Because of the effectiveness of this technique, Congress is likely to restrict its use in the future.

Gifts to Grandchildren – Annual Exclusion Gifts and Trusts.

Gifts to grandchildren are covered by the \$14,000 per donor per year gift tax exclusion. Because grandchildren are often minors, an outright gift to them may not be a good idea. Likely a conservatorship would need to be set up for them. There are better techniques such as establishing a Colorado Uniform Transfers to Minors Act account, or similar account under the laws of the state where a grandchild lives. One would need to name a custodian for the account and then make the gift to the designated custodian. Another approach is to establish an irrevocable trust for the grandchildren.

Irrevocable trusts for grandchildren are usually of one of two types:

1. Section 2503(c) trust IRC – provides that if certain rules are followed, a transfer into a trust for a grandchild will qualify for the \$14,000 annual exclusion even if it is not a transfer of a “present interest”
2. Section 2041 trust – IRC provides that a trust under which the grandchild is given the right of withdrawal of annual gifts into the trust qualify for the annual gift tax exclusion. If the grandchild does not exercise this right, the assets stay in trust for the provided period set by the trust.

The use of custodial accounts or trusts can be combined with a third technique. This technique entails the trustee or custodian to act as a partner in a partnership arrangement. Grandparents can transfer large assets into a partnership and then give fractional interests in the partnership to their grandchildren each year, directly if the beneficiaries are old enough, or to a custodian or trustee for the beneficiary.

Installment Sales

To facilitate intergenerational transfers of a business, farm, or ranch, often the property is sold to a following generation member. There are related party rules which apply in such a case. The sale of assets between parents and children is a good way to fix the value of the property or land in the parent's estate for estate tax purposes. Generally the increase in the value of the real estate will be greater than the cumulative amount of interest paid on a note associated with the sale. This is a

particularly interesting option given the current low long term interest rates and the rapidly increasing land values.

Note that if the transaction between the parents and children qualifies for installment reporting, the interest paid on the note is taxable income. All parties to an installment sale should plan on holding the property for at least two years after the transaction. If the sale outside the family takes place within two years of the family transaction, this could trigger recognition of all the gains on the transfer.

Dealing with Joint Tenancy and Beneficiary Designations

For many married couples, property ownership as joint tenants is commonplace. Actually, joint tenancy can be a trap. When all the assets of a married couple pass through joint tenancy, probate costs are saved. However, the first spouse to die has lost the opportunity to shelter some of his or her assets in a trust. For large estates, joint tenancy titling should normally be avoided. If a tax planning will or trust is part of the owners' estate plan, property should be held by the owners as tenants in common. Then, the surviving spouse (as a tenant in common) can disclaim the half interest in the real estate owned by his or her spouse, allowing this half to be held in a trust for the survivor's benefit. This is an important aspect of the estate planning process and requires the expertise of a good estate attorney.

Similarly, beneficiary designations on investment or bank accounts are often thought to be good planning devices. But because of the need to make

contingency plans if the chosen beneficiary doesn't survive the account owner, this can be risky, and should not be done routinely or nonchalantly.

Family Partnerships and Limited Liability Companies

To assist in intergenerational transfers, it is often essential to choose a business entity that will help the process. Corporations are generally not advisable for income tax purposes, especially when appreciating assets are held by the entity. There may be income taxes payable because of distributing land to shareholders out of the corporation. Basis of assets held by the corporation are not stepped up upon the death of a shareholder. Need for annual meetings and reporting as well as the need to observe other formalities associated with the operation of the entity can be an administrative burden. Lastly, there are inflexibilities in the law concerning shareholder rights. In most cases, owners likely will choose to set up a family limited partnership (there are several kinds of these) or a limited liability company.

The advantages of using these entities are as follows:

- Provide asset management for family members
- Prevents interests in family property from passing to outsiders as a result of death, divorce, etc.
- Protect family assets from creditors or partners
- Avoid ancillary probate in the case of real estate in states other than Colorado
- Control distributions of assets to preserve them for the future benefit of the partners
- Facilitate transfers of lifetime gifts
- Avoid liquidation or partition rights by owners of fractional interest in the land

- Centralize management, usually in the hands of senior members of the family

Limited partnerships (LP) are often the entity of choice. There is a modest benefit with a LP when compared to a limited liability company if the owners plan to make substantial gifts to children during their lifetimes. For gift tax purposes, the IRS and tax courts have gone on record allowing reduction in the value of gifts (with the result being savings in taxes) on LP and LLC transfers, which are called "valuation discounts". These are somewhat lesser for LLC interests than LP interests, because of greater rights given to LLC members under the laws of most states. LP and LLC agreements can restrict younger members from voting on most matters. The agreements can also restrict partners or members from giving away or selling their interests in the family entity. The degree of voting and transfer restrictions in the agreement is used in calculating the value of a gifted interest for gift tax purposes. Each time a gift is made of an interest in an LP or LLC, it is wise to have the underlying assets appraised. It is also necessary to have the valuation discount confirmed by a business appraiser (many CPA's are qualified to do this), although this only needs to be done once.

An LP or LLC agreement can provide for management succession in the event of death or retirement of the initial general partner or manager. This can take place without changing titles to any of the assets in the entity. The LP or LLC can provide the means to ensure family members not involved in the business are treated fairly. Such techniques discussed previously, such as a life insurance funded buyout,

could be utilized to ensure a fair and equitable resolution of potential conflicts between those involved in the business and those who are not. As with Grantor Retained Annuity Trusts, Congress may restrict the benefits of valuation discounts for gifts of LP or LLC interests in the future.

After-Death Planning Options

If an estate is large enough to incur estate taxes, there are options to pay the taxes on an installment basis. However certain criteria must be met. In the case of a farm or ranch, the value of the farm/ranch must constitute at least 35 percent of the value of the estate. The estate can elect to start paying the taxes on the date four years after the estate tax return is due. The estate tax return is due nine months after death. The tax can be paid in ten equal installments, thus the tax would be paid over 14 years, nine months. This deferral only applies to the portion of the estate tax assessed on the business. The right to pay in installments is generally available, even if the farm/ranch business is held in a corporation or partnership. For a partnership there must be no more than 15 partners or the decedent must own 20 percent or more of the partnership. In the case of a corporation there must be no more than 15 stockholders or the decedent must own 20 percent or more of the corporation's voting stock.

Other options include conservation easement election, special use valuation, and alternative value election. An estate may elect to create a conservation easement. A conservation easement can exclude for federal estate tax purposes up to 40 percent of the value of the land. The property must

be a qualified conservation contribution. Finding a qualified land trust that first has the funds to purchase the easement or accept a donation of such an easement, and secondly is interested in doing an easement are two critical points. The election must be made by the estate's personal representative on the estate tax return.

Under the IRC there is a section designed to preserve farm values from forced liquidation (IRC 2032A) referred to as the Special Use Valuation Election. An estate may lower the value of the farm property for taxation purposes by electing to value the property on its agricultural value only. In many cases the market value is substantially higher than the agricultural value. The agricultural property must constitute at least 50 percent of the decedent's estate, and the farmland must be at least 25 percent of the estate. There are a number of conditions that must be met: the farm must remain in production for at least ten years after the death of the owner; it must pass to qualified family members; and it must have been run by the owner (not just held as an investment and cash rented).

One other tool is the Alternative Value Election. It may be possible to reduce estate taxes by an election which would allow the valuation of the estate six months after the date of death instead of using the date of death values. This assumes the value of the estate is going to decline during the six month window. Any assets which were sold between the date the decedent died and the alternative valuation date would be valued at their sale price.

Conclusions and Concerns

One of the biggest concerns professionals have in the estate planning area is that people either are not doing any estate planning, or are waiting too long and not allowing sufficient time to provide for the transfer of an estate to survivors in the best way possible. Often, this neglect to act or delay in doing so occurs because of family dynamics and communication issues within the family. Once these aspects are addressed and overcome, the estate planning process in terms of setting up a useful and functional plan which meets the goals and objectives of the family is very straightforward.

Again, the emphasis here is upon utilizing a qualified estate attorney even if you are unsure whether you

need do anything regarding your estate besides a will and power of attorney. A conservative recommendation, even to recent college graduates, is that once you start to acquire assets or have a family, a will is the minimum needed for a working estate plan. The will is also important for assigning who will have custodial responsibility for minor children.

With the large increases observed recently in farm and ranch land values and mineral right values, the establishment of a good, working estate plan continues to be vital in today's economic environment.