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Financial Advisor Current Events Update Fourth Quarter 2016

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Source information

Reflection of the Quarter

- https://jordialemany.wordpress.com/2015/01/10/the-10-common-characteristics-of-wise-people/
- Miriam Webster

Joke of the Quarter

- Arnie Glick

5 Tips for Managing the Stinger

- http://wealthmanagement.com/high-net-worth/five-tips- managing-stinger

Candidates Tax Plan Review

- http://www.aaepa.com/2016/09/hillary-clintons-tax-plan/
- http://www.aaepa.com/2016/09/donald-trumps-tax-plan/

Hillary Clinton Proposes 65% Top Rate for Estate Tax

- http://www.wsj.com/articles/hillary-clinton-proposes-65-tax-on-largest-estates-1474559914

Dreary Days Ahead for Valuation Discounts

- https://www.kitces.com/blog/disregarded-restrictions-in-proposed-section-2704-regulationswould -eliminate-flp-valuation-discounts/

William E Andersen, Jr. received his J.D. from Hofstra University. Will's focus will be on Estate Planning, Estate Settlement, Estate Litigation and Asset Protection Planning

2014 New York Firm Event

Table for Writers, Literary Event

Political Affairs Dinner at The Union League Club

2016 BTT Conservation Event

2014 - Bill as featured continuing education speaker for CPA event group on Wall Street.

A Message from Bill

William E. Andersen | President & CEO

As we find ourselves in the final quarter of 2016 I want to briefly touch each of the Financial Advisors we work with from New York to both coasts of Florida and many other locations in the United States. We have an excellent team which provides estate planning, estate settlement, estate litigation and asset protection throughout the United States. As temperatures drop on Park Avenue and moderate in Florida, thank you for letting us be part of your practice in driving revenue through wealth management.

I have attached a suggested approach that many advisors are currently using to drive revenue through wealth management. I hope you find it as useful as others have. If you would like to discuss incorporating this into your practice, please touch base with Angela Hooper at 866.230.2206 or you may reach her by email at AHooper@TheAndersenFirm.com.

We look forward to helping you and your team drive revenue through wealth management.

All my very best,

Bill Andersen

BILL'S SUGGESTED APPROACH

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FOR HIGH NET WORTH AND ULTRA HIGH NETWORTH ADVISORS ONLY

DESCRIPTION: How to consolidate assets with current clients and bring in new prospects. This message (from you to your clients/prospects) can be presented 6 ways:

- In Person
- Conference Call
- Voicemail
- Email
- Handwritten Note
- Formal Letter
- (Or any combination of the above)

I thought of you when I was recently offered a resource because of my status as one of the top Financial Advisors in my office.

I have access to an attorney who does more work for our clients than any other law firm in the country with respect to Estate Planning, IRA Planning, Tax Planning and Asset Protection Planning.

His name is Bill Andersen. He is a West Point graduate. He wrote the book The Pocket Guide to Trusts & Estates.

Bill will review your planning as a courtesy to me and provide recommendations, if he has any. If you like any of his recommendations, you can work with him to implement them. And if you don't, you have gotten some very high-end legal advice because of my relationship with Bill.

Would you like me to arrange this?

THE FOLLOW THROUGH: Angela Hooper and Melissa Campbell are available to you along with Pat Bowman to assist you in your follow ups. They can be reached at 866.230.2206.

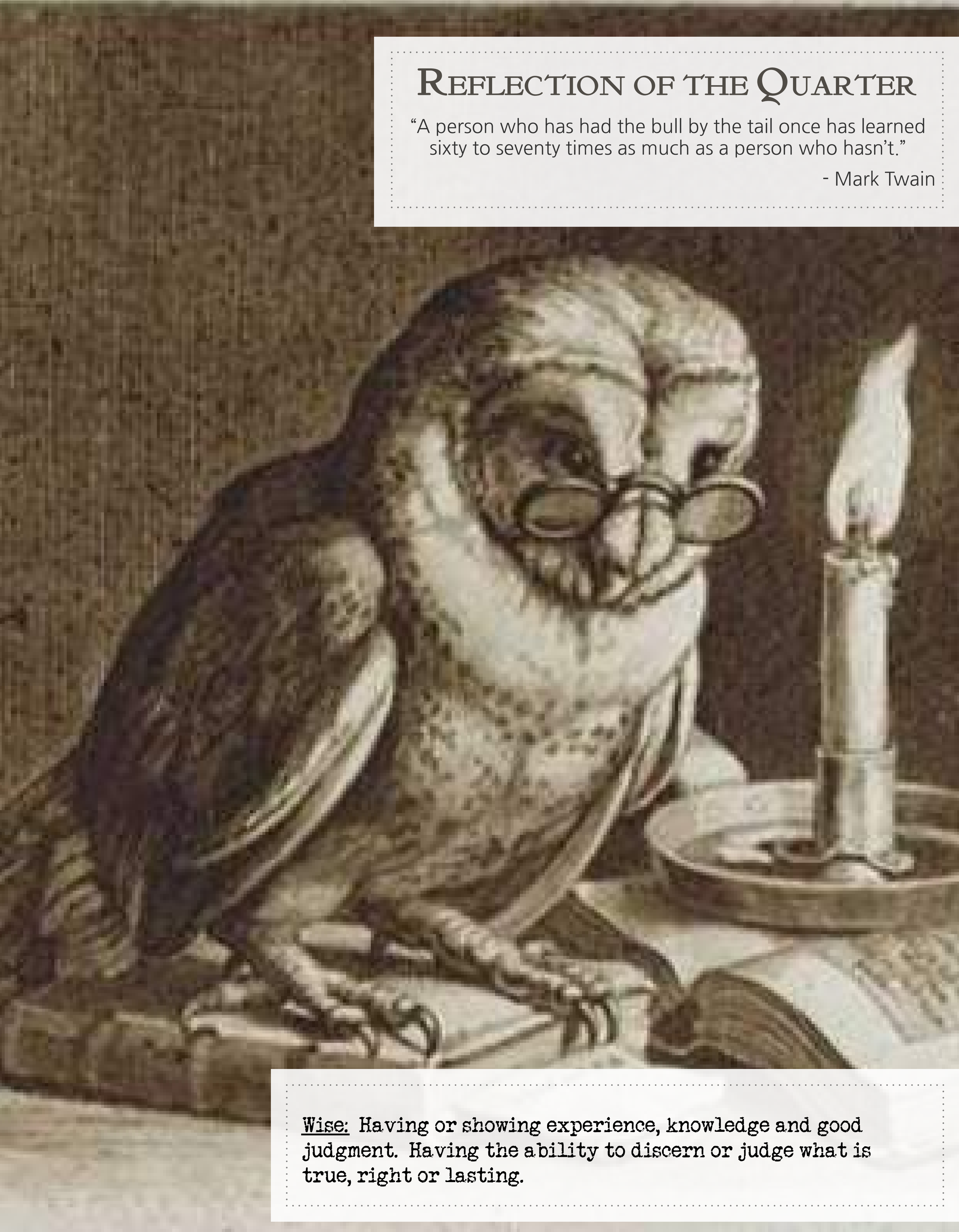
Joke of the Quarter

"With Thanksgiving around the corner, I thought this would be a good time to review my estate plan."

Reflection of the Quarter

"A person who has had the bull by the tail once has learned sixty to seventy times as much as a person who hasn't."

- Mark Twain



<u>Wise:</u> Having or showing experience, knowledge and good judgment. Having the ability to discern or judge what is true, right or lasting.

Constant reading goes into the preparation of this quarterly publication. During the last couple of months, it is probably not surprising that the subject of trust is on everyone's mind. This has always been the case with clients of financial advisors and attorneys, but what do clients look for in order to determine if you are trustworthy? Recent articles reveal or imply most clients prefer what is perceived to be a wise person verses what is perceived to be a smart person to deal with their affairs.

Paul Graham had an interesting post to support this theory where he addresses what wisdom is, and how it differs from ("merely") being smart or intelligent. He says "wise" means one has a high average outcome across all situations, and "smart" means one does spectacularly well in a few.

The list below summarizes 10 common characteristics wise people have in common:

1 - CULTIVATED: *In learning to know other things and other minds, we become more intimately acquainted with ourselves and are to ourselves better worth knowing. - Philip Gilbert Hamilton*

2 - COMPASSIONATE: *Love and compassion are necessities, not luxuries. Without them humanity cannot survive. -Dalai Lama*

3 - GOOD LISTENERS: *Good listeners have a huge advantage. For one, when they engage in conversation, they make people 'feel' heard. They 'feel' that someone really understands their wants, needs, and desires. And for good reason, a good listener does care to understand. - Simon Sinek*

4 - NONCONFORMISTS: *Here's to the crazy ones. The misfits. The rebels. The troublemakers. The round pegs in the square holes. The ones who see things differently. They're not fond of rules. And they have no respect for the status quo. You can quote them, disagree with them, glorify or vilify them. About the only thing, you can't do is ignore them. Because they change things. They push the human race forward. And while some may see them as the crazy ones, we see genius. Because the people who are crazy enough to think they can change the world, are the ones who do." - Apple Inc.*

5 - OPEN-MINDED: *Your assumptions are your windows on the world. Scrub them off every once in a while, or the light won't come in." – Isaac Asimov*

6 - PROBLEM-CENTERED: *Saving our planet, lifting people out of poverty, advancing economic growth... these are one and the same fight. We must connect the dots between climate change, water scarcity, energy shortages, global health, food security and women's empowerment. Solutions to one problem must be solutions for all. - Ban Ki-moon*

7 - REFLECTIVE: *Take time out to reflect on yourself. Do you like what you see? Do you wish to change some attitudes, traits, and habits? Remember, it is never too late to change. - Hui-Neng*

8 - HUMORFUL: *A keen sense of humor helps us to overlook the unbecoming, understand the unconventional, tolerated the unpleasant, overcome the unexpected, and outlast the unbearable - Billy Graham*

9 - UNSELFISH: *Happiness is spiritual, born of truth and love. It is unselfish, therefore it cannot exist alone but requires all mankind to share it. - Mary Baker Eddy*

10 - WILLING: *There are many persons ready to do what is right because in their hearts they know it is right. But they hesitate, waiting for the other fellow to make the make the first move - and he, in turn, waits for you. - Marian Anderson*

5 Tips for Managing the Stinger

Donna LeBlanc, Wealth Managment.com

Occasionally, an individual client family member will do whatever it takes to cause trouble, becoming the lightning rod that others circle round to attack. I like to call these individuals "Stingers." Preventing this problem or solving it once unleashed is a complex and difficult challenge for advisors because that highly charged atmosphere can hijack good sense, financial planning, trustee relationships and legal-contractual mandates.

What distinguishes the Stinger phenomenon from typical family feuds is that the latter term usually describes family members fighting over an inheritance or certain personal items. That dynamic has limits because both parties have support, relatively similar amounts of power and, ultimately, all sides are searching for a solution.

The Stinger generally has no such specific agenda. She may be an intelligent, fascinating, flawed good gal to the world, but one who pushes limits and defies authority.

Punishment Estate Planning

As Ed Mooney, senior wealth strategist at BNY Mellon Wealth Management stated, "It can be heartbreaking to isolate one family member but the alternative could be even worse."

Grantors and families, pushed to their limits, often become unable to change the Stinger's behavior. As a result, the Stinger often suffers the ultimate punishment of being left completely out of a will or marginalized to such an extent that her only recourse is litigation or further self-destruction.

Although advisors have made tremendous progress in guiding families through Punitive Estate Planning, it still happens, especially when the family, in an effort to save money, appoints a family member as trustee for its trusts (for example, a sibling) instead of a neutral third party, such as a bank, accounting or law firm. If an advisor is asked to be a henchman in this process, she can become just one more punishing family member and end up unwittingly networked into the family dysfunction.

If these complex dynamics aren't handled properly, the crisis will corrode the relationship with the advisor or trustee, causing a push-pull, tug-of-war in which grantors or beneficiaries transfer their subconscious fight with their families onto advisors or trust officers, especially because they, as outsiders, can be punished without the familial complications.

Five Steps for Advisors

This brief roadmap is a starting point that aims to drive an accord that sets legacy, survival and growth as the uppermost goal in everyone's mind.

Step 1: Arm yourself with knowledge. In general, begin with a clear-eyed examination of the true forces at play.

In my experience, many advisors see the tree and the fruits of the tree. What they sometimes don't see is the massive network of roots supporting the tree; the invisible ties between family members, which I call the "familial network."

If observing this landscape with the objectivity of a scientist at a microscope is a tool you have, that's great. If not, then an efficient and sophisticated avenue is to consider a third-party advisor, either as your secret weapon who privately works with you, or who, as a resolution specialist, is hired to work directly with the family and keep them moving in the right direction while also acting as your firewall, keeping you above the fray.

Step 2: Acquiring information is important. The critical issue is how you use it.

Learn how to break down and assess the information you get: who is listening to whom, who is aligned with whom, who is consistent and who isn't.

Family members often acquire subtle triggers to pull or push on the heartstrings of the others. Sometimes, members hold each other hostage for grievances that are 20 or even 50 years old.

The good news is, people's actions and reactions in this context are largely habitual; therefore, predictable.

Knowing the underlying dynamics will let you see the future. It will also let you see who's really driving the issues and how she does it. Know who's suffering from them and why. This will give you powerful solutions to the self-destruction of the familial tug of war.

Step 3: Practice non-attached listening.

It's imperative that you be seen as neutral at all costs. I spend significant time working with advisors to teach this skill because it's not only important to understand the complexity of the root system supporting the tree, but also it's just as important to recognize that neither you nor the family can fix these issues overnight.

A very useful tactic is "slowing things down," an important function from your end because families in this situation tend to be ready to up the ante at any time.

Your role on higher ground starts immediately with focusing on the client, who could be the troublemaker (the Stinger) or a key family member (for example, the mom). Return calls promptly, because the Stinger will be especially sensitized to rejection. Your act of returning calls to all of them sends a message of care. Listen without interruption; it will give you the power to safely respond with neutrality and not blame.

No matter what you hear, avoid at all costs joining any rush to bad-mouth a family member. Even if you agree, there's an old adage: "I can talk about my mother, but you better not." Do that, and in the heat of the moment, your comments may be shared, tables may turn and it may be you who sounds unprofessional or who's bad-mouthed.

In life, individuals often don't feel truly understood or that others "get" them. When you're a supportive and neutral listener, you galvanize your bond and avoid being pulled into the network. You needn't agree with the Stinger's goal, but she needs to feel that you understand her. That alone will deepen her bond to you.

Step 4: Keep the relations open and fluid.

As you become stronger as a neutral listener, you can quietly help the family avoid making Machiavellian decisions or supporting solutions that may satisfy short-term needs but that will, midterm, exacerbate a rupture.

Do this by sending messages that work for all and empower you at the same time. For example, "Let's take our time with this," "Let's let it develop a bit more," "That may be useful," "We need to think about this" or "Let's sleep on it and talk in two days."

I often ask people—using great neutrality—"What's your goal here?" You would be amazed how many times there's silence on the phone, because it turns out, they can't articulate one. When that occurs, leave room whenever possible for change to occur. Keep the dynamics open for fluidity.

To build power, advisors, while not taking sides, must try to keep the field clear to allow room for people to change and adjust their thinking and their behaviors.

Step 5: Keep grantors focused on a conflict-free family legacy.

Advisors who've created neutral power must try to help the grantors not use inheritance as the ultimate "I win," by pointing out not only the human but also the financial cost of staking out such a position.

What they leave behind is just as important as how they leave it because it will have a multi-generational impact on how they themselves are viewed. Leave a mess, and second and third generations won't carry with them the very memories and legends that grantors want them focused on. By providing the wisdom of the long view as the basis for conversations, you can then help set up a plan that's structured to eliminate generations of fighting and ensure a family's emotional and financial legacy, hopefully preventing new Stingers from ever arising.

With proper timing, themes and language, you can transform yourself into a leader above the fray and bring peace to a family, regardless of the forces working against you.

Candidates' Tax Plan Review

Stephen Hartnett, Associate Director of Education, American Academy of Estate Planning Attorneys

Over the last two weeks, Stephen Hartnett has reviewed how Hillary Clinton's and Donald Trump's Tax Plans would affect our clients in estate planning. Below are both articles as published in the American Academy of Estate Planning Attorney's blog:

Hillary Clinton's Tax Plan

as published on September 21, 2016

(SEE UPDATED ARTICLE RELEASED ON SEPT. 22 WITH CHANGES TO THIS PLAN ON PAGE 18)

The candidates' standings in the polls go up and down. But how would each of them affect our clients and estate planning?

First, estate taxes. Hillary Clinton would keep the estate tax. In fact, she would enhance it by returning it to the 2009 law:

- Reduce the applicable exclusion to $3.5 million
- Increase the rate of taxation from 40% to 45%
- Reinstate the $1 million lifetime gift exclusion

Next, income taxes. Hillary Clinton has detailed income tax proposals, including the following:

- Small business can deduct up to $1 million in capital investment
- Institute the Buffett rule, *i.e.* taxpayers with income above $1 million would pay a minimum 30% effective tax rate
- Impose a 4% surcharge for taxpayers earning above $5 million
- Eliminate the "carried interest" loophole
- Graduated rates for capital gains based on holding period (Holding up to 2 years, ordinary income rates apply; 2-3 years, 36%; 4 years, 32%; 5 years, 28%; 6 years, 24%; 7 or more years, 20%)

The Tax Policy Center estimates that the top 1% of taxpayers with incomes above $750,000 would face average tax increases of $78,000 under the proposed Clinton plan. Those earning less than $300,000 would face no increase.

According to a piece in the New York Times, Clinton's plan would add complexity to tax laws and would benefit tax lawyers.

Stephen C. Hartnett, J.D., LL.M.
Associate Director of Education
American Academy of Estate Planning Attorneys, Inc.

Donald Trump's Tax Plan

as published on September 28, 2016

The candidates' standings in the polls go up and down. But how would each of them affect our clients and estate planning? Last week, we looked at Hillary Clinton's tax plan. This week, we look at Donald Trump's tax plan.

First, estate taxes. Donald Trump would completely up-end the current transfer tax system:

- He would eliminate the estate tax entirely.
- He would eliminate the gift tax entirely.
- Presumably, he would eliminate the GST tax entirely.He would disallow a step-up in basis for the assets of decedents with estates over $10 million.

Next, income taxes. Donald Trump's tax proposals are not entirely clear and change. However, he has proposed the following:

- Cap deductions at $100,000 for individuals and $200,000 for a married couple filing jointly.
- Increase the standard deduction to $15,000 for individuals and $30,000 for married filing jointly.
- Reduce the federal tax brackets from 7 to 3, with rates of 12%, 25%, and 33%.

Current estimates are that Trump's tax plan would:

- Reduce taxes for low income earners by an average of 1.2%.
- Reduce taxes for highest income earners by 10.2%.

According to a piece in *Fortune*, Trump's plan would add $5.3 trillion to the federal deficit over 10 years.

HILLARY CLINTON PROPOSES 6

Tax plan changed to increase top rate for wealthiest ho

[Democratic presidential candidate](#) [Hillary Clinton](#) would levy a 65% tax on the largest estates and make it harder for wealthy people to pass appreciated assets to their heirs without paying taxes, expanding the list of tax increases she would impose on the top sliver of America's affluent.

The estate-tax increase and other new proposals that Mrs. Clinton detailed on Thursday would generate $260 billion over the next decade, enough to pay for her plans to simplify small business taxes and expand the child tax credit, according to the nonpartisan Committee for a Responsible Federal Budget, which advocates fiscal restraint.

In all, Mrs. Clinton would increase taxes by about $1.5 trillion over the next decade, increasing federal revenue by about 4%, though that new burden would be concentrated on relatively few households. There is at least a $6 trillion gap between her plan and the tax cuts [proposed by her Republican rival](#) [Donald Trump](#).

The Clinton campaign changed its previous plan—which called for a 45% top rate—by adding three new tax brackets and adopting the structure proposed by Sen. Bernie Sanders of Vermont during the Democratic primaries. She would impose a 50% rate that would apply to estates over $10 million a person, a 55% rate that starts at $50 million a person, and the top rate of 65%, which would affect only those with assets exceeding $500 million for a single person and $1 billion for married couples.

In 2014, just 223 estates with a gross value exceeding $50 million filed taxable estate-tax returns, according to the Internal Revenue Service.

In a statement, Mr. Sanders said the proposal would respond to the "grotesque level of wealth" concentrated among the top few households.

"Secretary Clinton understands that it is appropriate to ask the top three-tenths of 1%, the very wealthiest people in this country, to pay their fair share of taxes so that we can provide a child tax credit for millions of working families and lower taxes for small businesses," Mr. Sanders said.

The 65% estate-tax rate would be the highest since 1981 and marks one of the most enormous tax-policy gulfs between Mrs. Clinton and Mr. Trump, who would repeal the tax.

"It is the height of hypocrisy for Hillary Clinton to offer an even more dramatic hike in the death tax at the same time she uses exotic tax loopholes reserved for the very wealthy to exempt her Chappaqua estate," said Jason Miller, a spokesman for Mr. Trump, referring to Mrs. Clinton's use of residence trusts in New York to lower the value of her taxable estate.

Photo: Steve Pope/Getty Images

5% Top Rate for Estate Tax

useholds ; By Richard Rubin, WSJ on September 22, 2016

Neither Mrs. Clinton's nor Mr. Trump's proposals stand much chance of succeeding in a divided Congress where Republicans control the House and Democrats can block action in the Senate. The current top rate of 40% was set as part of a bipartisan compromise in January 2013, and the first $5.45 million a person is exempt from tax.

Mrs. Clinton's plan is "dead on arrival," said Rep. Kevin Brady (R., Texas), chairman of the House Ways and Means Committee.

"It will stop family owned businesses—including women and minority-owned businesses—from being passed down to their children and grandchildren," he said.

The estate tax is "wildly unpopular" with small business owners, said Matt Turkstra, who works on the issue for the National Federation of Independent Business, and "the biggest transfer of wealth is going to be from very, very wealthy people to lawyers."

The shrunken version of the estate and gift tax that has been in place in recent years brings in relatively little money for the federal government, less than 1% of projected revenue over the next decade, according to the Congressional Budget Office.

Still, the tax carries symbolic and political weight. Republicans and their allies in the business world see it as a patently unfair confiscation of wealth that punishes family-owned businesses. Democrats see it as a leveling tool necessary to combat the increasing concentration of wealth, and say that the impact would largely be felt by a very small number of people.

"The people who care a lot about it are the ones who are subject to it or the ones who benefit from it," said Michael Graetz, a tax-law professor at Columbia University and co-author of a book on the politics of the estate tax. That includes charities, he said, which worry that a repeal of the tax would reduce charitable bequests.

Mrs. Clinton would also repeal what is known as the step-up in basis. Under that rule, people who die with appreciated assets—for example, a stock bought decades ago—don't have to pay the capital-gains taxes on the increase in value before death. Then, their heirs only have to pay taxes when they sell the assets and only have to pay capital-gains taxes on the difference between the sale price and the value when they were inherited.

Under Mrs. Clinton's plan and under a proposal from President Barack Obama that has gone nowhere in Congress, a bequest of an asset would be treated as realizing those pent-up gains. There would be an exemption of undetermined size that would focus the tax on high-income families, and Mrs. Clinton's proposal, the campaign said, would include "careful protections and flexibility for small and closely held businesses, farms and homes, and personal property and family heirlooms."

But the combination of the 65% estate tax and the change to capital-gains rules could lead to significant increases in effective tax rates at death on some people—including, for example, Mr. Trump, who claims a net worth of $10 billion, though independent estimates put it lower.

Mrs. Clinton's new proposals would also limit like-kind exchanges, the technique commonly used in real estate to defer capital gains when properties are sold.

The latest changes are part of a series of tax increases Mrs. Clinton has rolled out to pay for targeted tax cuts and for increased spending. She would impose a 4% surcharge on income over $5 million a year, limit deductions for high-income households, create higher capital-gains rates on assets held for between two and six years and require the "Buffett Rule," a minimum 30% tax rate for the highest-income households named for investor Warren Buffett.

"These proposals reflect Hillary Clinton's approach to growing our economy: making investments in good-paying jobs and the middle class, paid for by closing loopholes and asking the wealthiest to pay their fair share—even as Donald Trump wants to give trillions in tax breaks tilted towards the wealthy," said Mike Shapiro, an economic policy adviser to Mrs. Clinton.

Dreary Days Ahead for Valuation Discounts

Source: Nerd's Eye View @ Kitces.com

Executive Summary

Using a Family Limited Partnership (FLP) or Family LLC to obtain favorable valuation discounts on gifts or bequests has been a staple of high-net-worth estate planning for the past 15 years. While IRC Section 2704, passed in 1990, was intended to limit the aggressive use of valuation discounts, over the decades since a number of Tax Court cases, along with evolving state laws, have undermined the IRS' ability to enforce those rules.

Accordingly, after years of failed attempts to get Congress to update the rules, the Treasury department has decided to pursue its own crackdown, in the form of newly proposed 25.2704 Treasury Regulations. In fact, **the proposed Regulations under Section 2704 are so expansive, that they would severely limit the use of valuation discounts for any type of family limited partnership or other family business transfer**, where the family will retain control before and after the gift or bequest occurs.

The new rules would include the imposition of a new 3-year lookback to determine whether a minority valuation discount should apply (limiting deathbed transfers used to create a minority interest), the introduction of new "disregarded restrictions" that go beyond the already-ignored "applicable restrictions" in situations where the family will retain control after the transfer (and effectively create an implied put right for any recipients of a transfer, which significantly curtails most valuation discounts), and a shift away from only looking at restrictions that are "more restrictive" than available state law.

Fortunately, the proposed Treasury Regulations must go through a 90-day public comment period through November, following by a public hearing in December, and must then be re-evaluated before final issuance (which in turn wouldn't take effect until 30 days thereafter).

Nonetheless, **for those high-net-worth families who *are* over the estate tax thresholds, just a few months remain to engage in transfer planning to maximize current valuation discounts before the new rules take effect!**

"FOR THOSE HIGH-NET-WORTH FAMILIES WHO ARE OVER THE ESTATE TAX THRESHOLDS, JUST A FEW MONTHS REMAIN TO ENGAGE IN TRANSFER PLANNING TO MAXIMIZE CURRENT VALUATION DISCOUNTS BEFORE THE NEW RULES TAKE EFFECT"

New Section 2704 Treasury Regulations Limiting Family Business Valuation Discounts

As proposed, the new Section 2704 Treasury Regulations would crack down on both lack-of-marketability valuation discounts for family businesses (by expanding the scope of Section 2704(b)), and also the lack-of-control valuation discounts for such businesses (with a further expansion of Sections 2704(a) and (b)).

New 3-Year Lookback To Determine Lack Of Control Discounts

Under the new Treasury Regulation 25.2704-1(c)(1), any lapse of a restriction or liquidation right within 3 years of death is treated as a lapse at death (which in turn would be re-included in the decedent's estate under Section 2704(a)). In essence, this provision means that changes in ownership intended to trigger a minority discount on shares held at death may no longer produce such a discount.

For instance, if the family patriarch owned 51% of the family's stock, and upon his/her deathbed made a gift of 2%, it would not only be possible to claim a minority discount on the 2% share being transferred, but at death the remaining now-minority 49% interest would also be eligible for a discount. Under the new rules, though, while the 2% interest might still be eligible for a lack-of-control discount (or not, per the further rules described below), if those 2% of shares were transferred within 3 years of death, the minority valuation discount on the remaining 49% would be invalidated. Notably, the decedent would still only report the value of 49% of the shares at death (and not necessarily the full 51%, as the other 2% really was transferred), but in determining any potential minority discount, the 49% would be valued *assuming* the 51% interest was still present (which means no minority discount).

In point of fact, a version of this strategy – where the decedent transfers 2% from a 51% interest just to reduce to minority status on their deathbed – is exactly what occurred in the 1990 Tax Court case of *Estate of Murphy v. Commissioner*, and appears to be exactly what the IRS and Treasury were aiming to prevent with the new 3-year lookback period. Going forward, it will no longer be feasible to winnow down a majority interest to a minority interest at/near death just to obtain a minority valuation discount on the remaining shares held at death.

Implied Put Right For Minimum Value And Disregarded Restrictions Beyond Applicable Restrictions

Under the existing Section 2704(b) rules, certain "applicable restrictions" that might otherwise reduce the valuation of a family business are ignored if the transferor or his/her family have the right to remove the restriction after the transfer (and if the restriction is more restrictive than what state law already provides).

However, Treasury's proposal includes the new Treasury Regulation 25.2704-3, which would define an additional category of "disregarded restrictions" that are ignored when determining the valuation of the business, if the family still has control in the aggregate to eliminate the restriction after the transfer or bequest.

These disregarded restrictions would include anything that: (a) limits the ability of the holder of the interest to liquidate the interest; (b) defers the payment of the liquidation proceeds for more than six months; (c) permits the payment of the liquidation proceeds in any manner other than in cash or other property (other than certain notes); or (d) limits the liquidation proceeds to an amount that is less than a "minimum value". For the purpose of these rules, "minimum value" is the fair market value of the entity, reduced by outstanding obligations (i.e., debts) of the entity.

In practice, this means that a transfer subject to the "disregarded restrictions" rules would be unable to take advantage of most traditional business valuation discounts – including a lack-of-control and lack-of-marketability discounts that wouldn't otherwise be reflected in the calculation of minimum value – whenever the family will retain control of the business after the transfer occurs (whether a gift during life or a bequest at death).

Notably, certain exceptions do apply to the disregarded restriction limitations. In determining whether the family has the control/ability to remove restrictions after the transfer, nonfamily owners may be considered (as long as they have owned the shares for at least 3 years, have the ability to liquidate within 6 months, and meet certain minimum ownership guidelines). In addition, a restriction is not disregarded if each owner has an enforceable "put" right to receive (via liquidation or redemption), within 6 months, either cash or other property equal to "minimum value" of the business. (If 'other property', though, it cannot be a mere promissory note issued by the entity or other family members, unless the entity is an active trade or business, where at least 60% of the value is non-passive assets.) Or viewed another way, the proposed regulations would implicitly apply a "put right" to the valuation of any transfer of the family business to other family members, effectively eliminating most forms of discounts.

New Section 2704 Treasury Regulations Would End Most FLP Valuation Discounts

The substantive impact of the newly proposed Section 2704 Treasury Regulations on valuation discounts is that it would end most forms of lack of control and marketability discounts for intra-family transfers of businesses, as most such restrictions would easily be captured as "disregarded restrictions" under the new Section 2704(b) rules. In addition, the expanded Section 2704(a) rules will not even allow family business owners to attempt to diminish their ownership interests in order to claim a minority or lack-of-control discount at death on their *remaining* shares, either.

In fact, the proposed Treasury Regulation 25.2704-3(g) provides a series of examples, that demonstrate the incredibly broad scope of the new rules.

Example. *Samuel and his children Joe and Sally are partners in a limited partnership. Samuel owns a 98% limited partner interest, and Joe and Sally are each 1% general partners. The partnership agreement states that the partnership will automatically liquidate in 50 years (or earlier by agreement of all partners), but otherwise prohibits the withdrawal of a limited partner (a marketability and control restriction). This restriction is permitted, but not required, under state law. The partnership can be amended by the approval of all partners.*

Samuel transfers 33% of his interest to Joe, and another 33% of his limited partnership shares to Sally. Because Joe and Sally could change the partnership to eliminate the liquidation provisions after the transfer, though, the marketability and control limitations would be "disregarded restrictions" in valuing the partnership shares. As a result, the transfers would be fully valued at 33% of the fair market value (i.e., the "minimum value") of the business, and the valuation discounts would be lost altogether as a result of the new rules.

Notably, upon Samuel's subsequent death, his remaining 32% interest would also be ineligible for any minority or marketability discount, if bequeathed to a family member (whether Joe and/or Sally, or a surviving spouse). Because, again, the restrictions would be disregarded, since they could be removed by the family after the transfer/bequest.

Fortunately, if the business includes ownership by, or distributions to, nonfamily members as well, a more favorable result may occur (subject to certain nonfamily ownership requirements discussed earlier). The rules for disregarded restrictions apply primarily in situations where the family retains control over the business – including the ability to change or remove restrictions – after the death or transfer of the original owner.

Nonetheless, the end result remains that most forms of intra-family transfers will be unable to obtain previously common minority and marketability discounts once the new rules take effect.

Effective Date And FLP Planning Opportunities Of The Proposed 25.2704 Regulations

At this point, the reality is that the Treasury's proposed regulations are just that – proposed. Per the standard process for considering the adoption of new Regulations, they will now go into a Public Comment period running through November 2nd, followed by a public hearing on December 1st. After that, the IRS and Treasury must consider the comments before issuing final rules, which in turn would not be effective until 30 days after being entered into the Federal Register.

Nonetheless, the IRS and Treasury have been building up to this change for the better part of 13 years (since first introducing Section 2704 valuation discount concerns as part of the IRS Priority Guidance Plan in 2003). And while some family business groups are already gearing up objections, and a few tax commentators have already raised the question of whether the IRS and Treasury are overreaching (as arguably if Congress really wanted to eliminate all family valuation discounts, they could have made Section 2704 more restrictive in the first place), it seems *highly likely* that some form of these rules will be finalized soon. A realistic timeline would be for the Final Regulations to be issued and take effect sometime in 2017.

The Clock is Ticking for Gifting

Fortunately, though, *the new rules would only apply to transfers that occur after the effective date*. Which means families holding businesses entities have a limited number of months to engage in transfer planning now, before the new rules take hold. This may include accelerating current gifts of shares of a family business – while minority and marketability discounts still hold – and possibly even beginning the process of (quickly) forming a family limited partnership (FLP) or FLLC to facilitate the beginning of a transfer process. The limited time opportunity to take advantage of the implied leverage of discounted gifts means very affluent families may even use some or all of their lifetime gift tax exemption just to maximize the available transfers. And of course, gifts made now will not only enjoy the benefit of valuation discounts, but as with any inter vivos gifting will also shift all future appreciation out of the original owner's estate, too.

On the other hand, while the new rules won't apply until after the effective date, a death that occurs after the effective date *will* be subject to the 3-year lookback period in determining whether any family business bequest is eligible for minority or marketability discounts (or not). This wouldn't necessarily make it "bad" to transfer shares of the family business – which would still lock in any current valuation discounts on transfers that occur now – but still means there's a risk that gifting enough to get the original owner down to a minority interest may not ultimately enjoy a minority discount when the time comes.

Of course, it's important to remember that gifts, once made, are irrevocable, and that family business owners should be *ready* to make such gifts in the first place. If the business owner isn't ready to make the gift, and/or isn't comfortable with who will receive the shares (either outright or in trust), then trying to maximize the valuation discounts of gifting before the rules change is a moot point. Family dynamics around gifting and the ownership of the family business should still trump the tax consequences alone.

It's also important to bear in mind that the new rules will only be relevant for those who *have* estate tax exposure in the first place, which means generally those families with more than $5.45M individually (or $10.9M as a couple) of combined assets (plus a few states whose estate tax exemptions are still lower). Thus, family businesses that are below this threshold for estate tax exposure, and don't anticipate rising above the threshold going forward, still won't need to worry about the new rules at all. In fact, for those who do not have any estate tax exposure, arguably the new rules may be *good* news, potentially allowing the estate to claim a *higher* estate valuation reported on Form 8971, resulting in a more favorable step-up in cost basis at death!

Nonetheless, for the subset of ultra-high-net-worth families that have created enough wealth to face estate tax exposure, where the wealth is either centered around a family business, or can/will be transferred *into* a family business, the clock is ticking to complete transfers for potential minority or marketability discounts. While it remains to be seen exactly when in 2017 the new rules will take effect, and there may be some strategies that remain (or new "loopholes" that emerge?), it appears to be only a very limited matter of time before intra-family valuation discounts are drastically curtailed.

Areas of Practice

Estate Planning

– At The Andersen Firm we have planned for a vast array of estates ranging in size from a few hundred thousand dollars to a hundred million dollars and up, all the while realizing each specific case is different and requires specialized attention.

Estate Settlement

– The process of settling an estate can be difficult and emotionally painful for the family and loved ones of the deceased. It is our goal at The Andersen Firm to ensure that the process be handled with compassion, expedience, professionalism, and expertise, while protecting the rights of all parties involved. If the circumstances surrounding a client's estate require probate, our attorneys offer extensive experience in handling the processes and legalities involved.

Estate Litigation

– Our lawyers are not only skilled at handling cases involving estate and trust disputes, they draw on a thorough knowledge base of the specific procedures surrounding these issues. The Andersen Firm can efficiently take each case through to completion realizing that full blown litigation often can be avoided if we work diligently to come to resolution.

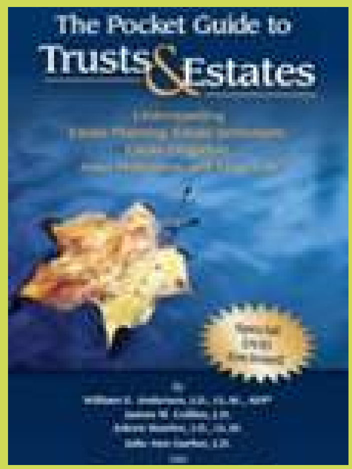
Attorneys at The Andersen Firm represent beneficiaries, trustees and personal representatives in various jurisdictions dealing with estate litigation and probate litigation matters. A Will contest challenges the admission of a Will to probate or seeks to revoke the probate of a Will that is already pending before the probate court. A similar type of estate litigation can take place contesting the terms of a trust. The most common causes of action in both Will contests and estate litigation can be found at www.TheAndersenFirm.com or call us at 866.230.2206.

Asset Protection

– For some, putting an Asset Protection Plan in place is advisable in order to attempt to remove the economic incentive to be sued and also to try and increase the ability to force an early settlement in the event a suit is filed.

The Pocket Guide to Trusts and Estates

Bill Andersen and Joleen Searles with Erin Turner and Jerry Saresky have released their collaborative book ***The Pocket Guide to Trusts & Estates: Understanding Estate Planning, Estate Settlement, Estate Litigation and Asset Protection***.



COMMENTS: If you have questions about The Andersen Firm's practice areas, need assistance with continuing education, client seminars, would like to request a copy of The Pocket Guide, or have a question or suggestion about our website, **Angela Hooper** is our **Director of Professional Alliances.** Angela welcomes your calls and may be reached at 866.230.2206 or by email at AHooper@TheAndersenFirm.com.

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Financial Advisor Current Events Update Fourth Quarter 2016

Thank you for taking the time to review this edition.

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