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Goldman's "Golden Rules" of Estate Planning – Part I - *Trusts & Estates and Elder Law Newsletter*

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3.14.14

For those of our readers whose New Year resolutions included creating (or updating) their estate plan, here are some "golden" rules:

1. "**The only things certain in life are death and taxes**"

- Talk of an estate tax repeal is past. The Federal estate tax for an estate exceeding $5,340,000 in 2014 is 40%. Add New Jersey or New York estate tax of up to 16%. That could result in a big bite out of your estate.
- Need to consider the ATRA 2012 provisions – the interplay of higher income tax rates and a decreased amount of estates subject to Federal estate tax (on account of the increased exemption) which has dramatically changed the dynamic of estate tax planning.

2. "**Failing to plan is planning to fail**"

- Assets may pass in a manner you didn't intend.
- Unnecessary estate tax costs.

3. "**It's not what you say – it's what you do**"

- Even the best estate plan is worthless if it's not implemented.
- Make sure assets are titled properly to achieve estate tax savings.

4. "**What have you done for me lately?**"

Even if you have a Will, the changes to the estate and gift tax laws make it important that you review it.

- Formula credit shelter – because of the increased exemption amount, your spouse could get much less outright than you think.

- De-coupling of State estate tax (NY, NJ) from Federal estate tax – there is often a State estate tax on the death of a surviving spouse, even if there's no Federal Estate tax.
- After ATRA 2012, weigh potential estate tax saving strategies through gifting against loss of "stepped-up" basis to transferee for income tax purposes.

5. "**Let's talk of Executors and make Wills**"

- Even Shakespeare knew the importance of having a Will.
- Cornerstone of estate plan.
- If you don't make a Will, the State you live in makes one for you.
- Tax planning through use of trusts, disclaimers.
- Set up trusts to manage property for minors, spouse.
- Name your fiduciaries (executors, trustees) and guardians.

6. "**Credit check**"

- Two basic rules of estate tax planning – (a) unlimited marital deduction, and (b) unified gift and estate tax credit.
- Take advantage of credit in each spouse's estate to avoid unnecessary estate tax in surviving spouse's estate.
- The de-coupling of the New York estate tax and the New Jersey estate tax from the Federal estate tax could cost you – unless you make the right changes to that credit shelter provision in your Will.
- New York credit amount capped at $1,000,000 (although the pending New York Budget Bill would raise it to conform with the federal exemption).
- New Jersey credit amount capped at $675,000.
- Don't rely on "portability" – not recognized for State estate tax purposes or for generation skipping transfer ("GST") purposes.
- After ATRA 2012, need to weigh the estate tax benefit of keeping assets out of surviving spouse's estate v. increased income tax due to loss of "stepped-up" basis on surviving spouse's death.

7. "**Think of the children**"

- Make a Will to name a guardian for your minor children – or else the State will do it for you! Not a tax reason, but maybe the most important reason to have a Will.
- Create trusts for management of property for children, even if they have reached the age of majority.

8. "**From generation to generation**"

- Use a Will to take advantage of generation-skipping transfers and reduce estate taxes to the family.
- GST exemption tied to credit shelter amount ($5,340,000 in 2014).
- Trust for child for life, remainder to grandchildren – avoids tax in child's estate.

9. "**Who(m) Do You Trust?**"

- Use trusts as part of your estate plan, to manage property for minor children: (a) Set ages for mandatory distribution of principal (e.g., 1/3 – 25, 1/3 – 30, balance at 35); (b) Income from age 21; (c) Discretionary principal; (d) "Hold-back" provisions – gives trustee authority to hold back any mandatory distribution if not in best interest of beneficiary – bad marital, financial or mental situation.
- Use trusts to manage property for surviving spouse: (a) Not subject to tax in first estate; (b) Ensures that trust property goes to children.
- Use testamentary trusts to minimize state taxes: (a) Credit Shelter Trust – Not included in surviving spouse's estate, but watch out for triggering NJ or NY state estate tax on account of "decoupling;" (b) Marital Trust (QTIP) – (1) not subject to tax in first estate – deferred until death of surviving spouse), (2) testator names remainder beneficiaries, (3) useful in second marriage situations.
- Use inter vivos trusts: (a) Life Insurance Trust – (1) proceeds not included in grantor's estate, (2) can keep proceeds in trust for surviving spouse's lifetime so also not includible in surviving spouse's estate, (3) can provide needed liquidity; (b) Qualified Personal Residence Trust ("QPRT") – (1) discounted gift-giving, (2) reserve an interest for a term of years, then title passes to remainder beneficiaries, (3) if not a QPRT (e.g., a life estate), retained interest is valued at zero and entire value of residence is treated as a gift, (4) grantor must survive the QPRT term; (c) Grantor Retained Annuity Trust/Unitrust ("GRAT," "GRUT") – (1) discounted gift giving, (2) trust is funded with income-producing property, (3) reserve an annuity for a term of years, then assets pass to remainder beneficiaries, (4) if not qualifying as a GRAT, retained interest is valued at zero, and entire value of asset is treated as a gift, (5) grantor must survive the GRAT term; (d) Charitable Trusts – (1) remainder trusts, (2) lead trusts; (e) Supplemental Needs Trust – preserve governmental benefits.