ADVISOR SYMPOSIUM

ISSUES OF INTEREST TO ADVISORS TODAY

NEW YORK LIFE

November 6, 2024

Agenda

Time (Eastern)	Presenter	Topic
2:00 – 2:05 pm	Heather Davis	Welcome / Opening remarks
2:05 – 2:30 pm	Jeff Chadwick	Maximizing Wealth Transfers: Strategic Estate Planning and Gifting Solutions Amidst Impending Tax Changes
2:30 – 2:55 pm	Jeff Chadwick and Allen Hensley	Maximizing Wealth Transfers – Case study discussion
2:55 – 3:05 pm	*Break*	
3:05 – 3:30 pm	Patricia Annino	Mastering Family Business Dynamics: Valuations, Agreements, and Strategic Decisions
3:30 – 3:55 pm	Patricia Annino and Allen Hensley	Mastering Family Business Dynamics – Case study discussion
3:55 – 4:05 pm	*Break*	
4:05 – 4:30 pm	Chris Hoyt	Maximizing Tax Savings with Retirement Distributions and Charitable Giving
4:30 – 4:55 pm	Chris Hoyt and Allen Hensley	Maximizing Tax Savings – Case study discussion
4:55 – 5:00 pm	Heather Davis	Closing remarks / Adjourn

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Presenter bios

Patricia Annino, JD, LL.M.

Partner, Rimon, P.C.

A nationally recognized authority on estate planning and taxation, Patricia has more than 30 years of experience serving the diverse needs of families, individuals, and owners of closely held businesses. Her practice includes all aspects of private client work, including estate planning; will and trust planning; incapacity planning; prenuptial and postnuptial agreements; estate litigation; advising executors, trustees, and beneficiaries; and administration of estates and trusts. Patricia particularly focuses on planning for family business owners, including coordinating their estate planning, corporate, and succession needs. In addition, she represents non-profit entities and private family foundations. Patricia testifies as an expert witness in high-stakes divorce cases where trusts and other inherited assets are at risk. Her testimony has been favorably reviewed by the Massachusetts Probate Courts. A leading voice on estate planning matters, she has been quoted extensively in a wide variety of local and national publications including the *Wall Street Journal*, *Barron's*, *Dallas Morning News*, *Chicago Tribune*, *MarketWatch*, *Investors.com*, and *Women's Business Journal*. She also has acted as the estate planning consultant to the independent investment research provider, Morningstar, and has been interviewed on Bloomberg Television. Patricia is the author of "Women and Money: A Practical Guide to Estate Planning" and writes a monthly column for *CPA Insider*, a newsletter sent to more than 160,000 CPAs and other wealth managers and advisors.

Jeff Chadwick, JD

Shareholder, Winstead, PC

Jeff focuses his practice on trust and estate planning for business owners, corporate executives, professional athletes, and other high net worth individuals and families. He strives to provide innovative and practical solutions to a wide range of legal matters, including wealth transfer planning, trust and estate administration, business formation and succession, asset protection, charitable giving, and premarital planning.

Jeff is Board Certified in Estate Planning and Probate Law by the Texas Board of Legal Specialization. He is a frequent speaker at estate planning seminars around the country and is an active member of many professional organizations. He also serves on the Texas Trust Code Committee, where he monitors trust issues in Texas and drafts legislation for inclusion in the Texas Trust Code.

Before settling in Texas, Jeff began his career in Richmond, Virginia. Jeff has maintained his Virginia law license and regularly counsels clients transitioning from Virginia to Texas, or vice versa, in regard to their estate planning matters.

Heather L. Davis, JD, CLU®, ChFC®, CAP®

Corporate Vice President, The Nautilus Group®

Heather has been with New York Life since 1999. She leads the marketing and meetings teams for The Nautilus Group and oversees the agent development initiative for New York Life, where she serves as executive director and host of the Advisor Symposium. She graduated Phi Beta Kappa from the University of Nebraska where she received both her Bachelor of Arts and Juris Doctor degrees. Heather earned her CLU®, ChFC®, and CAP® designations from The American College of Financial Services and is past president of the college's Alumni Association. She is a member of the Texas State Bar Association.

Allen A. Hensley, CLU®, ChFC®, MSFS, AEP®

Advanced Agent Development Officer, Corporate Vice President, New York Life Insurance Company

Allen Hensley is the Advanced Agent Development Officer for New York Life where he leads a team working with top financial service professionals and their clients to achieve financial goals and solve planning issues. He conducts national training events and speaks to groups on financial planning issues and strategies. For more than 25 years Allen has worked with New York Life to protect and grow wealth for clients and their families. Allen is an Accredited Estate Planner, with a Master of Science in Financial Services from The American College and a BA from Western Kentucky University. He has earned the Chartered Life Underwriter®, Chartered Financial Consultant® designations and is a Registered Representative of NYLIFE Distributors LLC, (Member FINRA/SIPC).

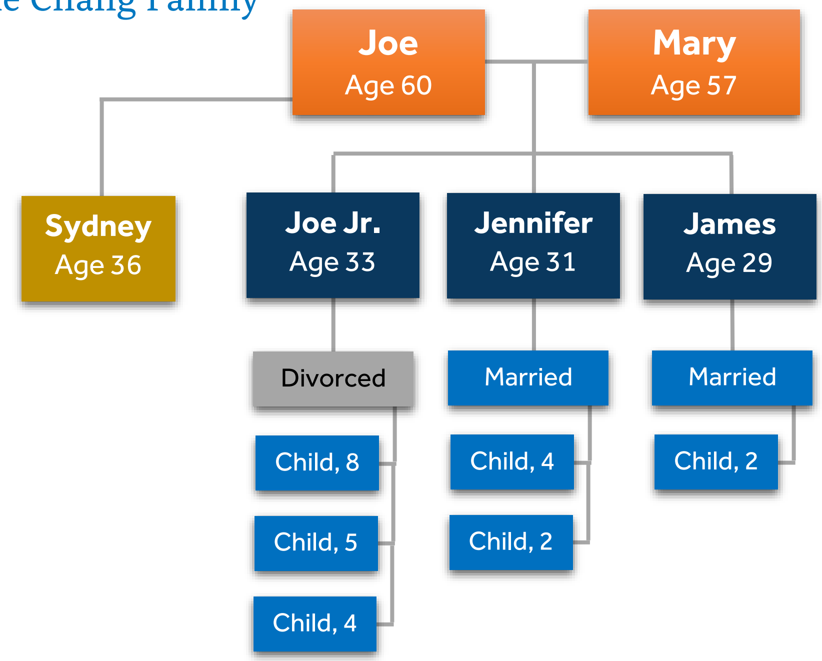
Christopher R. Hoyt, JD

Professor, University of Missouri Kansas City School of Law

Chris Hoyt is a Professor of Law at the University of Missouri Kansas City School of Law where he teaches courses in the area of federal income taxation and business organizations. Previously, he was with the law firm of Spencer, Fane, Britt & Browne in Kansas City, Missouri. He received an undergraduate degree in economics from Northwestern University and dual law and accounting degrees from the University of Wisconsin. Professor Hoyt has served as the Chair of the American Bar Association's Committee on Charitable Organizations (Section of Trusts and Estates) and is on the editorial board of Trusts and Estates magazine. He is an ACTEC fellow, has been designated by his peers as a "Best Lawyer," and was elected to the Estate Planning Hall of Fame by the National Association of Estate Planners & Councils. He is a frequent speaker at legal and educational programs and has been quoted in numerous publications, including *The Wall Street Journal*, *Forbes*, *MONEY Magazine*, *The New York Times*, and *The Washington Post*.

Case study: Chang Family and Head Waters Tours & Marina

The Chang Family



- **Joe & Mary** – Happily married for 33 years. They enjoy working together but are ready to begin stepping away and give their sons more responsibility for the businesses. This is the first and only marriage for Joe and Mary, although Joe has a daughter from a previous relationship. They are active in the community, working with the local economic development board and several non-profit organizations.
- **Joe Jr.** – Recently divorced with three children. He purchased a small percentage of the business from his parents with the winnings from a scratch-off lottery ticket. His ex-wife attempted to gain an ownership interest in Head Waters Marina during the divorce, but he

agreed to larger support payments to avoid splitting any ownership of the business. Joe Jr. stays involved with his children and spends a lot of time with them on weekends and summer vacations. For the last 10 years, Joe Jr. has been actively working with the Hilton Head Marine Conservancy to protect the coastal waters and local marine life.

- **James –** Manages the tour company and is constantly working to find qualified seasonal help for the business. In the off season, he does marketing and promotion to drive tour sales throughout the year. He has built a significant online presence for the tours and is now the top boat tour provider in the area. James has always enjoyed giving the tours and works tirelessly to continue building the business. James feels his brother, Joe Jr., is just a caretaker for the marina with their manager Sharon doing most of the work. James thinks Joe Jr. should be doing more to grow the marina's sales. James is married with one child. His wife grew up in the area and does some tours but feels that James devotes too much time to the business, especially during the summers.
- **Jennifer** - Not involved in the family business. She and her husband run an Airbnb in Savanah, GA, and are opening a gallery to feature local artisans. Jennifer currently serves on the board of the Savanah Arts Council. She has a close relationship with her parents but enjoys her independence and artistic pursuits.
- **Sydney** - Joe's daughter from a previous relationship. Joe has helped with her support since birth, but she has difficulty maintaining relationships and employment due to struggles with alcohol and drug addictions. She has been in a local substance abuse facility several times and her father, Joe, has become an active supporter of the non-profit treatment center. Sydney has a strained relationship with the Chang family—especially Mary. Joe and Mary have attempted to employ her in the family businesses, but she resents the success of Joe Jr. and James and has caused disruptions in the businesses and family harmony. Joe feels some guilt about her situation but is not sure how to best help her financially without enabling her addictions.

Chang Family Businesses

Head Waters Marina

- Includes real estate, restaurant, fuel stations, and boat slips.
- Started by Mary's parents – bought out parents in 2004.
- LLC owned by Joe 45%, Mary 51%, and Joe Jr. 4%.
- **Joe Jr.** manages the marina with help of long-time employee (Sharon).
  - Sharon started the restaurant and maintains close relationships with many of the owners leasing boat slips.
- The marina is well established and generates steady year-round income.
- There is no room to expand the marina, so revenue growth has been slow and driven mostly by the restaurant and adding additional services.

Head Waters Tours

- Started by Joe & Mary in 2014.
- LLC - Joe and Mary 100% JTWROS.
- Seasonal business that has rapidly expanded – especially in the last three years.
    - The tour business now generates more revenue than the marina, but the timing and amount of revenue is much less predictable.
    - It has few assets and requires little capital.
- **James** runs many of the tours himself along with hiring and training staff each year for the summer season.
    - More seasonal tour guides and boat captains are needed to keep up with the demand in the summer and to offer longer excursions with higher margins.
    - They are considering another full-time manager to help James with the logistics of hiring and scheduling the seasonal staff.

SDC Holdings

- Commercial multi-family real estate development.
- LLC – 100% Joe & Mary.
- **Joe's project** – purchased five years ago to help diversify their businesses.
- Provides some housing for the seasonal tour staff.
- Generates steady income.
    - Still has $2M debt, but it is locked in a low rate for 3 more years.

Objectives and Considerations

- Pass business equity to Joe Jr., James, and Jennifer equally.
- Provide basic expenses and support for Sydney.
- Continue and expand their support of Brighter View Recovery Center. Joe serves on the board of the center and Sydney has utilized their services on several occasions.
- Eventually pass control of businesses to the next generation. Not willing to give up complete control over business but would consider transferring some ownership today.
- Retain Sharon long-term to make sure that marina operations continue smoothly.
- Concerned about:
    - Treating Jennifer fairly since she is not involved in the family business.
    - Providing minimal support to Sydney without encumbering the businesses or other planning.
    - Minimizing potential future conflicts among the siblings about how to run the businesses.
    - Potential for divorce among their kids.
        - One child is already divorced, and clients want to make sure family wealth stays in the family.
    - Asset protection.
        - Lawsuits have been filed against the tour company in the past and they want to limit the exposure of their assets to this type of liability.
    - Concentrating too much wealth in the next generation.
    - Escalating cost of passing their rapidly appreciating business to future generations.

Joe and Mary Chang – Balance sheet

Assets	Value
Residence	$1,200,000
Vacation home	$800,000
Head Waters Marina restaurant, boat storage & land LLC Joe 45%, Mary 51%, Joe Jr. 4%	(Owner estimate) $14,000,000
Head Waters Tours LLC -- Joe & Mary 100% JTWROS	(Estimated FMV) $6,000,000
Commercial multi-family real estate Apartment complex LLC -- Joe & Mary 100% JTWROS	$5,000,000
Investments Jointly owned	$2,000,000
401(k) Joe Mary	 $950,000 $650,000
Debt Commercial real estate	- $2,000,000
Total	$28,600,000

The Nautilus Group®

The Nautilus Group is an exclusive resource accessible to Member Agents working with affluent, high net worth, and business owner clients. Nautilus provides a range of consultative services and technical case design to support its Member Agents in presenting estate planning, business exit planning, charitable giving, insurance, and retirement planning strategies to their clients and their clients' advisors in these key areas:

- Asset protection.
- Business succession and exit planning.
- Estate and legacy planning.
- Executive benefits.
- Family protection.
- Charitable giving.
- Retirement protection.
- Risk mitigation.
- Tax strategies.
- Wealth building.
- Wealth preservation.

The Nautilus Group is staffed by an elite team of professionals experienced in law, taxation, accounting, business, insurance, finance, and philanthropic planning.

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MAXIMIZING WEALTH TRANSFERS:
STRATEGIC ESTATE PLANNING AND GIFTING SOLUTIONS AMIDST IMPENDING TAX CHANGES
Jeff Chadwick, JD

“Estate planning is easy.”

We just need to know:

- When a client will pass away,
- How wealthy the client will be, and
- What the tax laws will be.

Putting things in perspective: 2000 vs. 2024

Tax attribute	2000	2024
Gift / Estate exemption	$675,000	$13,610,000
GST tax exemption	$1,030,000	$13,610,000
Maximum tax rate	55%	40%
Portability of estate exemption	No	Yes

New planning paradigm

- Large transfer tax exemptions; lower rates & portability.
- Historical focus – minimize estate tax.
- Uncertainty and fluidity of tax laws.
  - Exemptions sunset in 2026:
    - Indexed for inflation – assume $7.5M per person or $15M per couple.
    - "Bonus" exemptions are use it or lose it amounts.
    - No clawback.
  - Potential legislation.

Three client groups based on projected net worth

Clients who are *unlikely* to have a taxable estate.	Clients who are *likely* to have a taxable estate.	Clients who *might* have a taxable estate.
• Focus on non-tax objectives.	• Business as usual.	• Get creative.

Core estate planning alternatives (for married couples)

- All assets to surviving spouse outright.
- First spouse's remaining exemption to family/bypass trust.
- All assets to marital trust.
- All assets to surviving spouse outright or marital trust, with option to disclaim into family/bypass trust.
- Lesser-known alternatives.

Preliminary gifting considerations

- Client's financial needs and expected cash flow.
- Client's desire to maintain control over gifted assets.
- Client's risk tolerance and ability to handle complexity and follow best practices.
- Donee's financial and emotional maturity.
- Client's assets available to gift, including tax basis and appreciation potential.

Non-tax motivations for gifting

- Satisfy a beneficiary's current need.
- Permit beneficiaries to enjoy assets now.
- Equalize prior gifts among family members or forgive outstanding loans.
- Provide beneficiaries opportunity to manage finances.
- Help beneficiary start a business, invest, or make a charitable gift.

Gifting for federal income tax savings

- Important for all three client groups.
- For 99.94% of taxpayers – more relevant than transfer taxes.

Gifting for federal income tax savings: Two approaches

Downstream planning

- Avoid gifts of highly appreciated assets.
- Preserve capital losses.
- Maximize stepped-up basis among spouses.
- Swap high basis assets from a grantor trust.
- Unwind discounting techniques that provide no estate tax savings but reduce potential stepped-up basis.

Upstream planning

- Client gifts appreciated assets to an irrevocable trust for the benefit of an older family member (OFM) who has “excess” exemption.
- Trust grants OFM a testamentary general power of appointment.
- Upon death of OFM, general power of appointment lapses and assets receive a stepped-up income tax basis and pass to irrevocable GST-exempt trust for client and/or client’s family members.

Gifting for federal transfer tax savings

- Two types of lifetime gifts:
  - Gifts that do not consume exemption – the "freebies."
  - Gifts that consume exemption.
- Enhancements:
  - Leverage gifts with discounted values.
  - Utilize grantor trusts for federal income tax purposes.
  - Allocate GST exemption for multi-generational planning.
  - Increase flexibility through use of powers of appointment and trust protectors.

The “freebies”

- Important to all three client groups.
- Marital deduction and charitable deduction.
- Health and education exclusion.
  - Medical expenses.
  - Tuition.
- Annual exclusions.
  - Gift tax.
  - GST tax.

Creative gifting strategies

- Balance minimizing transfer taxes vs. preserving sufficient assets to support wealthy clients.
- Consider techniques that provide access to transferred assets but may create greater IRS audit risk.
- Flexibility is the cornerstone for planning.

Utilize only one spouse's exemption

- Lifetime gifts use exemptions from the bottom, not the top.
- To capture any benefit from the bonus exemptions, the "gifting threshold" is approximately $15 million for a married couple making equal gifts, but only $7.5 million for one spouse.
- Consider practical impact to the donor spouse and the advisor's ethical duties if both spouses are clients.

Spousal lifetime access trusts (SLATs)

- One spouse creates irrevocable trust for primary benefit of other spouse and possibly secondary benefit of descendants.
- Usually a grantor trust for income tax purposes.
- Married clients often desire to create SLATs for each other, but structure to avoid "reciprocal trust doctrine."

Special power of appointment trusts (SPATs)

Structure:

- Client funds irrevocable trust for one or more persons, not including the client, in which a beneficiary or non-beneficiary is given a limited power to appoint trust assets among a class of persons that includes the client.

Objectives:

- Currently use bonus exemptions.
- Provide client with potential access to appointed assets.
- Provide assets with creditor protection.
- Exclude assets from client's taxable estate.

Designing trusts for flexibility and access

- Independent trustee with broad power to make distributions (and/or reimburse grantor for income taxes paid).
- Trust protector who can modify the trust.
- Authorize trust decanting.
- Give grantor swap power and ability to borrow.
- Powers of appointment.
- Permit grantor to serve as trustee (with HEMS distribution power).

Joint representation of spouses

- Inherent conflict of interest between spouses.
- Structuring engagement letters.
- Communicate with both spouses.
- Impact of partitioning community property.
- SLAT disclosures and protections.
- Does each spouse need separate representation?

Practical tips for pre-2026 planning

Client alerts -

- Provide information and present opportunities.
- Avoid “fear mongering” or being “sales-y.”

Lay the groundwork now and pivot later if needed.

- Give liquid assets to IDGTs now and swap hard-to-value assets later.
- Sell assets to IDGTs now and cancel promissory notes later to use bonus exemptions.
- Fund LLCs/LPs now and transfer membership interests later.

Conclusion

- Advisors cannot tell the future.
- But we can help clients make informed decisions.
  - Core estate plans should be as flexible as possible.
  - Look before you leap on substantial lifetime gifts.
  - Clients value simplicity and common sense.
- No matter what happens, trusted advisors will always be in demand.


MAXIMIZING WEALTH TRANSFERS:
CASE STUDY DISCUSSION
Jeff Chadwick, JD, and
Allen Hensley, CLU®, ChFC®, MSFS, AEP®

Maximizing Wealth Transfers: Case study discussion outline

A. Overview of case study:

1. Client:
   a. Joe (60) and Mary Chang (57), reside in Hilton Head, SC.
      1) Own Head Waters Marina, LLC & Head Waters Tours, LLC.
      2) Three adult children.
         a) Joe Jr. – 33, divorced, has three children ages 8, 5, and 4.
            i Manages the Marina business.
         b) Jennifer – 31, married, two children 4 and 2.
            i Artist and entrepreneur.
            ii Does not work in the family business.
         c) James – 29, married, one child aged 2.
            i Manages the tour business.
         d) Sydney – 36, single, no children.
            i History of addiction & strained relationship with family.
            ii Child of Joe prior to his marriage.

B. Balance sheet:

1. Assets: residence, vacation home, apartment complex, marina business, tour business, investments, retirement accounts.
2. Debt: for apartment complex.

***C.* Clients' goals and objectives:**

1. Pass business value to Joe Jr., James, and Jennifer equally.
2. Provide basic expenses and support for Sydney.
3. Continue and expand their support of Brighter View Recovery Center. Joe serves on the board of the center and Sydney has utilized their services on several occasions.
4. Eventually pass control of business to the next generation. Not willing to give up complete control over business but would consider transferring some ownership today.
5. Retain Sharon long-term to make sure that marina operations continue smoothly.
6. Concerned about:
   a. Treating Jennifer fairly since she is not involved in business.
   b. Providing minimal support to Sydney without encumbering the businesses or other planning.
   c. Minimizing potential future conflicts among the siblings about how to run the business.
   d. Potential for divorce among their kids.
   e. One child is already divorced, and clients want to make sure family wealth stays in the family.
   f. Asset protection.
      1) Lawsuits have been filed against the tour company in the past and they want to limit the exposure of their assets to this type of liability.
   g. Concentrating too much wealth in the next generation.
   h. Escalating cost of passing their rapidly appreciating business to future generations.

D. Current plan:

1. Distribution of assets – family/charity/government.
2. Existing legal documents.

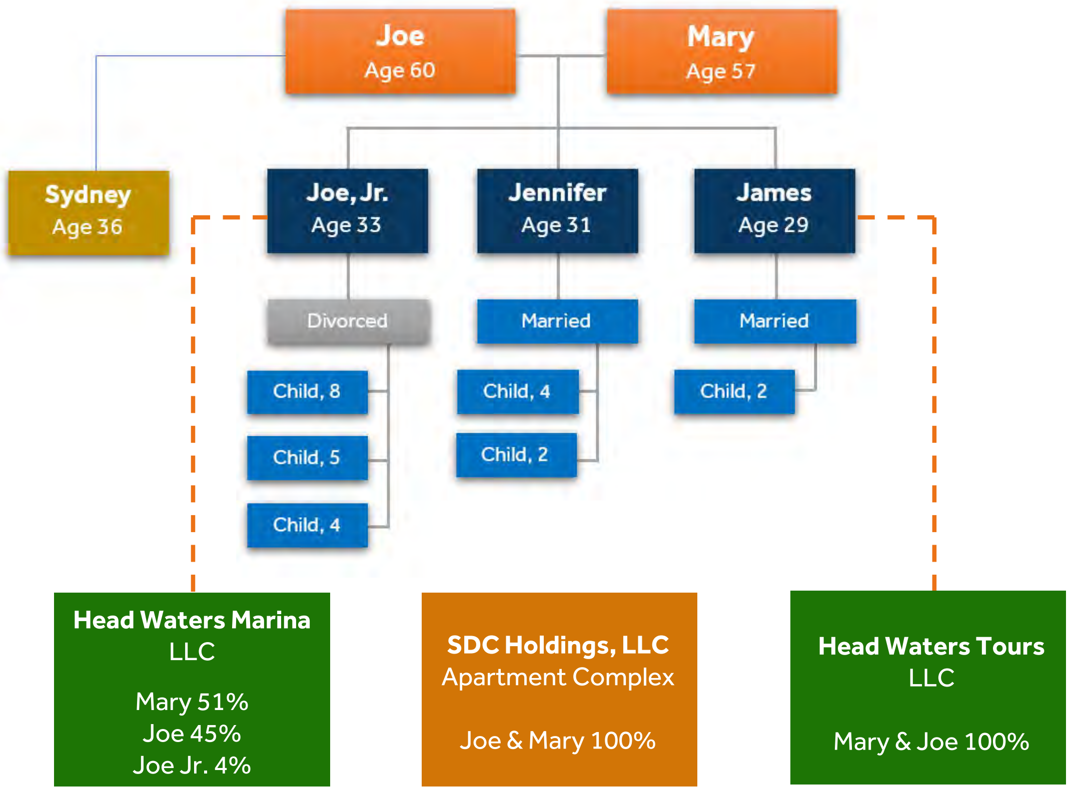
E. Assessment of issues and considerations:

1. What are the key issues for their succession plan?
2. Needs for liquidity:
   a. Key question of income and parent's financial security - If they pass the business along to kids, where will their income come from? Options:
      1) Keep voting shares to provide income while giving or selling non-voting shares.
      2) Selling the business to kids to generate income.

3) Parents keep real estate to continue income.
   a) Even if business fails later, they have that to either lease out or sell.
4) Debt.
5) Life insurance provides cash for payoff.
6) Key person coverage.
   a) Life insurance for key person that is key to succession.

3. How are you setting up your beneficiaries?
   a. Trust vs. outright?
   b. How do you take care of child who isn't involved in the business?
   c. Which child has controlling interest for each business?
   d. What should be provided to Sydney for living expenses?
4. Needs for liquidity.
   a. Estate tax.
   b. Equalization or buy-out?
   c. Trust for Sydney -
      1) Gifts to trust? If so, how much?
   d. Non-voting shares vs. voting shares?
   e. Life insurance:
      1) Could be used to buy out existing shares from the estate.
      2) Enough income producing assets in trust to pay premium.
5. Proposed plan: Consider gifts to family trust (IDIT).
   a. Mom and Dad create IDIT (descendants' trusts, etc.).
   b. Mom and Dad restructure businesses with voting & non-voting stock.
   c. Mom and Dad create IDIT to hold non-voting shares and pass voting shares to each son.
   d. Appraisal is completed to value both businesses.
   e. Mom and Dad file federal gift tax returns disclosing transaction for gifts and allocating GST exemption.
   f. Trust uses income from business to fund life insurance on Mom & Dad.
6. Assessment of goals:
   a. Reduce federal transfer tax.
   b. Trust assets protected from creditor claims, including divorcing spouses.
   c. Pass business to next generation in tax-efficient manner but retain control initially.
   d. Preserve cash flow for living expenses, income tax payments, etc.
7. Potential disadvantages:
   a. "Reverse wealth shift" if business depreciates, instead of appreciating.
   b. Transaction cost and complexity.
   c. Ongoing income tax liabilities for IDITs.
   d. Loss of income tax basis adjustment at death.

The Chang Family



Asset	Value
Residence	$1,200,000
Vacation home	$800,000
Head Waters Marina – LLC *Restaurant, boat storage & land*	*(Estimated FMV)* $14,000,000
Head Waters Tours - LLC	*(Estimated FMV)* $6,000,000
Commercial real estate - LLC *Apartment complex*	$5,000,000
Investments *Jointly owned*	$2,000,000
401(k) *Joe* *Mary*	 $950,000 $650,000
Debt *Commercial Real Estate*	-$2,000,000
Total	**$28,600,000**

Current planning

Simple wills & revocable trusts – 1994:

- Everything to each other – then to children of marriage equally.
- No property transferred to revocable trust.

Power of attorney.

Healthcare power of attorney.

	2024
Gross Estate	$30,600,000
Debts	$(2,000,000)
Life Insurance Incl. in Taxable Estate	$0
Net Taxable Estate	$28,600,000
Federal Exemption(s)	$27,220,000
(Less Prior Taxable Gifts)	$0
Taxable Estate	$1,380,000
Federal Estate Taxes	$552,000
Income Tax on IRD (@40%)	$640,000
Total Wealth Transfer Taxes	$1,192,000
Effective Estate Tax %	4.17%

	2024
Taxable Estate	$28,600,000
Total Taxes	$1,192,000
Net to Heirs	$27,408,000

Taxable estate assumed to be worth **$30,600,000** appreciating annually at a **5%** rate.

Estate taxes are shown based on current law, including a sunset of the current exemption levels in 2026 per the Tax Cuts and Jobs Act of 2017 (with a continued increase in the exemption level at a 2% inflation rate).

Taxes are projected in the current year, as well as in 2026, 2034 (10 years) and 2044 (20 years).

Any income taxes on IRD (Income in Respect of Decedent) are taxed at 40% net of any estate tax deduction.

Estate taxes with 5% future appreciation

	2024	2026 (Sunset)	2034 (Sunset)	2044 (Sunset)
Gross Estate	**$30,600,000**	**$33,736,500**	**$49,844,176**	**$81,190,910**
Debts	$(2,000,000)	$(2,000,000)	$(2,000,000)	$(2,000,000)
Life Insurance Incl. in Taxable Estate	$0	$0	$0	$0
Net Taxable Estate	$28,600,000	$31,736,500	$47,844,176	$79,190,910
Federal Exemption(s)	$27,220,000	$14,760,000	$17,300,000	$21,080,000
(Less Prior Taxable Gifts)	$0	$0	$0	$0
Taxable Estate	**$1,380,000**	**$16,976,500**	**$30,544,176**	**$58,110,910**
Federal Estate Taxes	$552,000	$6,790,600	$12,217,670	$23,244,364
Income Tax on IRD (@40%)	$640,000	$423,360	$625,496	$1,018,866
Total Wealth Transfer Taxes	**$1,192,000**	**$7,213,960**	**$12,843,166**	**$24,263,230**
Effective Estate Tax %	**4.17%**	**22.73%**	**26.84%**	**30.64%**

	2024	2026 (Sunset)	2034 (Sunset)	2044 (Sunset)
Taxable Estate	**$28,600,000**	**$31,736,500**	**$47,844,176**	**$79,190,910**
Total Taxes	**$1,192,000**	**$7,213,960**	**$12,843,166**	**$24,263,230**
Net to Heirs	**$27,408,000**	**$24,522,540**	**$35,001,010**	**$54,927,680**

Taxable estate assumed to be worth **$30,600,000** appreciating annually at a **5%** rate.

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Any income taxes on IRD (Income in Respect of Decedent) are taxed at 40% net of any estate tax deduction.

Chang family - Issues and considerations

- Legacy - Equalizing inheritance to Joe & Mary's children.
  - Provide basic support to Joe's child (Sydney).
- Business succession – Plan transfer of control to Joe Jr. and James.
- Asset protection – For businesses and heirs.
- Vacation home – Maintain for next generations.
- Charitable giving - Continue and expand giving as a family.
- Taxes - Minimize estate and income taxes.

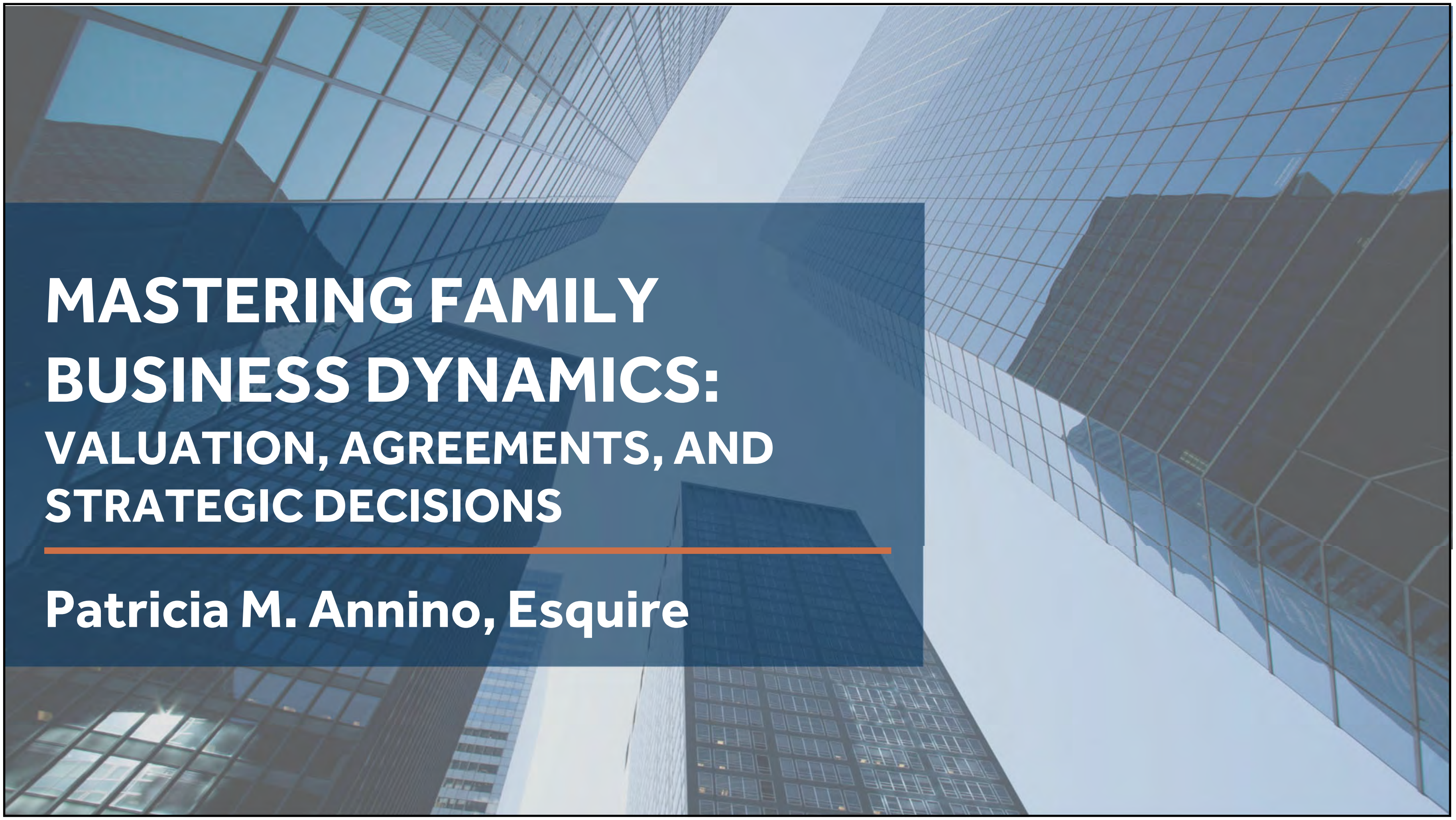
Planning opportunities

- **Create voting & non-voting shares for both businesses.**
  - Parents can own voting shares and later transfer to Joe Jr. and James.
- **Create an irrevocable trust to facilitate business transfer.**
  - Gift or sell non-voting shares to the trust.
  - Voting shares can pass to Joe Jr. and James to control.
  - Income and ownership can be allocated among the three children.
  - Trust may purchase life insurance to provide liquidity.
    - Income from non-voting shares can be used for premiums.
    - Fund any buy-sell arrangements.
    - Equalization for Jennifer.
    - Liquidity for estate taxes.
  - Provides additional asset protection for children.

Planning opportunities

- **Valuation discount of business assets.**
  - Professional appraisal needed.
  - Non-voting shares have lower value.
  - Gift tax returns will document gift valuation.
- **Create an irrevocable trust for the benefit of Sydney.**
  - Fund with annual exclusion gifts.
  - Include spendthrift and substance abuse provisions for long-term protection.
  - Corporate trustee can take family out of distribution decisions.
  - Annual gifts can fund life insurance to leverage cash needed for support.
  - May include provision to prevent contest of the estate plan.


BREAK


MASTERING FAMILY
BUSINESS DYNAMICS:
VALUATION, AGREEMENTS, AND
STRATEGIC DECISIONS
Patricia M. Annino, Esquire

Family businesses

- Family businesses are the lifeblood of American economy.
- The family business blends two different entities: The family and its related business.
- Many families now have formal and informal businesses:
  - Formal business may be the operating business.
  - Informal businesses are the LLCs, family limited partnerships, and other entities where the family co-owns assets for financial reasons.
    - All of these should be considered as businesses, not family assets, and should adhere to business formalities.

Family businesses

To be sustainable, the family and related business must understand:

- The impact of family dynamics,
- The importance of governance (such as a family employment policy),
- Fair vs. equal, and
- The impact of valuation on planning.

Family dynamics

- Separate family from business issues.
- Family dynamics always lurk in the background.
- Boundaries matter.
- Keep the elastic BOUNDARY between the family and the family business in check; don’t let it snap.

Family dynamics

Problems lurk:

- Founder does not want to leave.
- Changes in risk appetite among generations.
- Sense of entitlement (not gratitude).
- Sibling rivalry.
- Seeking approval (from living people or from ghosts of authority figures).
- Generational dynamics.
- Inability to take responsibility.
- Interference by in-laws (nothing beats pillow talk).
- Infidelity.
- Failure of past businesses.
- Advisors who are past their prime.
- Alcoholism and substance abuse.
- Confusion of family goals v. business goals.
- Breakdown of trust.
- Selecting a wrong successor.
- Lack of open communication.

Family dynamics: Practical thoughts

- When both a family and family business are entwined, there is almost always something else going on under the surface and behind the scenes.
- Everyone but you may know what it is about.
- Ask a lot of questions and keep your antennae up.
- The problem you are trying to solve may not be a logical one; it may be an emotional one that is woven deep into the family history.

Family dynamics: Practical thoughts

Think about the process and the changes in relationships:

- For example, after a spouse dies a widow may be fighting his ghost - thinking of all the dinner conversations about whether to sell the family business or not.
- For some widows whose husbands started the business, the husband's death was tragic. Selling the business is akin to another loss of her husband.
- Sometimes widows fight the ghost and make tough succession decisions the founder was unable to do.
- Understand the pattern may have shifted and reliance that used to be placed on the husband may now lead to open discussions with adult children.
- Don't fight this and don't play telephone.
- Find a way to meet with widow and adult children in one room.

How the family and family business can address the issue of family dynamics

- Create a code of conduct.
- Create a vision and values statement that highlights shared purposes.
- Openly communicate the good and bad that is going on at the business level.
- Address succession issues fairly.
- Establish policies within the business –
    - Dividend policy, family employment policy, governance structure.
- If appropriate, form a family council to foster open communication that includes all family members - those in the business and those not in the business.
- Establish a conflict resolution policy.

Family employment policy

- Federal and state labor laws, wage and hour laws, and discrimination (including Title VII of Civil Rights Act, American Disabilities Act, and the Family and Medical Leave Act) apply to all employees of all businesses - family members or not, family business or not.
- All businesses - family or not - can be sued for discrimination, harassment, and wrongful termination.
  - There is no special exception if the business is a family.

Family employment policy

- Not adhering to the law and retaliating against employees can lead to litigation and chaos.
- For example, firing a family member or laying off family members first in hard times, or shying away from correcting a family member (even founder's) behavior, can all lead to litigation and chaos.
- The family business should put a family business employment policy in place to ensure that there is a process for hiring, firing, reviews, and rewards.
- Without a family business employment policy, non-family employees can be demotivated.
- Consider employment practices liability insurance (EPLI).

Family employment policy - What to include?

- Formal job descriptions.
- Criteria for evaluating employees for purpose of compensation and promotion.
- List of qualifications important for each position (experience, education, certificates, skills).
- Expectation of vacation days and required working hours.
- Measurable goals for advancement.
- All employees including family members should undergo background checks.
- Many family businesses mandate that a family member first work somewhere else for a defined time, such as five years, before entering the family business.
- Good practice is to have family members report to non-family management.
- It is prudent to have an employee handbook written by an employment lawyer.

Practical thoughts

Risk mitigation at all levels of family business is important and a good starting point for this conversation.

Open communication across the generations leads to additional planning opportunities.

Fair vs. equal

- Fair vs. equal must be addressed when estate and succession planning.
- Equal is not fair. Fair is not equal. You may need to be unequal to be fair.
- Feeling of not being treated fairly is at the bottom of many family conflicts - what is at stake? Money? Asset values, status, parental approval, love?
- Hard to determine what is fair and what is equal.
- Too many tiaras – look at the Harry Winston case (*In Re Winston, 833 NYS 2d 657)(App. Div. 2007*).
- What about using insurance to equalize?

Practical thoughts

Life insurance:

- Unlocks liquidity and provides an escape hatch for those who would rather have cash.
- Covers estate taxes (otherwise next generation member in business may have to cover estate taxes AND buy out siblings with available cash).

- IRC Section 6166's ability to defer estate taxes may apply at federal level.
  - Life insurance can provide the down payment and cushion. It also can cover any state estate taxes that may be due.
  - Life insurance in an irrevocable trust:
    - Does not jeopardize §6166 treatment,
    - Allows a loan back to the estate, and
    - Allows the family to receive interest on the loan while all other assets are frozen because of §6166 liens.

Practical thoughts

Life insurance:

- Self funding mechanism for sibling who will eventually own the business.
  - Tax apportionment clause may very well throw the burden of the estate tax on the sibling(s) who will end up owning the business, so purchasing the insurance now is a sinking fund.
- Rather than second-to-die, consider insurance on key business owner:
  - Even if estate tax deferred until death of parents, life insurance on founder in ILIT allows spouse to be comfortable and safe no matter what next gen does with the business.
  - Provides safety and creditor protection.
- At death of second spouse, benefits can be used for estate tax payments.

Valuation of family business

Reasons the family business must be valued include:

- Gifting.
- Estate tax.
- Shareholder redemption.
- Outside investors.
- Divestment of part of company.
- Performance measurement and compensation.
- Corporate finance decisions.
- Divorce.
- Selling to other family members.
- Succession planning.

Valuation of family business

How is fair market value determined?

- The IRS (Rev. Rul. 59-60) and state tax authorities have strict guidelines, starting with the premise that fair market value is determined at the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the facts.
  - See also Treas. Reg. Section 20.2031-3 and 20.2031-2(f) which state that all relevant factors used in determining the value of a business should be used in appraisal.
  - See also Internal Revenue Service Manual (IRM) 4.84.4 which sets forth guidelines to be used in appraising privately held companies.
  - See also Uniform Standards of Professional Appraisal published by the Appraisal Foundation and the AICPA statement on Standards for Valuation Services.

Valuation of family business

An appraisal should be done by a qualified appraiser.

- Not only for taxing authority purposes but also to minimize family strife.

Discounts for minority, lack of control, and marketability may apply.

Valuation of family business and buy-sell agreement; special rules for family transfers

- Before the 1990 Omnibus Budget Reconciliation Act (ACT), agreements were generally determinative of the transfer tax value of the family business.
- Following ACT this changed; unless IRC §2703 and its regulations are adhered to, the value in a family owned buy-sell agreement is not determinative of its value for transfer tax purposes.
- If the IRS determines that the buy-sell agreement is a device to transfer property to family members for less than adequate and full consideration, it can redetermine the value of the transferred interest for gift, estate, and generation skipping estate tax purposes.
- The IRS also may challenge the value established in a buy-sell agreement when it appears the decedent was attempting to transfer property for less than full consideration (a partial disguised gift) to a non-family member.

Valuation of family business and buy-sell agreement; special rules for family transfers

- When drafting or reviewing a family buy-sell agreement, it is important to understand the impact of IRC §2703 and its regulations.
- The general rule of §2703 is that the value of a closely held business is determined without regard to any option, agreement, or other right to acquire or use the property at a price that is less than the fair market value of the property, or any restriction on the right to sell or use the property.
- However, the general rule does not apply if certain requirements are met. If those requirements are met, then the buy-sell agreement can be used to set the value for transfer tax purposes.

Valuation of family business and buy-sell agreement; special rules for family transfers

- All three of the requirements in IRC Section 2703(b) must be met:

The agreement must be bona fide.	The agreement must not be a device to transfer property to members of the decedent's family for less than full and adequate consideration.	Its terms must be comparable to similar arrangements entered into by persons in arm's length transactions.

Valuation of family business and buy-sell agreement; special rules for family transfers

- An agreement is deemed to satisfy all three requirements if more than 50% of the value of the property subject to the restriction is owned directly or indirectly by individuals who are not members of the individual's family. (Treas. Reg. 25.2703-1(b)(3).
  - This applies only if the interests owned by non-family members are subject to the same restrictions as the property owned by the transferor. Members of the transferor's family include the transferor's spouse, ancestors of the transferor or the transferor's spouse, and any other individual who is a natural object of the transferor's bounty. The statute and regulations do not specify who is a natural object of the transferor's bounty, making it unclear whether siblings or cousins fall into that definition.

Strategies for family and family business to minimize conflict

- Develop a disaster plan and model out different scenarios.
- Communicate face to face on a regular basis.
- Create and keep open channels of communication, such as a family council, to keep those who are not as involved with the planning up to date.
- Develop a good governance system.
- Be open and honest about succession issues.
- Develop policies such as dividend policies and family employment policies.
- Keep all documents (corporate, estate planning, and life insurance) up to date.
- Meet regularly with your advisory team.

Practical thoughts

- Risk mitigation is a key part of the disaster plan.
  - Many founders put off estate planning but understand the importance of a disaster plan. To be effective in business they understand risk and how to cover it. Think about discussing the disaster plan, not the estate plan, with those who own the business.
- Look across generations now and put insurance in place on all who currently own or inherit and those who will own or inherit.
  - When a family owns a business (whether it is a formal business, a limited partnership that owns commercial real estate, or an LLC) it must observe formalities.
  - The sooner the process of formalities happens, the better.

Practical thoughts

- In a “common wealth” situation, every reaction causes action.
  - The death of any stakeholder impacts the future of the family business, which is typically the economic lifeblood of the family.
- Especially in a second marriage situation, it is critically important to think through all the planning options, and conquering and dividing may be the best.
  - Give the spouse sufficient life insurance and remove the valuation issues from hands of anyone who could be a family predator.


MASTERING FAMILY BUSINESS DYNAMICS:
CASE STUDY DISCUSSION
Patricia M. Annino, Esquire, and
Allen Hensley, CLU®, ChFC®, MSFS, AEP®

Mastering Family Business Dynamics -

Case study discussion outline

A. Review of case study:

1. Key family dynamics in our case study:
   a. Two sons, Joe Jr. & James, each managing separate businesses.
   b. Daughter, Jennifer, not involved in the businesses.
   c. Sydney, Joe's daughter from a prior relationship, with addiction issues and strained relations with the Chang family.
2. Assets: residence, vacation home, land, businesses, business real estate, investments, retirement accounts, apartment complex, life insurance.
3. Debt: on the commercial property.

B. Clients' goals and objectives:

1. Pass business value equally to the three children of the marriage.
2. Eventually pass control of businesses to Joe Jr. and James. Not willing to give up complete control over business but would consider transferring some ownership today.
3. Also want to retain long term key employee (Sharon) who is critical to ongoing success of the marina and could help the sons run the businesses when they decide to retire.
4. Provide minimal basic support to Sydney over her lifetime.
5. Concerned about:
   a. How to treat Jennifer fairly since she is not involved in business.
   b. Minimizing potential future conflicts among the siblings about how to run the business.
   c. Allowing Joe Jr. and James to control the businesses they currently manage.
   d. Maintaining vacation home for continued use by next generation.
   e. Preventing Sydney from becoming a threat or burden for the three children or the businesses.
   f. Potential for divorce among their kids. One child is already divorced, and clients want to make sure family wealth stays in the family.
   g. Protecting assets - Lawsuits have been filed against the tour business in the past and they want to limit the exposure of their assets to this type of liability.
   h. Concentrating too much wealth in the next generation.
   i. Escalating cost of passing their rapidly appreciating business to future generations.

C. Current plan:

1. Distribution of assets – family/charity/government.
2. Existing legal documents.

D. Assessment of issues and considerations:

1. Needs for liquidity -
   a. Income for Joe and Mary. Key question of parent's financial security. If they pass the business along to kids, where will their income come from? Options:
      1) Keep voting shares to provide income while giving or selling non-voting shares.
      2) Selling the business to kids to generate income.
      3) Parents keep real estate to continue income. Even if business fails later, they have that to either lease out or sell.
   b. Debt.
      1) Confirm amount of real estate debt.
      2) Life insurance provides cash for payoff.
   c. Key person coverage.
      1) If parents sell, key person on buyer to protect their buyout.

2) Life insurance for key person that is key to succession.

2. Business valuation.
   a. Confirm value to provide a basis for buyout and any gifting.
   b. Update periodically.
3. Business succession strategy.
   a. Who gets control and when?
   b. Perhaps give or sell non-voting interest now, then decide on timing for voting interests.
4. Vacation home ownership and maintenance.
   a. Responsibility for management.
   b. Financial resources for maintenance.
   c. Equitable use by children / grandchildren.
   d. Funds for maintenance / management of vacation home.

E. Proposed plan:

1. Professionally appraise businesses.
2. Draft buy-sell agreement(s).
3. Update estate planning documents.
4. Present funding solutions.
   a. Use life insurance for liquidity needs.
   b. Buy out sibling's or parent's non-voting shares.
   c. Equalization for Jennifer.
5. Develop business governance system including:
   a. Dividend policies.
   b. Employment policies.
   c. Code of Conduct.
   d. Vision and Values statement.

F. Next steps to implement:

1. Analyze facts, goals, and objectives.
2. Design alternatives and create a game plan.
3. Review with all parties – CPA, attorney, financial professional.
4. Finalize planning strategies.
5. Draft documents.
6. Implement strategies.
7. Maintain coordination with planning team.
8. Schedule follow-up and review.

G. Best practices for working with other members of professional planning team:

1. How to effectively collaborate with other advisors?
   a. Keep each other in the loop.
   b. Copy them on correspondence.
   c. Be careful of client getting billed.
      1) Get permission to talk without charge.
2. What advice would you give to the attorneys and accountants who are joining us today on how to best get up to speed on understanding the different types of life insurance products and how to optimally design them?
   a. Attend CLEs and read articles.
   b. Call professional colleagues and lean on their collective experience.
   c. Take advantage of the resources provided by The Nautilus Group.
   d. Really dig into the policy cash flows – good questions include:
      1) "What is the worst case scenario for this policy?"
      2) "Would I personally utilize this policy if it were me and my family?"
3. What advice would you give to the attorneys and accountants who are joining us today on how to best help their clients in the current environment?
   a. Provide information and present opportunities.
   b. Ask questions and listen closely to understand the family dynamics and emotional issues.
   c. Lay the groundwork now and pivot later if needed:
      1) Give liquid assets to IDITs now and swap hard-to-value assets later.
      2) Sell assets to IDITs now and cancel promissory notes later to use bonus exemptions.
      3) Fund LLCs/LPs now and transfer membership interests later.

Planning opportunities

- **Equalization for three children of marriage:**
  - Use of non-voting shares.
  - Dividend distributions for non-voting shares.
  - Difference in valuation of the two businesses.
  - Potential buy-out of Jennifer's share.
- **Planning for control of the businesses:**
  - Control of voting shares.
  - Buy-sell agreements.
    - Call options for Joe Jr. and James.
  - Financial transactions between the two businesses.
- **Insulating businesses, family, and estate from claims by Sydney:**
  - Employment, income distributions, liability claims.

Planning opportunities

- **Vacation home ownership & maintenance:**
  - Entity ownership – professional manager.
  - Funding for management, maintenance, and taxes.
    - Gifting life insurance and/or assets for continuing operation.
  - Future gifting of ownership to move value from estate.

- **Business governance:**
  - Vision and values statement.
  - Code of conduct.
  - Employment policies.
  - Dividend policies.
  - Formalities for meetings and operation.


BREAK


MAXIMIZING TAX SAVINGS
WITH RETIREMENT DISTRIBUTIONS
AND CHARITABLE GIVING
Christopher Hoyt, JD

Retirement accounts - Income tax planning

Distributions from traditional retirement accounts are generally taxed as ordinary income.

- IRAs – IRC §408 Employer plans (most common - 401(k)) - §401.
- Tax-exempt employers – IRC §403(b) and §457(b).

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- ALSO: Distributions before age 59½ are usually subject to an additional 10% tax.
  - IRC §72(t)

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- Distributions from *inherited* retirement accounts are generally taxed as ordinary income - "Income in Respect of a Decedent" (IRD).
- Exception: Distributions from Roth accounts can be tax free (if over age 59½ and have had a Roth account for at least five years).
  - Roth IRA
  - Roth 401(k)
  - Roth 403(b)
  - Roth 457(b)

Retirement accounts - Estate tax planning

Concept: If you have a $1 million IRA, you will not be able to use it to purchase $1 million of goods.

- Reason: The distributions will be taxable income.
- After paying $300,000 of income taxes (over-simplified), you might be left with just $700,000 that you can use to purchase goods.

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But if you die with a $1 million IRA, federal & state estate taxes will be levied on the entire $1 million.

- Federal and state **<u>estate</u>** taxes will be assessed against the $300,000 portion of the IRA that will be paid to the federal and state governments as income taxes.

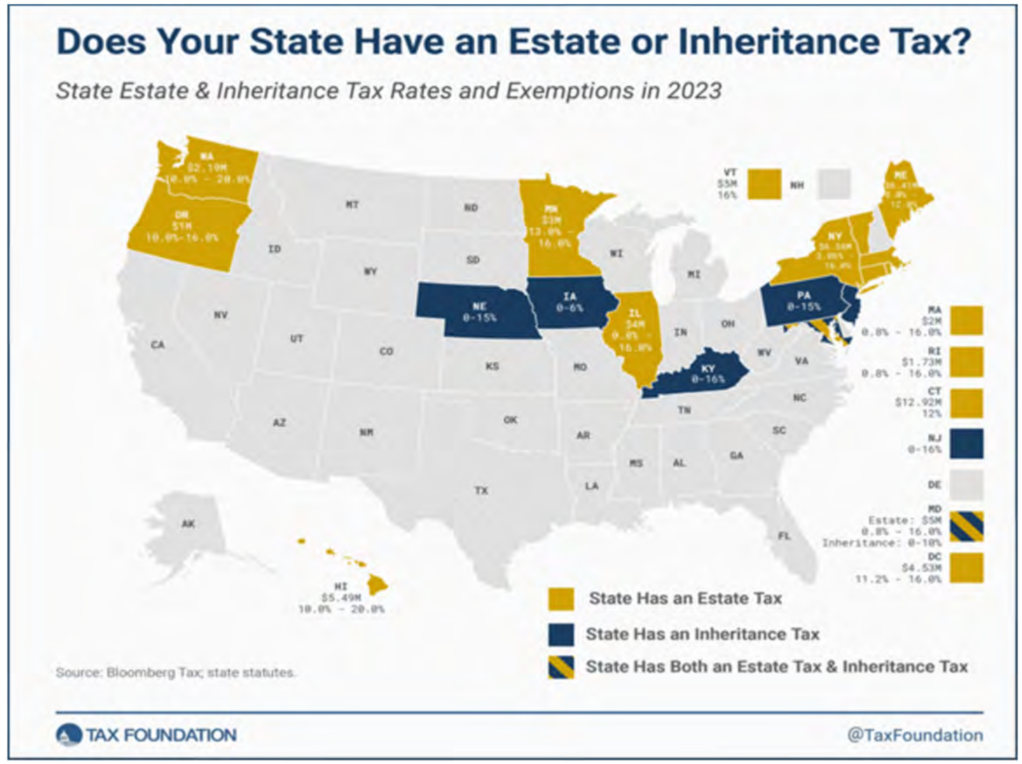
Future of the federal estate tax?

Year	Threshold	
2001	$675,000	
2002 – 2003	$1,000,000	
2004 – 2005	$1,500,000	
2006 – 2008	$2,000,000	
2009	$3,500,000	
2010	REPEALED!	*(Carryover basis)*
2011 – 2017	$5,000,000	*Inflation indexed*
2018 – **2024**	**$13,610,000**	*Inflation indexed*
2025	*Roughly* $14,000,000	*Inflation indexed*
2026	*Roughly* $7,000,000	*If Congress does nothing*

States with estate or inheritance taxes

If an individual lives in a state that has a state estate tax or a state inheritance tax, those taxes are assessed at much lower thresholds than the federal estate tax threshold.

- $1M in Oregon
- $2M in Massachusetts
- $3M in Minnesota
- $4M in Illinois



The combination of income & estate taxes

Example: Assume that a very wealthy person earns $100 of interest income in February, and then dies in August.

How much of the $100 will children inherit?

Income	$100
Income tax	40 (40%)
	(really 40.8%)
Net	$ 60

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Net	$ 60
Estate Tax	24 (40%)
Net to Heirs	

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Net	$ 60
Estate Tax	24 (40%)
Net to Heirs	$ 36 in 2024

Example: Combination of estate & income taxes on IRD

Beginning balance in retirement plan	$ 100,000

Example: Combination of estate & income taxes on IRD

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Minus: Total estate tax paid by the probate estate	(40,000)

Example: Combination of estate & income taxes on IRD

Beginning balance in retirement plan		$ 100,000
Minus: Total estate tax paid by the probate estate		(40,000)
Minus: Income tax on distribution		
Gross taxable income	$ 100,000	

Example: Combination of estate & income taxes on IRD

Beginning balance in retirement plan		$ 100,000
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Reduced By **§691(c) Deduction for *Federal* Estate Tax**		

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Reduced By **§691(c) Deduction for *Federal* Estate Tax**		
Total estate tax $ 40,000		

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Beginning balance in retirement plan			$ 100,000
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Minus: Income tax on distribution			
Gross taxable income		$ 100,000	
Reduced By **§691(c) Deduction for *Federal* Estate Tax**			
Total estate tax	$ 40,000		
State tax credit			

Example: Combination of estate & income taxes on IRD

Beginning balance in retirement plan			$ 100,000
Minus: Total estate tax paid by the probate estate			(40,000)
Minus: Income tax on distribution			
Gross taxable income		$ 100,000	
Reduced By **§691(c) Deduction for** ***Federal*** **Estate Tax**			
Total estate tax	$ 40,000		
State tax credit	Zero		

Example: Combination of estate & income taxes on IRD

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Minus: Total estate tax paid by the probate estate		(40,000)
Minus: Income tax on distribution		
Gross taxable income	$ 100,000	
Reduced By **§691(c) Deduction for** ***Federal*** **Estate Tax** (*only*)		
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State tax credit Zero		
Deduction for federal estate tax		

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Reduced By **§691(c) Deduction for *Federal* Estate Tax** (*only*)			
Total estate tax	$ 40,000		
State tax credit	Zero		
Deduction for federal estate tax		(40,000)	
Net taxable income		$ 60,000	

Example: Combination of estate & income taxes on IRD

Beginning balance in retirement plan			$ 100,000
Minus: Total estate tax paid by the probate estate			(40,000)
Minus: Income tax on distribution			
Gross taxable income		$ 100,000	
Reduced By **§691(c) Deduction for *Federal* Estate Tax** (*only*)			
Total estate tax	$ 40,000		
State tax credit	Zero		
Deduction for federal estate tax		(40,000)	
Net taxable income		$ 60,000	
Times income tax rate		x 37%	
Net income tax on income in respect of decedent			(22,200)

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Example: Combination of estate & income taxes on IRD

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NET AFTER-TAX AMOUNT TO CHILD		

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Minus: Income tax on distribution			
Gross taxable income		$ 100,000	
Reduced By **§691(c) Deduction for** ***Federal*** **Estate Tax** (*only*)			
Total estate tax	$ 40,000		
State tax credit	Zero		
Deduction for federal estate tax		(40,000)	
Net taxable income		$ 60,000	
Times income tax rate		x 37%	
Net income tax on income in respect of decedent			(22,200)
NET AFTER-TAX AMOUNT TO CHILD			$ 37,800

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Example: Combination of estate & income taxes on IRD

Beginning balance in retirement plan		$ 100,000
Minus: Total estate tax paid by the probate estate		(40,000)
Minus: Income tax on distribution		
Gross taxable income	$ 100,000	
Reduced By **§691(c) Deduction for *Federal* Estate Tax** (*only*)		
Total estate tax $ 40,000		
State tax credit Zero		
Deduction for federal estate tax	(40,000)	
Net taxable income	$ 60,000	
Times income tax rate	x 37%	
Net income tax on income in respect of decedent		(22,200)
NET AFTER-TAX AMOUNT TO CHILD (after a roughly 62% tax rate)		$ 37,800

Retirement accounts - Estate tax planning

Concept: Try to get the size of the estate to be below the applicable federal (and/or state) estate tax threshold.

- Focus especially on reducing the balances that are held in traditional retirement accounts, to avoid paying estate and inheritance taxes on the portion of those accounts that will be paid as income taxes to governments.

How?

Lifetime:

- Roth IRA conversions.
- Distributions to purchase life insurance.
  - Keep that out of estate.
- Charitable gifts from IRAs after age 70½.
  - (QCDs – "Qualified Charitable Distributions")

After death:

- For charitably inclined individuals, have retirement assets payable to tax-exempt charities.
  - Consider planning disclaimers to charities.

Planning strategies: A Roth IRA conversion & a disclaimer that produces a charitable bequest

Pre-mortem planning:

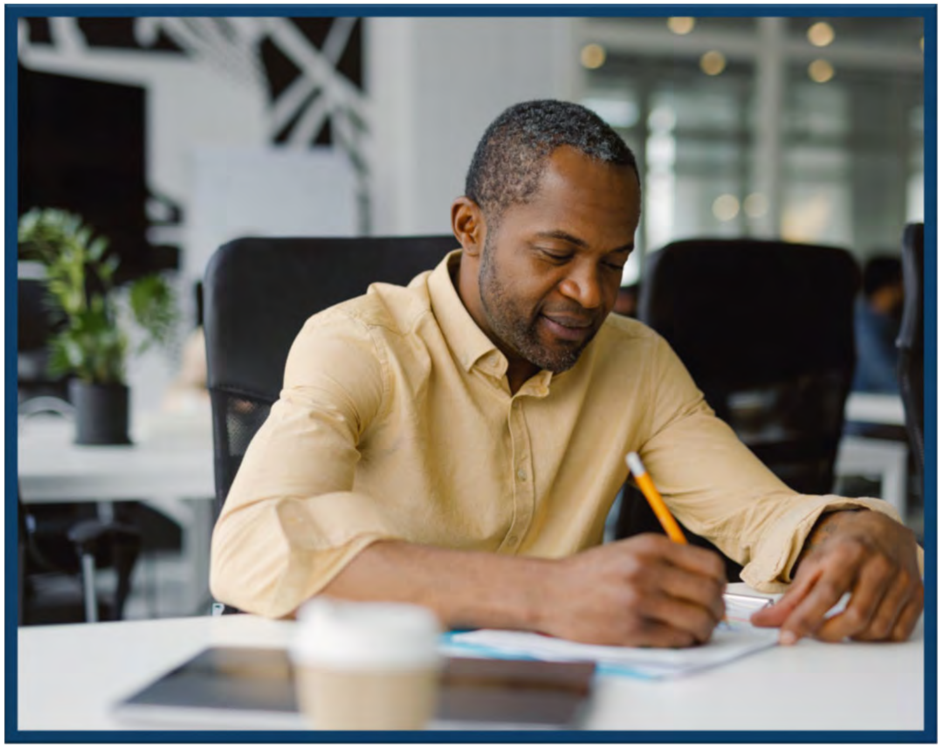
- Roth IRA conversion.

Post-mortem planning:

- Charitable bequest via disclaimer.
  - A charity is named as a contingent beneficiary of a retirement account.

A Roth IRA conversion is a taxable event

- Treated as taxable withdrawal from a traditional taxable IRA,
- Followed by a non-deductible contribution to a Roth IRA.



Roth IRA & estate tax

Assets

Cash, stocks, etc.	$ 6.1 million
IRA (*taxable IRD*)	1.0 million
Tax-exempt Roth	- 0 -
Liabilities	- 0 -
Net estate	$ 7.1 million

Roth IRA & estate tax

	Before	After
Cash, etc.	$ 6.1 million	$ 6.1 million
IRA	1.0 million	0.7 million
Tax-exempt Roth	- 0 -	0.3 million
Liabilities	- 0 -	-0.1 million
Net estate	$ 7.1 million	$ 7.0 million

Roth IRA & estate tax

	Before		After
Cash, etc.	$ 6.1 million	paid>	$ 6.0 million
IRA (*taxable IRD*)	1.0 million		0.7 million
Tax-exempt Roth	- 0 -		0.3 million
Liabilities	- 0 -	paid>	- 0 -
Net Estate	$ 7.1 million		$ 7.0 million

Roth IRA & estate tax

	Assets	Death
Cash, etc.	$ 6.1 million	$ 6.3 million
IRA	1.0 million	
Tax-exempt Roth	- 0 -	
Charitable bequest	- 0 -	
Liabilities	- 0 -	
Net estate	$ 7.1 million	$ 7.3 million

Charitable disclaimer

	Before		After	
Cash, etc.	$ 6.3 million	paid>	$ 6.2 million	
IRA (*taxable IRD*)	1.0 million	paid>	0.5 million	
Tax-exempt Roth	- 0 -		0.3 million	
Charitable bequest	- 0 -	paid>		0.2
Liabilities	- 0 -	paid>	- 0 –	
Net estate	$ 7.3 million		$ 7.0 million	0.2

Estate planner said to me:

"Show me the child that will actually disclaim an inheritance to a charity to avoid an estate tax."

Charitable disclaimer

- A charity the *child* supports.
- Donor advised fund -
  - There are problems with disclaimers to a private foundation when the disclaimant is on the board of directors.

Charity & philanthropy

CLIENT: “I have no charitable intent!”

- This is evident from federal estate tax returns:
  - For all *taxable* estates - 32% claimed a charitable deduction (68% did not).
  - For taxable estates over $50 million - 54% claimed a charitable deduction (46% did not).

But note: 61% of taxable estates had retirement assets.

Charity & philanthropy

CLIENT: "I have no charitable intent!"

- "Does your estate have IRD? Then you are already making a charitable gift. You are giving 64%+ to the federal government in taxes (perhaps 80%+ if state income taxes and state estate taxes)."

- Way to leave IRD to your children and to your community? Philanthropy.
  - Tie-in with business succession planning.


MAXIMIZING TAX SAVINGS:
CASE STUDY DISCUSSION
Christopher Hoyt, JD, and
Allen Hensley, CLU®, ChFC®, MSFS, AEP®

Maximizing Tax Savings:

Case study discussion outline

A. Review of case study:

2. Parents (Joe & Mary) are actively giving to local groups.
   a. Two sons, Joe Jr. & James, each managing separate businesses.
   b. Daughter, Jennifer, not involved in the businesses.
   c. Sydney, Joe's daughter from a prior relationship, has addiction issues and strained relations with the Chang family.
3. Assets: residence, vacation home, land, businesses, business real estate, investments, retirement accounts, apartment complex, life insurance.
4. Debt on the commercial property.

B. Clients' goals and objectives:

5. Pass business value equally to the three children of the marriage.
6. Treat the children of the marriage fairly.
   a. Give them autonomy to manage their own lives, but still be connected.
   b. Provide a fair financial legacy to all three children.
   c. Encourage charitable giving and community involvement.
7. Concerned about:
   d. How to treat Jennifer fairly since she is not involved in business.
   e. Minimizing potential future conflicts among the siblings.
   f. Allowing Joe Jr. and James to control the businesses they currently manage.
   g. Concentrating too much wealth in the next generation.
   h. Minimizing tax liabilities.
      1) Income taxes for family currently.
      2) Estate tax exposure over time.
      3) Escalating cost of passing their rapidly appreciating business to future generations.

C. Current plan:

8. Distribution of assets – family/charity/government.
9. Existing legal documents and beneficiary arrangements.

D. Assessment of issues and considerations:

10. Qualified plans taxation.
    a. Estate tax and IRD impact on plan assets.
    b. Impact of distributions on current income taxes.
    c. Distribution planning.
       1) Roth conversions.
       2) Qualified charitable distributions.
       3) Charitable bequest (beneficiary designation).
       4) Current distributions.
    d. Family wealth replacement.
       1) Life insurance funded to replace qualified plan assets given to charity.
11. Lifetime charitable giving plans.
    e. Current giving amounts and maximizing deductions.
12. Legacy charitable giving.
    f. Gifts can reduce taxable estate.
    g. Identifying the best assets for gifting.
    h. Strategy to encourage children's participation.

E. Proposed plan:

13. Reduce the deferred taxable income in the retirement accounts with:
    a. Roth IRA conversions.
    b. Withdrawals (perhaps to purchase life insurance) after age 59½.
    c. After age 70½, qualified charitable distributions (QCDs) from IRAs.

The Advanced Planning Group

New York Life's Advanced Planning Group is a team of more than 30 professionals with specialized training in law, taxation, accounting, business, insurance, finance, and philanthropic planning. Combined, they have more than 300 years of experience assisting with wealth strategies and business planning objectives in numerous concentrations.

Working with a New York Life financial professional, you have the opportunity to consult with this nationally known group of knowledgeable, experienced professionals trained to assess your clients' goals and objectives, examine the current planning strategies, and offer well-researched suggestions and solutions to help optimize the client's financial goals.

Your agent can bring you and your clients together with the APG consultants by phone, face to face, or in a virtual environment from anywhere in the country.

To meet the team at the Advanced Planning Group, visit https://www.newyorklife.com/advanced-planning-group/our-team.

14. Set up each child's DAF during parents' lifetime with assets (preferably appreciated stock from an investment account) so the children become familiar with how DAFs work.
    d. Parents can claim a charitable income tax charitable deduction for funding the children's DAFs.
    e. Children can recommend grants to charities that they and their businesses support.
15. Designate children's DAFs as beneficiaries of retirement accounts.
    f. Eliminate estate and IRD taxation on the retirement assets.
    g. Minimal value would have been available to heirs, net of estate tax and income tax on IRD.

F. Discussing charitable intent with clients:

16. Is there a difference in planning for clients with definitive charitable goals as opposed to finding the best tax outcomes for clients and their families?
    a. The client goals determine the planning.
    b. Clients usually prefer control and directing assets, rather than paying taxes.
    c. Larger estates with larger tax liabilities have a higher percentage of clients using charitable deductions.
17. Why are retirement assets often utilized for charitable gifts:
    d. Regardless of estate size, the IRD affects all taxpayers.
    e. Planning for retirement assets is important for clients that will not consume all their retirement assets.
    f. Money that would otherwise go to taxes can benefit charity, often with little impact to the family's inheritance.

G. Discussing charitable strategies with other advisors:

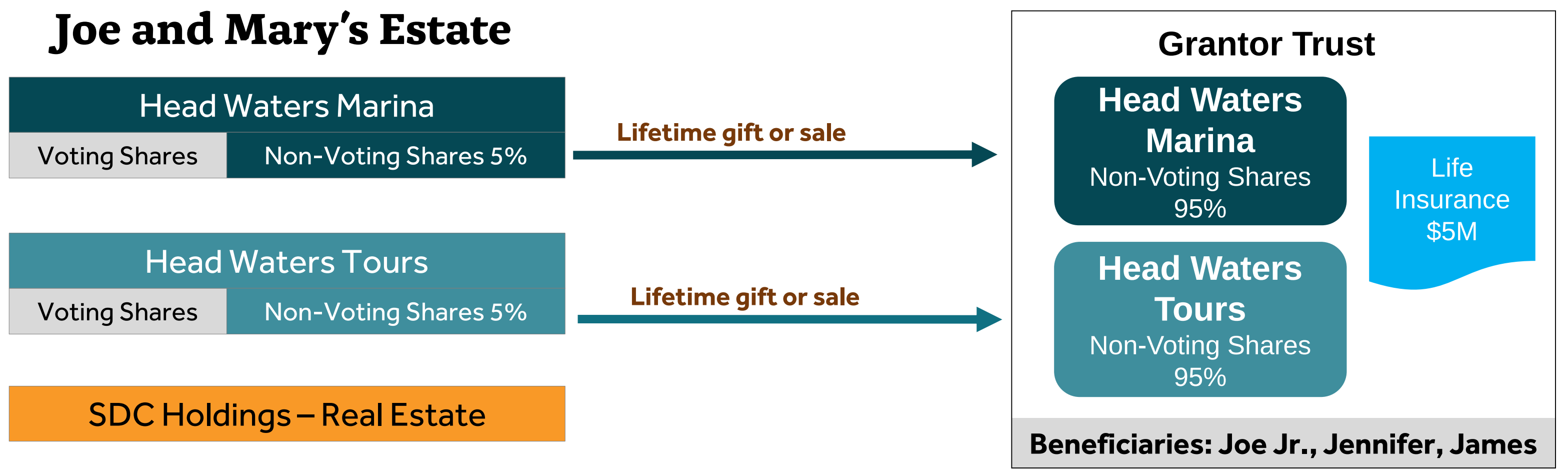
18. What charitable giving opportunities should advisors watch for with their clients?
    a. Large qualified-plan balances.
    b. Clients that are not taking distributions or are only taking the RMD.
    c. Those currently giving significant amounts or with ongoing donations.
    d. Larger estates and those with concerns about leaving too much to their heirs.

Planning opportunities

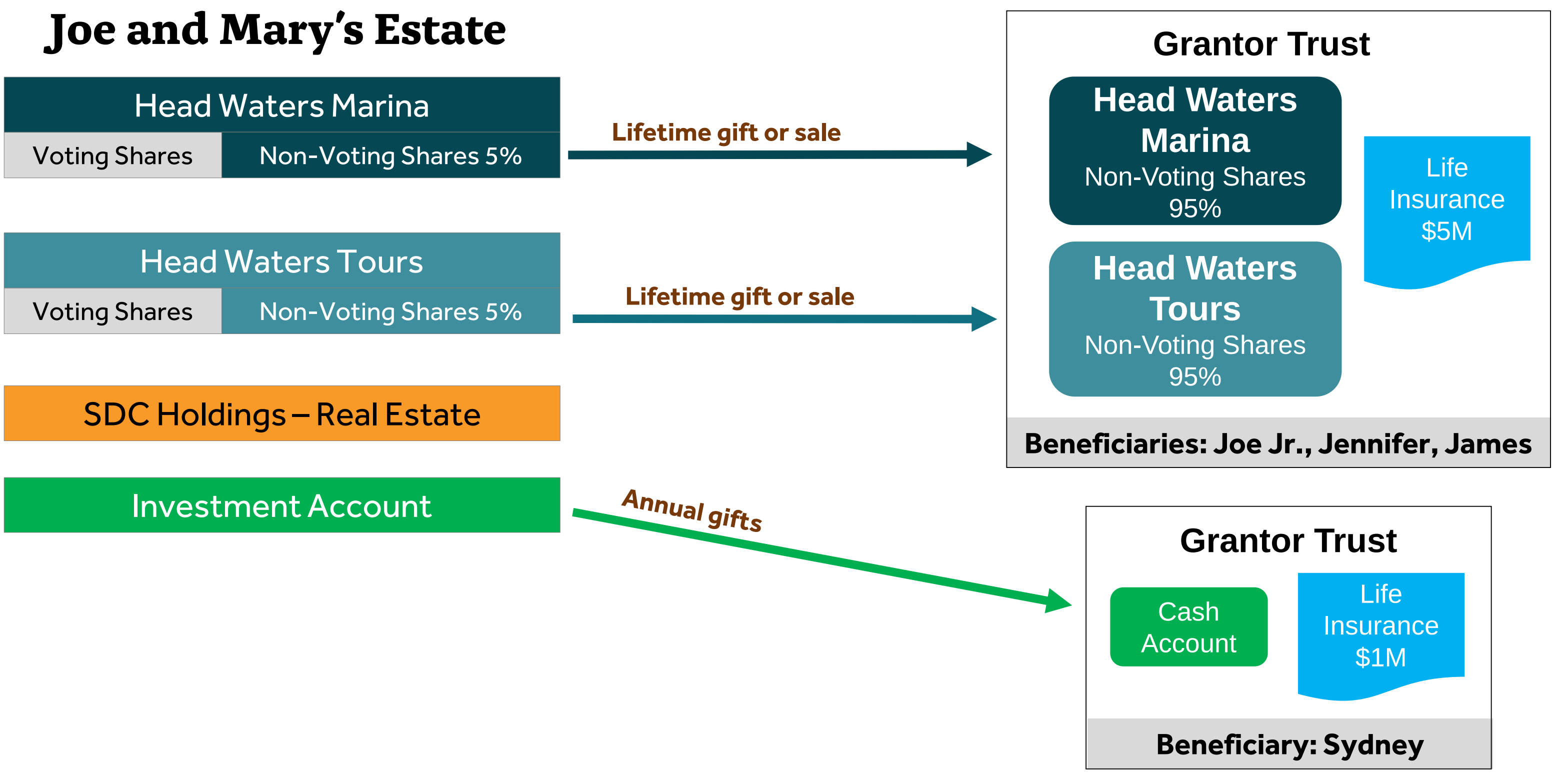
Minimize taxes on retirement plan assets.

- Reduce the deferred taxable income in the retirement accounts with:
  - Roth IRA conversions.
  - Withdrawals (perhaps to purchase life insurance) after age 59½.
  - After age 70½, qualified charitable distributions (QCDs).
- Leave the balance of retirement plan assets at death to the children's DAFs.
  - Set up each child's DAF during lifetime so they can get used to how they work.
    - Children can recommend grants to charities that they and their businesses support.
    - Designate children's DAFs as beneficiaries of retirement accounts.
  - Minimal value would have been available to heirs net of estate tax and IRD.

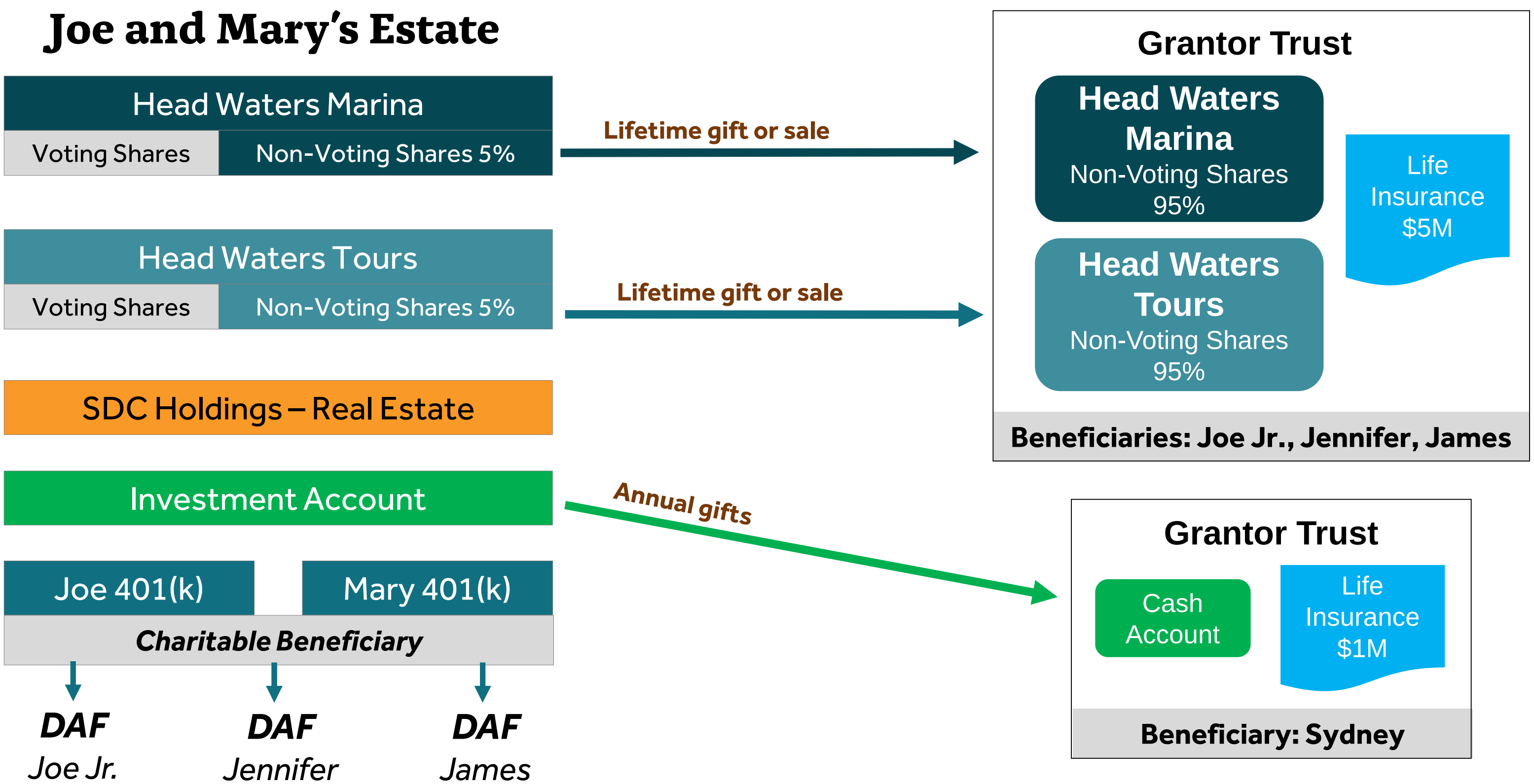
New planning



New planning



New planning



Effects of new planning

Prior Balance Sheet

Asset	Value
Residence	$1,200,000
Vacation home	$800,000
Head Waters Marina LLC *Restaurant, boat storage & land*	$14,000,000
Head Waters Tours LLC	$6,000,000
Commercial real estate - LLC *Apartment complex*	$5,000,000
Investments *Jointly owned*	$2,000,000
401(k) *Joe* *Mary*	 $950,000 $650,000
Debt *Commercial real estate*	-$2,000,000
Total	**$28,600,000**

Effects of new planning

Prior Balance Sheet

Asset	Value
Residence	$1,200,000
Vacation home	$800,000
Head Waters Marina LLC *Restaurant, boat storage & land*	$14,000,000
Head Waters Tours LLC	$6,000,000
Commercial real estate - LLC *Apartment complex*	$5,000,000
Investments *Jointly owned*	$2,000,000
401(k) *Joe* *Mary*	 $950,000 $650,000
Debt *Commercial real estate*	-$2,000,000
Total	**$28,600,000**

Business Valuation Non-Voting Shares	
Marina	$14,000,000
Tours	$6,000,000
Total	*$20,000,000*
30% discount for lack of marketability & control	$6,000,000
Business Value	**$14,000,000**

Effects of new planning

Prior Balance Sheet

Asset	Value
Residence	$1,200,000
Vacation home	$800,000
Head Waters Marina LLC *Restaurant, boat storage & land*	$14,000,000
Head Waters Tours LLC	$6,000,000
Commercial real estate - LLC *Apartment complex*	$5,000,000
Investments *Jointly owned*	$2,000,000
401(k) *Joe* *Mary*	 $950,000 $650,000
Debt *Commercial real estate*	-$2,000,000
Total	**$28,600,000**

Business Valuation Non-Voting Shares	
Marina	$14,000,000
Tours	$6,000,000
Total	*$20,000,000*
30% discount for lack of marketability & control	$6,000,000
Business Value	**$14,000,000**

Transfer 95% of Non-Voting Shares to Irrevocable Grantor Trust	
Marina	$9,310,000
Tours	$3,990,000
Total	**$13,300,000**

Effects of new planning

Prior Balance Sheet

Asset	Value
Residence	$1,200,000
Vacation home	$800,000
Head Waters Marina LLC *Restaurant, boat storage & land*	$14,000,000
Head Waters Tours LLC	$6,000,000
Commercial real estate - LLC *Apartment complex*	$5,000,000
Investments *Jointly owned*	$2,000,000
401(k)	
Joe	$950,000
Mary	$650,000
Debt *Commercial real estate*	-$2,000,000
Total	**$28,600,000**

New Balance Sheet

Asset	Value
Residence	$1,200,000
Vacation home	$800,000
Head Waters Marina LLC *Restaurant, boat storage & land*	700,000
Head Waters Tours LLC	$300,000
Commercial real estate - LLC *Apartment complex*	$5,000,000
Investments *Jointly owned*	$2,000,000
401(k)	
Joe	$950,000*
Mary	$650,000*
Debt *Commercial real estate*	-$2,000,000
Total	**$9,600,000**

*Charity as contingent beneficiary

Tax effects of planning

Current situation	2024
Gross estate	**$30,600,000**
Debts	$(2,000,000)
Life insurance including in taxable estate	$0
Net taxable estate	$28,600,000
Federal exemption(s)	$27,220,000
(Less prior taxable gifts)	$0
Taxable estate	**$1,380,000**
Federal estate taxes	$552,000
Income tax on IRD (@ 40%)	$640,000
Total wealth transfer taxes	**$1,192,000**
Effective estate tax rate	**4.17%**

Gross estate assumed to be worth $30,600,000 appreciating annually at a 5% rate. Estate taxes are shown based on current law, including a sunset of the current exemption levels in 2026 per the Tax Cuts and Jobs Act of 2017 (with a continued increase in the exemption level at a 2% inflation rate). Taxes are projected in the current year. Any income taxes on IRD are taxes at 40% net of any estate tax deductions.

With asset shifting	2024
Gross estate	**$11,600,000**
Debts	$(2,000,000)
Life insurance included in taxable estate	$0
Net taxable estate	$9,600,000
Federal exemption(s)	$27,220,000
(Less prior taxable gifts)	$(13,300,000)
Taxable estate	**$0**
Federal estate taxes	$0
Income tax on IRD (@ 40%)	$0
Total wealth transfer taxes	**$0**
Effective estate tax rate	**0.00%**

Gross estate assumed to be worth $11,300,000 appreciating annually at a 5% rate.


THANK YOU FOR ATTENDING!
PLEASE COMPLETE YOUR CE FORMS AND RETURN THEM TO YOUR COURSE MONITOR

Federal Tax Rates and Limits for 2024

Individual Income Tax Rates

Taxable income		Flat Amount	+ %	Of amount over
Unmarried Individuals				
$ 0 to	$ 11,600	$ 0	10%	$ 0
11,601 to	47,150	1,160.00	12%	11,600
47,151 to	100,525	5,4267.00	22%	47,150
100,526 to	191,950	17,168.50	24%	100,525
191,951 to	243,725	39,110.50	32%	191,950
243,726 to	609,350	55,678.50	35%	243,725
609,351 to	+	183,647.25	37%	609,350
Married Filing Jointly and Surviving Spouses				
$ 0 to	$ 23,200	$ 0	10%	$ 0
23,201 to	94,300	2,320.00	12%	23,200
94,301 to	201,050	10,852.00	22%	94,300
201,051 to	383,900	34,337.00	24%	201,050
383,901 to	487,450	78,221.00	32%	383,900
487,451 to	731,200	111,357.00	35%	487,450
731,201 to	+	196,669.50	37%	731,200
Head of Household				
$ 0 to	$ 16,550	$ 0	10%	$ 0
16,551 to	63,100	1,655.00	12%	16,550
63,101 to	100,500	7,241.00	22%	63,100
100,501 to	191,950	15,469.00	24%	100,500
191,951 to	243,700	37,417.00	32%	191,950
243,701 to	609,350	53,977.00	35%	243,700
609,351 to	+	181,954.50	37%	609,350
Married Filing Separately				
$ 0 to	$ 11,600	$ 0	10%	$ 0
11,601 to	47,150	1,160.00	12%	11,600
47,151 to	100,525	5,4267.00	22%	47,150
100,526 to	191,950	17,168.50	24%	100,525
191,951 to	243,725	39,110.50	32%	191,950
243,726 to	365,600	55,678.50	35%	243,725
365,601 to	+	98,334.75	37%	365,600
Estates and Trusts				
$ 0 to	$ 3,100	$ 0	10%	$ 0
3,101 to	11,150	310.00	24%	3,100
11,151 to	15,200	2,242.00	35%	11,150
15,201 to	+	3,659.50	37%	15,200

Alternative Minimum Tax Exemption Amounts

Filing Status	2024 Exemption	Exemption Amounts Phase out at	2024 AMT Income in Excess of Exemption	AMT Rate
Single	$85,700	$609,350	First $232,600 Above $232,600	26% 28%
Married filing jointly	$133,300	$1,218,700	First $232,600 Above $232,600	26% 28%
Married filing separately	$66,650	$609,350	First $116,300 Above $116.300	26% 28%

Capital Gains Tax Rates

Taxable Income	Tax Rate
Less than $47,025 Single / $94,050 Married filing jointly / $63,000 Head of household	0%
Over $47,025 Single / $94,050 Married / $63,000 Head of household *but less than* $518,900 Single / $583,750 Married filing jointly / $551,350 Head of household	15%
Over $518,900 Single / $583,750 Married filing jointly / $551,350 Head of household	20%
Taxes on un-recaptured Sec. 1250 gains:	25%
Capital gains rates on collectibles:	28%

Standard Deductions

Filing Status	Standard Deduction
Single	$ 14,600
Married filing jointly	29,200
Head of household	21,900
Married filing separately	14,600

Additional deductions for certain taxpayers (provided they don't itemize): Age 65 or blind -- $1,550 if married; $1,950 if unmarried and not a surviving spouse. Dependents may take only a limited standard deduction which cannot exceed the greater of (i) $1,300 or (ii) $450 plus earned income (up to the regular standard deduction).

Social Security

Benefits: Full retirement age is 66, if born between 1943 and 1954. Maximum monthly benefit is $4,960.

Retirement earnings exempt amounts:

Before full retirement age:	$22,320
If full retirement age is reached during the year:	59,520
After full retirement age:	No limit

Income Taxation of Social Security Benefits:

To calculate the special tax base for determining whether a taxpayer's Social Security retirement benefits are subject to tax, add one-half of Social Security benefits, plus all other income (including tax-exempt).

Filing Status	Tax Base	% of Benefits Taxed
Single or head of household	$25,000 - $34,000 Over $34,000	50% 85%
Married filing jointly	$32,000 - $44,000 Over $44,000	50% 85%
Married filing separately	Depends on whether the spouses lived together during tax year.	Up to 85%

FICA: Social Security tax paid on income up to $168,600

	% withheld	Maximum tax payable
Employee pays	6.2%	$ 10,453.20
Self-employed pays	12.4%	20,906.40

Gift and Estate Tax

Unified Tax Rates:		Flat Amount	+%	of Amount Over
$ 0 to	$ 10,000	$ 0	18%	$ 0
10,000 to	20,000	1,800	20%	10,000
20,000 to	40,000	3,800	22%	20,000
40,000 to	60,000	8,200	24%	40,000
60,000 to	80,000	13,000	26%	60,000
80,000 to	100,000	18,200	28%	80,000
100,000 to	150,000	23,800	30%	100,000
150,000 to	250,000	38,800	32%	150,000
250,000 to	500,000	70,800	34%	250,000
500,000 to	750,000	155,800	37%	500,000
750,000 to	1,000,000	248,300	39%	750,000
1,000,000 to	—	345,800	40%	1,000,000

Estate Tax & Lifetime Gift Tax Applicable Exclusion Amount:

Basic exclusion amount:	$13,610,000
Annual gift tax exclusion:	$18,000 per donee
Annual gift tax exclusion for a noncitizen spouse:	$185,000

Retirement Plan Contribution Limits

Defined Contribution Plans [IRC Sec. 415(c)]	
Annual contribution limit:	$ 69,000
Defined Benefit Plans [IRC Sec. 415(b)]	
Annual benefit limit:	275,000
401(k), 403(b), SARSEPS, and 457(b) Plans	
Elective deferrals:	23,000
Age 50+ catch-up provisions:	7,500
SIMPLE Plans Elective deferral:	16,000
Age 50+ catch-up provisions:	3,500
Maximum annual compensation used to calculate contributions for most plans [IRC Sec. 401(a)(17)]	
Annual compensation limit:	345,000

Individual Retirement Accounts

Contribution limit of $7,000, with an age 50+ catch-up provision of $1,000, subject to the following income limits.

Type	Deduction Phase Out Range
Traditional	Single or Head of household: $77,000 to $87,000 Married filing jointly, contributor is covered: $123,000 to $143,000 Married filing jointly, contributor is not covered: $230,000 to $240,000 Married filing separately: $0 to $10,000
Roth	Single or Head of household: $146,000 to $161,000 Married filing jointly: $230,000 to $240,000 Married filing separately: $0 to $10,000

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Fiduciary Responsibility Checklist

Questions about the Insured:

- ❑ Do you know the insured's projected life expectancy and the chances of the insured living beyond it?
- ❑ Have you confirmed that the policy is projected (using reasonable assumptions) to stay in-force through at least the insured's life expectancy?
- ❑ If the policy ends, would the insured qualify for new coverage and would his or her rating be less than it is on the current policy?
- ❑ Does the policy owner have sufficient cash flow to pay premiums?

Questions about the Policy:

- ❑ When was the last time the life policy was reviewed?
- ❑ Do you request an annual in-force illustration showing both current and guaranteed assumptions?
- ❑ Based on current and guaranteed interest, charges and premium payments, how long is the policy projected to stay in force?
- ❑ Have any premium payments been late, reduced, or missed?
- ❑ Are there outstanding policy loans? If so:
  - ❑ Does the in-force illustration reflect the impact of these loans on policy performance and stability?
  - ❑ How is the policy loan interest rate determined?

For term insurance policies:

- ❑ Will the policy remain affordable for as long as needed?
- ❑ Are there conversion privileges to a competitive permanent product?

For permanent insurance policies:

- ❑ Is there enough cash value to provide sufficient stability and flexibility?
- ❑ Is the policy's performance subject to dramatic market fluctuations?
- ❑ If policy pays dividends, what is the dividend paying history?

Questions about the Insurance Provider:

- ❑ What is the overall financial strength and reputation of the insurance company?
  - ❑ What is its surplus as a percentage of assets?
  - ❑ How does this compare to other insurance companies?
- ❑ What are the company's financial ratings?
  - ❑ Have the ratings declined in recent years?
  - ❑ How do these compare to other insurance companies?
- ❑ Is the insurance provider a mutual or stock company?
  - ❑ If it's a stock company that was previously a mutual company, was the policy bought prior to demutualization?
- ❑ Does the company use captive insurance subsidiaries to reduce its reserve requirements?
- ❑ Was the company acquired by another insurance carrier after the policy was purchased?
- ❑ Does the company have broad diversification in its product lines?

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Appendix – Advisor Symposium program outline

I. **HEATHER DAVIS – WELCOME AND INTRODUCTION TO PROGRAM**

II. **CHADWICK– MAXIMIZING WEALTH TRANSFERS – STRATEGIC ESTATE PLANNING AND GIFTING SOLUTIONS AMIDST IMPENDING TAX CHANGES**

A. **Introduction and overview**

1. When a client will pass away,
2. How wealthy the client will be, and
3. What the tax laws will be.

B. **Tax Planning**

1. Putting Things in Perspective: 2000 vs. 2024
   a. Chart showing differences in tax attributes from 2000 to 2024.
2. New Planning Paradigm
   a. Large transfer tax exemptions, lower rates, & portability.
   b. Historical focus – minimize estate tax.
   c. Uncertainty and fluidity of tax laws
      1) Exemptions sunset in 2026 -
      2) Indexed for inflation – assume $7.5M per person or $15M per couple.
      3) “Bonus” exemptions are use it or lose it amounts.
      4) No claw back.
   d. Potential legislation.
3. Three client groups, based on project net worth:
   a. Clients who are *unlikely* to have a taxable estate.
      1) Focus on non-tax objectives.
   b. Clients who are *likely* to have a taxable estate.
      1) Business as usual.
   c. Clients who *might* have a taxable estate.
      1) Get creative.

C. **Core Estate Planning Alternatives**

1. All assets to surviving spouse outright.
2. First spouse’s remaining exemption to family/bypass trust.
3. All assets to marital trust.
4. All assets to surviving spouse outright or marital trust, with option to disclaim into family/bypass trust.
5. Lesser-known alternatives.

D. **Gifting Considerations**

1. Preliminary considerations
   a. Financial needs and expected cash flow.
   b. Desire to maintain control over gifted assets.
   c. Client’s risk tolerance and ability to handle complexity and follow best practices.
   d. Financial and emotional maturity.
   e. Assets available to gift, including tax basis and appreciation potential.
2. Non-Tax Motivations for Gifting
   a. Satisfy a beneficiary’s current need and permit beneficiaries to enjoy assets now.
   b. Equalize prior gifts among family members or forgive outstanding loans.
   c. Provide beneficiaries opportunity to manage finances.
   d. Allow beneficiary to start a business, invest, or make a charitable gift.
3. Federal Income Tax Savings
   a. Important for all three client groups.
   b. For 99% of taxpayers this is more relevant than transfer taxes.
   c. For taxpayers who will not be subject to estate tax, planning should focus on preserving the basis step-up for appreciated assets at death, rather than avoiding the estate tax.
      1) IRC §1015 generally provides a "carryover" basis for gifted property.

2) For most assets included a client's taxable estate, IRC §1014 provides an income tax basis adjustment to FMV at client's date of death.

3) In community property states, IRC §1014(b)(6) enhances the potential step-up by providing that both halves of any community property receive an income tax basis adjustment.

d. Two approaches:

1) Downstream planning - techniques designed to ensure that a client's low-basis assets are included in his or her own taxable estate before being passed on to the next generation.

(a) Avoid gifts of highly appreciated assets.

(b) Preserve capital losses.

(c) Maximize stepped-up basis among spouses.

(d) Swap high basis assets from a grantor trust.

(e) Unwind discounting techniques that provide no estate tax savings but reduce potential stepped-up basis.

2) Upstream planning - refers to transfer of assets to family members in the older generation to be included in the older generation family members' taxable estates for purposes of achieving a higher income tax basis.

(a) Client gifts appreciated assets to irrevocable trust for the benefit of an older family member (OFM) who has "excess" exemption.

(b) Trust grants OFM a testamentary general power of appointment.

(c) Upon death of OFM, general power of appointment lapses and assets receive a stepped-up income tax basis and pass to irrevocable generation-skipping transfer (GST) trust.

(d) Upstream planning can potentially benefit clients who own assets with substantial appreciation and have an older family member, such as a parent, who has an "excess" basic exclusion amount (BEA).

(e) Inclusion of appreciated assets in the parent's estate should facilitate the use of the parent's BEA and GST exemption, while reducing future capital gains tax.

(f) Upstream planning is not without risk.

(1) IRC §1014(e) disallows a basis step-up if appreciated property is gifted to a parent (or any other person), but the parent dies within one year of the gift and the property returns to the donor. IRC §1014(e) would not apply if appreciated property passed to a person other than the donor (e.g., a trust for the donor's descendants).

(2) It is also possible that IRC §1014(e) would not apply if the property passed to a trust that included the donor as a permissible beneficiary.

(3) The IRS could also assert that any assets that return to a trust for the benefit of the client should be included in the client's taxable estate under IRC §§2036 or 2038.

4. Transfer Tax Savings

a. Two types of lifetime gifts:

1) Gifts that do not consume exemption – the "freebies."

2) Gifts that consume exemption.

3) Enhancements:

(a) Leverage gifts with discounted values.

(b) Utilize grantor trusts for federal income tax purposes.

(c) Allocate GST exemption for multi-generational planning.

(d) Increase flexibility through use of powers of appointment and trust protectors.

5. The Freebies

a. To optimize a client's lifetime gifting strategy, it is important to understand the "freebies," or gifts that do not consume a client's gift tax exemption.

b. For affluent clients it avoids pesky reporting requirements.

c. For wealthy and super wealthy clients, it preserves BEA for more impactful gifting.

1) Marital and charitable deduction

a) A taxpayer's gifts during life or bequests at death to a U.S. citizen spouse (or certain marital trusts) receive an unlimited marital deduction from federal gift and estate taxes and do not consume a taxpayer's BEA.

b) Similarly, gifts during life or bequests at death to a qualified charity (or certain charitable trusts) receive an unlimited charitable deduction.

2) Health and education exclusion – Under IRC §2503(e)(2), certain "qualified transfers" are not treated as transfers for tax purposes:

a) As tuition to an educational organization described in IRC §170(b)(1)(A)(ii); or

b) To any person who provides medical care, as defined in IRC §213(d).

3) Uniform Transfers to Minors Act (UTMA) accounts:

a) Client funding the UTMA account desires to control investments and distributions by serving as custodian.

b) This could cause unexpected adverse tax consequences.

c) Property gifted by the client to the UTMA account could be incomplete due to the client's broad discretion to make distributions or the ability account assets satisfy obligation of support.

d) In addition, the UTMA account assets could be includible in the client's gross estate if he or she dies before the beneficiary reaches age 21 and the UTMA account terminates.

e) The client can avoid these potential tax issues by designating a third party as custodian; must weigh the plusses and minuses.

4) 529 Plans

a) IRC §529 plans refer to state-sponsored qualified tuition programs that provide many benefits for a client.

b) Qualified higher education expenses at an eligible institution.

c) Earnings in the 529 account are not subject to federal income tax.

d) If a distribution is not used for qualified higher education expenses, income tax and a 10% penalty are applied.

e) Client can change the beneficiary of the 529 account.

f) Room and board, meals, and books.

g) Client can reacquire the 529 account assets, albeit subject to potential income tax and a penalty.

h) "Front end load" contributions to a 529 account - five times the annual exclusion amount.

5) Gifts to trusts
   a) Annual exclusions are only available for gifts of property in which the beneficiary has a present interest .
   b) A beneficiary's interest in an irrevocable trust is typically a future interest. Exceptions to this general rule apply.
   c) IRC §2503(c) Trusts for Minors (under age 21) – gift of a present interest, as long as:
      (1) The trustee has broad discretion to make distributions,
      (2) The beneficiary is entitled to withdraw all of the trust property at age 21; and
      (3) If the beneficiary dies before reaching age 21, the trust assets are included in the beneficiary's estate.
   d) Donor should not serve as trustee b/c 2503(c) requires distributions without "substantial restrictions."

6) Crummey Trusts
   a) Withdrawal right should cause the beneficiary to have a "present interest" in the donor's gift to the trust that qualifies the gift for the annual gift exclusion.
   b) Advantages
      (1) Crummey trust can benefit more than a single beneficiary.
      (2) Not required to grant a beneficiary the right to withdraw assets upon a beneficiary attaining a certain age.
   c) Lapsing withdrawal rights
      (1) A beneficiary, who fails to exercise a withdrawal right with respect to a trust contribution and allows the withdrawal right to lapse, may be deemed to have made a taxable gift.
      (2) However, IRC §2514(e), provides that the lapse of a beneficiary's withdrawal right will be considered a transfer to the trust only to the extent the lapsed withdrawal right exceeds the greater of $5,000 or 5% of the total value of the trust.
   d) Existing trusts without appropriate Crummey withdrawal rights
      (1) Client can overrule the trust agreement's withdrawal right provisions in a Deed of Gift that sets out new withdrawal rights as a condition to the gift to the trust.
      (2) Requirements for transfers in trust to qualify for annual GST exclusion – IRC §2642(c)(2) provides that a transfer of property to a trust for the benefit of a skip person will qualify for the annual GST exclusion only if the trust agreement satisfies two additional requirements:
         (a) During the life of the beneficiary, no trust assets may be distributed to any other person.
         (b) If the trust does not terminate before the beneficiary dies, the trust assets are included in the beneficiary's estate.

6. Creative Gifting Strategies
    a. Balance minimizing transfer taxes vs. preserving sufficient assets to support wealthy clients.
    b. Consider techniques that provide access to transferred assets but may create greater IRS audit risk.
    c. Flexibility is the cornerstone for planning.
    d. Utilizing one spouse’s exemption:
        1. More planning options are available for wealthy clients who are married, compared to a wealthy client who is single.
        2. Lifetime gifts use exemptions from the bottom, not the top.
        3. To capture any benefit from the bonus exemptions, the “gifting threshold” is approximately $15M for a married couple making equal gifts, but only $7.5M for one spouse.
        4. Consider practical impact to the donor spouse and the advisor’s ethical duties if both spouses are clients.
    e. Spousal Lifetime Access Trusts (SLATs)
        1. One of the most common planning techniques for wealthy clients.
        2. Many married couples desire that each spouse create and fund a SLAT so that both spouses are permissible beneficiaries of transferred assets, instead of just one spouse.
        3. However, if each spouse creates and funds a trust for the benefit of the other spouse, the IRS may attempt to apply the "reciprocal trust doctrine."
        4. SLATs are typically grantor trusts for income tax purposes.
        5. A SLAT is, in essence, a pre-funding of the bypass trust.
        6. Can take advantage of the doubled BEA and GST exemption amounts set to expire in 2026, while also removing appreciating assets from the transfer tax system.
    f. Special Power of Appointment Trusts (SPATs)
        1. SPATs offer considerable appeal for wealthy clients given the possibility that the trust assets could be available to the donor, or pass to a trust for the donor's benefit, through a third party's exercise of a lifetime or testamentary limited power of appointment.
        2. Structure:
            a) Client funds irrevocable trust for one or more persons, not including the client, in which a beneficiary or non-beneficiary is given a limited power to appoint trust assets among a class of persons that includes the client.
            b) This technique should enable a wealthy client to currently make use of the doubled BEA while having the possibility to benefit from the assets.
        3. Objectives:
            a) Currently use bonus exemptions.
            b) Provide client with potential access to appointed assets.
            c) Provide assets with creditor protection.
            d) Exclude assets from client’s taxable estate.
            e) Designing trusts for flexibility and access.
                (1) Risks associated with SPATs:
                    (a) If a portion of the SPAT assets are appointed to donor, the IRS could argue IRC §2036 inclusion.
                    (b) If a donor creates a SPAT and the holder of a limited power of appointment directs the SPAT assets to an appointive trust for the

benefit of the donor, the appointive trust should not grant the donor a lifetime or testamentary power of appointment. included in the donor's taxable estate under IRC §2038.

(c) Creditor rights issue under state law - risk that the appointive trust "relates back" to the original donor of the SPAT.

7. Designing trusts for flexibility and access
   a. Independent trustee with broad power to make distributions (and/or reimburse grantor for income taxes paid).
   b. Trust protector who can modify the trust.
   c. Authorize trust decanting.
   d. Give grantor swap power and ability to borrow.
   e. Powers of appointment.
   f. Permit grantor to serve as trustee (with HEMS distribution power).
8. Issues regarding joint representation of spouses in estate planning
   a. Inherent conflict of interest between spouses.
   b. Structuring engagement letters.
   c. Communicate with both spouses.
   d. Impact of partitioning community property.
   e. SLAT disclosures and protections.
   f. Does each spouse need separate representation?

E. Practical Tips for Pre-2026 Planning

1. Client alerts:
   a. Provide information and present opportunities.
   b. Avoid "fearmongering" or being "sales-y."
2. Lay the groundwork now and pivot later if needed.
   a. Give liquid assets to IDGTs now and swap hard-to-value assets later.
   b. Sell assets to IDGTs now and cancel promissory notes later to use bonus exemptions.
   c. Fund LLCs/LPs now and transfer membership interests later.

F. Conclusion

1. Advisors cannot tell the future.
2. But we can help clients make informed decisions.
   a. Core estate plans should be as flexible as possible.
   b. Look before you leap on substantial lifetime gifts.
   c. Clients value simplicity and common sense.
3. No matter what happens, trusted advisors will always be in demand.

III. CHADWICK AND HENSLEY – MAXIMIZING WEALTH TRANSFERS CASE STUDY

A. Review of case study

1. Client overview
   a. Joe (60) and Mary Chang (57), reside in Hilton Head, SC.
   b. Own Head Waters Marina, LLC & Head Waters Tours, LLC.
   c. Three adult children.
      1. Joe Jr. – 33, divorced, has three children ages 8, 5, and 3.
         i Manages the Marina business.
      2. Jennifer – 31, married, two children 4 and 2.
         i Artist and entrepreneur.
         ii Does not work in the family business.
      3. James – 29, married, one child aged 2.
         i Manages the tour business.
      4. Sydney – 36, single, no children.
         i History of addiction & strained relationship with family.
         ii Child of Joe prior to his marriage.

B. Review the balance sheet

1. Assets: residence, vacation home, apartment complex, marina business, tour business, investments, retirement accounts,
2. Debt: for apartment complex

C. Discuss clients' goals and objectives.

1. Pass business value to Joe Jr., James, and Jennifer equally.
2. Provide basic expenses and support for Sydney.
3. Continue and expand their support of Brighter View Recovery Center. Joe serves on the board of the center and Sydney has utilized their services on several occasions.
4. Eventually pass control of business to the next generation. Not willing to give up complete control over business but would consider transferring some ownership today.
5. Retain Sharon long-term to make sure that marina operations continue smoothly.
6. Concerned about:
    a. Treating Jennifer fairly since she is not involved in business.
    b. Providing minimal support to Sydney without encumbering the businesses or other planning.
    c. Minimizing potential future conflicts among the siblings about how to run the business.
    d. Potential for divorce among their kids.
    e. One child is already divorced, and clients want to make sure family wealth stays in the family.
    f. Asset protection.
    g. Lawsuits have been filed against the tour company in the past and they want to limit the exposure of their assets to this type of liability.
    h. Concentrating too much wealth in the next generation.
    i. Escalating cost of passing their rapidly appreciating business to future generations.

D. Review current plan

1. Distribution of assets – family/charity/government
2. Existing legal documents

E. Assessment of issues and considerations

1. What are the key issues for their succession plan?
2. Needs for liquidity:
    a. Key question of income and parent's financial security: If they pass the business along to kids, where will their income come from? Options:
        1) Keep voting shares to provide income while giving or selling non-voting shares.
        2) Selling the business to kids to generate income.
        3) Parents keep real estate to continue income.
            i Even if business fails later, they have that to either lease out or sell.
        4) Debt
        5) Life insurance provides cash for payoff.
        6) Key person coverage.
            a) Life insurance for key person that is key to succession.
3. How are you setting up your beneficiaries?
    a. Trust vs. outright?
        1) How do you take care of child who isn't involved in the business?
        2) Which child has controlling interest for each business?
        3) What should be provided to Sydney for living expenses?
4. Needs for liquidity:
    a. Estate tax.
    b. Equalization or buy-out.
    c. Trust for Sydney:
    d. Gifts to trust? If so, how much?
    e. Non-voting shares vs. voting shares.

f. Life insurance:
   1) Could be used to buy out existing shares from the estate.
   2) Enough income producing assets in trust to pay premium.

5. Proposed plan: Consider gifts to Family Trust (IDIT)
   a. Mom and Dad create IDIT (descendants' trusts, etc.).
   b. Mom and Dad restructure businesses with voting & non-voting stock.
   c. Mom and Dad create IDIT to hold non-voting shares and pass voting shares to each son.
   d. Appraisal is completed to value both businesses.
   e. Mom and Dad file federal gift tax returns disclosing transaction for gifts and allocating GST exemption.
   f. Trust uses income from business to fund life insurance on Mom & Dad.
6. Assessment of goals:
   a. Reduce federal transfer tax –
   b. Trust assets protected from creditor claims, including divorcing spouses.
   c. Pass business to next generation in tax-efficient manner but retain control initially.
   d. Preserve cash flow for living expenses, income tax payments, etc.
7. Potential disadvantages
   a. "Reverse wealth shift" if business depreciates, instead of appreciating.
   b. Transaction cost and complexity.
   c. Ongoing income tax liabilities for IDITs.
   d. Loss of income tax basis adjustment at death.

IV. Break

V. PATRICIA ANNINO – MASTERING FAMILY BUSINESS DYNAMICS: VALUATIONS, AGREEMENTS, AND STRATEGIC DECISIONS

A. Introduction

1. Importance of understanding the unique relationship between a family and its family business.

B. Family dynamics and their impact

1. Boundary between family and business must be elastic and not snap.
2. Issues behind the scenes that impact planning:
   a. Founder does not want to leave, changes in risk appetite among generations, sense of entitlement, sibling rivalry, seeking approval, inability to take responsibility, inference from in-laws, infidelity, failure of past businesses, advisors who are past their prime, alcoholism and substance abuse, confusion of family goals v. business goals, breakdown of trust, selecting wrong successor, lack of open communication.
3. How the family and family business can address the issue of family dynamics:
   a. Create Code of Conduct.
   b. Create vision and values statement.
   c. Openly communicate.
   d. Address succession issues fairly.
   e. Establish policies within the business such as dividend policy, family employment policy and governance structure.
   f. If appropriate form a family council to foster open communication between those in business and those not in business.
   g. Establish a conflict resolution policy.

C. Family employment policies and their importance for the family business

1. Discussion of federal and state labor laws wage and hour laws, discrimination, and retaliation (including Title VII of Civil Rights Act, American Disabilities Act (ADA) and Family and Medical Leave Act). There is no exception for family businesses.

2. Importance of establishing Family Employment Policy addressing employment issues to mitigate litigation and chaos and so that non-family employees are not demotivated.
3. Include the following in family employment policy statement:
   a. Formal job descriptions.
   b. Criteria for evaluating employees for purposes of compensation and promotion.
   c. Qualifications that are important for each position (experience, education, certificates, skills).
   d. Expectation of vacation days and working hours.
   e. Measurable goals for advancement.
   f. Background checks.
   g. Consider having family members work elsewhere first.
   h. Consider having family members report to non-family members.
   i. Establish an employee handbook written by an employment lawyer.

D. **Fair v. equal: How to divide an estate among those working in business and those who are not.**
1. Fair is not equal and equal is not fair.
2. Discussion of Harry Winston Estate litigation and its application to fair v. equal.
   a. In re Winston, 833 NYS2d 657 (App. Div. 2007

E. Valuation and its importance to family business
1. Reasons a family business must be valued: gifting, estate tax, shareholder redemption, outside investment, divestment of part of the company, performance measurement and compensation, corporate finance decisions, divorce, selling to other family members, and succession planning.
2. Methods for determining value.
   a. Rev. Ruling 59-60, Treas. Reg. $20.2031-3 and 20.2031-2(f), IRM 4.84.4
   b. Use of discounts (minority, lack of control, and marketability)

F. Unique aspects when agreement is among family members
1. Before the 1990 Omnibus Budget Reconciliation Act (ACT), buy-sell agreements were generally determinative of the transfer tax value of the family business. Following ACT this changed and unless IRC Section 2703 and its regulations are adhered to, the value in a family owned buy-sell agreement is not determinative of its value for transfer tax purposes.
2. If the IRS determines that the buy-sell agreement is a devise to transfer property to family members for less than adequate and full consideration, it can redetermine the value of the transferred interest for gift, estate, and generation skipping estate tax purposes. The IRS may also challenge the value established in a buy-sell agreement when it appears the decedent was attempting to transfer property for less than full consideration (a partial disguised gift) to a non-family member.
3. Gloeckner, 152 F.3rd 208 (2d Cir. 1998)
4. When drafting or reviewing a family buy-sell agreement, it is important to understand the impact of Internal Revenue Code Section 2703 and its regulations.
5. The general rule of 2703 is that the value of a closely held business is determined without regard to any option, agreement or other right to acquire or use the property at a price that is less than the fair market value of the property, or any restriction on the right to sell or use the property.
6. IRC Section 2703(a)
7. However, the general rule does not apply if certain requirements are met. If those requirements are met, then the buy-sell agreement can be used to set the value for transfer tax purposes. All three of the requirements in Section 2703(b) must be met:
   a. The agreement must be bona fide.
      1) Estate of Lauder, T.C. Memo 1992-736
      2) Estate of Amlie, T.C. Memo 2006-76
      3) Holman, 130 T.C. 170 (2008), aff'd 601 F. 3d 763 (8^{th} Cir. 2010)

b. The agreement must not be a devise to transfer property to members of the decedent's family for less than full and adequate consideration.
   1) Tax Court in Estate of Lauder set forth how the test is to be applied.
c. Its terms must be comparable to similar arrangements entered into by persons in arm's length transactions.
   1) Treas Reg. 25.2703-1(b)(4)

8. A buy-sell agreement is deemed to satisfy all the requirements of IRC Section 2703(b) if more than 50% of the value of the property subject to the restriction is owned directly or indirectly by individuals who are not members of the individual's family.
   a. Treas. Reg. 25.2703-1(b)(3).
   b. This applies only if the interests owned by non-family members are subject to the same restrictions as the property owned by the transferor.
   c. Members of the transferor's family include the transferor's spouse, ancestors of the transferor or the transferor's spouse, and any other individual who is a natural object of the transferor's bounty.
      1) The statute and regulations do not specify who is a natural object of the transferor's bounty making it unclear whether siblings or cousins fall into that definition.
      2) The Second Circuit in Estate of Gloeckner held that an individual without a blood or marital relationship is not the natural object of the decedent's bounty unless their relationship is so close as to appear they were related.
      3) 152 F.3d 208, 82 A.F.T.R. 2d 98-5748 (2d Circ. 1988)

9. Additional case citations:
   a. Estate of Blount, T.C. Memo 2004-116, aff'd 428 F. 3d 1338 (11th Circ. 2005).
   b. Hollinger v. Hollinger (Fla. Dist. Ct. Appl. March 20, 2020
   c. Estate of Collins v. Tabs Motor Company of Valley Stream Corp. (unreported Nassau County NY case).
   d. Tita v. Estate of Tita, 334 So. 3rd 646 (District Ct. of Appeals of Florida, Fourth District March 2, 2022.
   e. Estate of Connelly v. United States (USDC ED MO, 9/21/21) 128 A.F.T.R. 2d 2021-5231.

G. Conclusion

VI. ANNINO AND HENSLEY – MASTERING FAMILY BUSINESS DYNAMICS CASE STUDY

A. Review of case study

1. Key family dynamics in our case study
   a. Two sons Joe Jr. & James each managing separate businesses.
   b. Daughter Jennifer not involved in the businesses.
   c. Joe's daughter Sydney from a prior relationship with addiction issues and strained relations with the Chang family

2. Assets: residence, vacation home, land, businesses, business real estate, investments, retirement accounts, apartment complex, life insurance

3. Debt: on the commercial property

B. Discuss clients' goals and objectives

1. Pass business value equally to the three children of the marriage
2. Eventually pass control of businesses to Joe Jr. and James. Not willing to give up complete control over business but would consider transferring some ownership today.
3. Also want to retain long term key employee (Sharon) who is critical to ongoing success of the marina and could help the sons run the businesses when they decide to retire.
4. Provide minimal basic support to Sydney over her lifetime.

5. Concerned about:
    a. How to treat Jennifer fairly since she is not involved in business,
    b. Minimize potential future conflicts among the siblings about how to run the business.
    c. Allowing Joe Jr. and James to control the businesses they currently manage.
    d. Maintaining vacation home for continued use by next generation.
    e. Preventing Sydney from becoming a threat or burden for the three children or the businesses.
    f. Potential for divorce among their kids. One child is already divorced, and clients want to make sure family wealth stays in the family.
    g. Protecting assets - Lawsuits have been filed against the tour business in the past and they want to limit the exposure of their assets to this type of liability.
    h. Concentrating too much wealth in the next generation.
    i. Escalating cost of passing their rapidly appreciating business to future generations.

C. Review current plan

1. Distribution of assets – family/charity/government
2. Existing legal documents

D. Assessment of issues and considerations

1. Needs for liquidity.
    a. Income for Joe and Mary. Key question of parent's financial security. If they pass the business along to kids, where will their income come from? Options:
        1) Keep voting shares to provide income while giving or selling non-voting shares.
        2) Selling the business to kids to generate income.
        3) Parents keep real estate to continue income. Even if business fails later, they have that to either lease out or sell.
    b. Debt
        1) Confirm amount of real estate debt.
        2) Life insurance provides cash for payoff.
    c. Key person coverage.
        1) If parents sell, key person on buyer to protect their buyout.
        2) Life insurance for key person that is key to succession.
2. Business valuation
    a. Confirm value to provide a basis for buyout and any gifting.
    b. Update periodically.
3. Business succession strategy
    a. Who gets control and when?
    b. Perhaps give or sell non-voting interest now, then decide on timing for voting interests.
4. Vacation home ownership and maintenance.
    a. Responsibility for management.
    b. Financial resources for maintenance.
    c. Equitable use by children / grandchildren.
    d. Funds for maintenance / management of vacation home.

E. Present proposed plan

1. Professionally appraise business.
2. Draft buy-sell agreement(s).
3. Update estate planning documents.
4. Present funding solutions.
    a. How to use life insurance for liquidity needs
    b. Buy out sibling's or parent's non-voting shares.
    c. Equalization for Jennifer
5. Develop business governance system including:
    a. Dividend policies
    b. Employment policies
    c. Code of Conduct
    d. Vision and Values statement.

F. **Discuss next steps to implement**

1. Analyze facts, goals, and objectives.
2. Design alternatives and create a game plan.
3. Review with all parties – CPA, attorney, financial professional.
4. Finalize planning strategies.
5. Draft documents.
6. Implement strategies.
7. Maintain coordination with planning team.
8. Schedule follow-up and review.

G. **Best practices for working with other members of professional planning team**

1. How to effectively collaborate with other advisors?
    a. Keep each other in the loop.
    b. Copy them on correspondence.
    c. Be careful of client getting billed.
        1) Get permission to talk without charge.
2. What advice would you give to the attorneys and accountants who are joining us today on how to best get up to speed on understanding the different types of life insurance products and how to optimally design them?
    a. Attend CLEs and read articles.
    b. Call professional colleagues and lean on their collective experience.
    c. Take advantage of the resources provided by The Nautilus Group.
    d. Really dig into the policy cash flows – good questions include:
        1) "What is the worst case scenario for this policy?"
        2) "Would I personally utilize this policy if it were me and my family?"
3. What advice would you give to the attorneys and accountants who are joining us today on how to best help their clients in the current environment?
    a. Provide information and present opportunities.
    b. Ask questions and listen closely to understand the family dynamics and emotional issues.
    c. Lay the groundwork now and pivot later if needed:
        1) Give liquid assets to IDITs now and swap hard-to-value assets later.
        2) Sell assets to IDITs now and cancel promissory notes later to use bonus exemptions.
        3) Fund LLCs/LPs now and transfer membership interests later.

VII. Break

VIII. CHRIS HOYT – MAXIMIZING TAX SAVINGS WITH RETIREMENT DISTRIBUTIONS AND CHARITABLE GIVING

A. **Income tax rules for distributions from retirement accounts**

1. Generally taxed as ordinary income from:
    a. IRAs – Internal Revenue Code Section 408
    b. Employer plans (most common 401(k)) – IRC §401
    c. Tax-exempt employers – IRC §403(b) and §457(b)
    d. Distributions before age 59½ usually subject to additional 10% tax – IRC §72(t)
2. Distributions from inherited retirement accounts generally taxed as ordinary income:
    a. "Income in Respect of a Decedent" (IRD) – IRC §691
    b. Exception: Distributions from Roth accounts can be tax free if over age 59½ and have had Roth account for at least five years – §408A

B. **Estate tax planning for distributions from retirement accounts**

1. Concept: If you have a $1 million IRA, you will not be able to use it to purchase $1 million of goods.
    a. Reason: The distributions will be taxable income.
    b. Net result (over-simplified): After paying $300,000 of income taxes, you might be left with just $700,000 that you can use to purchase goods.
2. If your descendants inherit your $1 million IRA, they will also only have $700,000 after taxes to purchase goods.
3. But if you die with a $1 million IRA, federal & state estate taxes will be levied on the entire $1 million.

4. Federal and state estate taxes will be assessed against the $300,000 portion of the IRA that will be paid to the federal and state governments as income taxes.

C. Future of federal estate tax is uncertain

1. Federal estate tax thresholds:
   a. 2024: $13.6 million
   b. 2026: Just $7 million

D. States that have estate or inheritance taxes (12) – assessed at lower thresholds than federal estate tax

1. State map - source: https://taxfoundation.org/data/all/state/state-estate-tax-inheritance-tax-2023/

E. Combination of income & estate taxes

1. IRAs incur a more than 62% tax rate, with a combination of estate and income taxes.
2. Example: Assume that a very wealthy person earns $100 of interest income in February, and then dies in August.
   a. How much of the $100 will children inherit? $36 net to heirs.
   b. Calculation is shown on slide #65.
3. Example: Combination of income & estate taxes on IRD
   a. Assume Mother's total taxable estate is $20,000,000 and that all of it will be transferred to her sole heir (Daughter). Assume that the estate will pay the entire estate tax regardless of how Daughter acquired the assets (e.g., joint tenancy, etc.). If $100,000 in an IRA is immediately distributed to Daughter and if Daughter is in a 37% marginal income tax bracket, then combined estate and income taxes on the $100,000 of IRA assets would be $62,200 (62%).
   b. Calculation shown on slide #66.
      1) Treas. Reg. Section 1.691(c)-1(a) limits the deduction to federal estate tax. The 2001 Tax Act provided that the Section 2011 state tax credit was fully repealed in 2007, so there is no state estate tax adjustment.
      2) The deduction is an itemized deduction on Schedule A that is claimed on the last line of the form ("other miscellaneous deductions"). It is not subject to the 2%-of-adjusted-gross-income limitation that most miscellaneous deductions had been subject to. Sec. 67(b)(7).
      3) Thus, the Section 691(c) deduction can still be claimed in 2024, even though the 2017 TCJA eliminated the ability to deduct most other miscellaneous itemized deductions.
      4) Whereas retirement income is exempt from the 3.8% health care surtax, if the source of IRD is income that is subject to the surtax, then the effective marginal income tax rate would be even higher than 37%. The 3.8% health care surtax applies when an individual's adjusted gross income exceeds $250,000 ($300,000 on a joint return). For a trust or estate, the 37% marginal tax rate (plus the 3.8% health care surtax) applies with taxable income over just $15,200.

F. Estate tax planning for retirement accounts

1. Goal is to get the size of the estate to be below the applicable federal (and/or state) estate tax threshold.
2. Focus especially on reducing the balances that are held in traditional retirement accounts, to avoid paying estate and inheritance taxes on the portion of those accounts that will be paid as income taxes to governments.
3. Strategies during lifetime:
   a. Roth IRA conversion to reduce amount of estate tax.
      1) Roth IRA conversion is treated as a taxable withdrawal from a traditional taxable IRA, followed by a non-deductible contribution to a Roth IRA.
   b. Distributions to purchase life insurance (and keep that out of estate)

c. Charitable gifts from IRAs after age 70½ (qualified charitable distributions, aka QCDs)

4. After death, for charitably inclined individuals, have retirement assets payable to tax-exempt charities.
   a. Consider planning disclaimers that produce a charitable bequest.
      1) Charity is named as a contingent beneficiary of a retirement account.
      2) Donor-advised funds (DAFs).

IX. HOYT AND HENSLEY – MAXIMIZING TAX SAVINGS CASE STUDY

A. Review of case study

1. Parents (Joe & Mary) are actively giving to local groups.
2. Two sons, Joe Jr. & James, each managing separate businesses.
3. Daughter, Jennifer, not involved in the businesses.
4. Joe's daughter, Sydney, from a prior relationship with addiction issues and strained relations with the Chang family.
5. Assets: residence, vacation home, land, businesses, business real estate, investments, retirement accounts, apartment complex, life insurance.
6. Debt on the commercial property.

B. Discuss clients' goals and objectives

1. Pass business value equally to the three children of the marriage.
2. Treat the children of the marriage fairly.
   a. Give them autonomy to manage their own lives, but still be connected.
   b. Provide a fair financial legacy to all three children.
   c. Encourage charitable giving and community involvement.
3. Concerned about:
   a. How to treat Jennifer fairly since she is not involved in business.
   b. Minimize potential future conflicts among the siblings.
   c. Allowing Joe Jr. and James to control the businesses they currently manage.
   d. Concentrating too much wealth in the next generation.
   e. Minimizing tax liabilities.
      1) Income taxes for family currently.
      2) Estate tax exposure over time.
      3) Escalating cost of passing their rapidly appreciating business to future generations.

C. Review current plan

1. Distribution of assets – family/charity/government
2. Existing legal documents and beneficiary arrangements

D. Assessment of issues and considerations

1. Qualified Plans Taxation
   a. Estate tax and IRD impact on plan assets
   b. Impact of distributions on current income taxes
   c. Distribution planning
      1) Roth Conversions
      2) Qualified Charitable Distributions
      3) Charitable bequest (beneficiary designation)
      4) Current distributions
   d. Family wealth replacement
      1) Life Insurance funded to replace Qualified Plan assets given to charity.
2. Lifetime charitable giving plans
   a. Current giving amounts and maximizing deductions.
3. Legacy charitable giving
   a. Gifts can reduce taxable estate.
   b. Identifying the best assets for gifting.
   c. Strategy to encourage children's participation.

E. Present Proposed Plan

1. Utilize 401(k) and qualified plans for charitable giving and estate reduction.
   a. Eliminate estate and IRD taxation on the assets.

b. Create Donor Advised Fund for each child to direct assets to causes they support.

2. Use RMDs to fund DAF prior to death.
3. Purchase life insurance to replace value of the qualified plans.
   a. Potentially create endowment for the treatment center.

F. Discussing charitable Intent with clients

1. Is there a difference in planning for clients with definitive charitable goals as opposed to finding the best tax outcomes for clients and their families?
   a. The client goals determine the planning.
   b. Clients usually prefer control and directing assets, rather than paying taxes.
   c. Larger estates with larger tax liabilities have a higher percentage of clients using charitable deductions.
2. Why retirement assets often utilized for charitable gifts
   a. Regardless of estate size, the IRD affects all taxpayers.
   b. Planning for retirement assets is important for clients that will not consume all their retirement assets.
   c. Money that would otherwise go to taxes can benefit charity, often with little impact to the family's inheritance.

G. Discussing charitable strategies with other advisors

1. What charitable giving opportunities should advisors watch for with their clients
   a. Large qualified-plan balances.
   b. Clients that are not taking distributions or are only taking the RMD.
   c. Those currently giving significant amounts or with ongoing donations.
   d. Larger estates and those with concerns about leaving too much to their heirs.

X. HEATHER DAVIS – CLOSING REMARKS

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