Volume 58
Issue 3 *Dickinson Law Review - Volume 58, 1953-1954*

3-1-1954

A Critical Look at Estate Planning

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A CRITICAL LOOK AT ESTATE PLANNING

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For many years lawyers were accused of ignoring tax problems when their clients came to them for the preparation of wills. Then we began to overcompensate. Our clients became more sophisticated, the trust companies began to advertise "marital deductions", the insurance underwriters began to talk "powers of appointment in the surviving spouse" and the lawyer in self-defense began to make tax computations on long worksheets as soon as his client mentioned the word "will".

Later in this article we will cover some technical facets of the marital deduction and the tax consequences of a few insurance clauses. But first, let's ask ourselves—aren't we becoming too tax conscious? Must every client take the marital deduction? Shall every client set up lifetime trusts to cut his estate tax bill? Does every life insurance policy have to qualify for a marital deduction?

Let us look critically at the marital deduction first.

All of us know that the marital deduction is the feature of the 1948 *Revenue Act* that gives to residents of non-community property states the estate tax "benefits" of their more advanced brethren who reside in the community states. This is accomplished by giving a tax deduction for all testamentary dispositions to one spouse, providing they qualify under the law. So, if Mr. Jones leaves half his estate to Mrs. Jones, without attaching any strings, the half Mrs. Jones gets ordinarily will be deducted from the gross estate before computing the tax. The theory is that if the Jones's were living in a community state, half would be considered as belonging to Mrs. Jones anyhow and thus not taxed.

But are the Jones's better off as a family unit when Mr. Jones leaves one half to his wife and gets the marital deduction? Not always. For example, Mrs. Jones might own much property in her own name so that Mr. Jones by leaving her half his estate is putting her estate in a confiscatory bracket. The result is that the children, who are to be the ultimate beneficiaries would be better off if Mr. Jones paid the tax on his lesser estate, waived the marital deduction and left the property directly to them. When Mrs. Jones acts similarly, the family as a whole will pass a lot more capital on to the next generation than if they had used the marital deduction just because it's the latest in tax gadgets.

Usually, it must be conceded, the wife's estate will be insignificant beside the husband's. But that's not the point here. We must realize that estate planning is a family concept—not just the father's problem.

Other factors which must be considered family-wise in weighing the usefulness of the marital deduction are these:

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1. Even if the wife has no estate of her own, what will be saved if she does not survive her spouse for long, and dies unmarried without getting any marital deduction in her own estate?

2. What effect will double administrative costs have on the so-called tax saving?

3. For the sake of maximum business efficiency, is father better off leaving a half interest to his wife, or full control in the children (when the children are actually engaged in running the business)? Might it not be better to protect mother's lifetime income by insurance and leave business control in the hands of those charged with its management?

4. Assuming mother will be a young attractive widow, how would her remarriage affect the testator's feelings about leaving one half of his estate to her? Shouldn't he consider that he may be buying tax savings at the expense of family security when he seeks the maximum marital deduction?

5. Income taxes must be considered too. For example, if the surviving spouse has outside sources of taxable income, may we not be throwing our capital down the drain if the annual yield will be almost completely wiped out by the added income tax burden?

Now let's look critically at another popular tax gadget—the lifetime irrevocable trust which qualifies under the estate tax laws. The advantages are many: complete freedom from estate tax, savings of administration costs, lifetime savings of income taxes and a lifetime opportunity to see how the family is thriving under the planned trusts, so that various weaknesses which develop can be overcome in any planned testamentary disposition.

Again we must look before we leap. In the case of an aggressive young businessman, the irrevocable trust may create some problems:

1. Suppose business reverses occur. Irrevocable means just what it says. What does father do then?

2. Suppose family needs change. Today our children's needs may all be equal. Ten years from now one son may turn out to be a ne'er do well, the other two may need none of the income we have so generously settled on them.

3. Perhaps the outright gift may be better than the irrevocable trust. For one thing it is less cumbersome. For another, it can be given back to father with less attendant complications than the irrevocable trust.

When we come to the life insurance policies we face problems almost identical with those of the marital deduction. Tax benefits can be realized only by absolutely giving up control. The insurance policies cannot be tied down with restrictions on the wife's remarriage. If the widow lives only a short time she, and not the husband, ordinarily will control what happens to the bulk of the insurance principal. Insurance policy provisions which relate to common disaster must be carefully watched. We have seen many instances where the husband lost both the insurance protection he was counting on and the tax saving he was promised because of the complexity of the common disaster provisions of the marital deduction sections as they apply to insurance. Please do not accept glib statements by brokers on this phase of the law. Check the statutes, check the regulations and insist on going over the wording *you* want with counsel for the insurance carrier.

Now that we have stressed the critical approach, let us look more closely at some of the more common tax devices used in estate planning and life insurance.[1]

Lifetime Gifts

The most expensive way to leave property to your family is by will. Lifetime gift taxes are usually only three fourths of estate rates and the making of inter vivos gifts results in splitting the brackets into that of the gift tax and estate tax, thereby reducing the applicable tax rates. The value of the donated property, instead of its being subjected to the estate tax at the higher brackets applicable to property in excess of that remaining in the estate, will be subjected to gift tax at the rates applicable to lower brackets based upon only the amount of the gift. There is an additional advantage since a citizen or resident is allowed an exemption of $60,000 for estate tax purposes,[2] and an additional exemption of $30,000 for gift tax purposes.[2a]

The first $3,000 of gifts (other than of future interests) made to any person in any year is excluded from the taxable gifts. Further, even where an amount paid as gift tax is allowed as a credit against the estate tax, such gift tax is not part of the donor's taxable estate on death, while no part of the estate tax is so excluded.

The statute imposes the tax for each calendar year upon the transfer during such year by any individual, resident or nonresident, of property by gift. The tax applies whether the gift is in trust or otherwise, direct or indirect, on property real or personal, tangible or intangible. In the case of a citizen or resident, it applies on all property donated whether situated within or without the United States.[2b]

Therefore the making of gifts lowers the estate tax brackets subsequently applicable and the amount of the gift tax is not included as part of the taxable estate.[2c]

Marital Deductions

The new marital deduction provisions have removed the "income tax incentive" as to gifts between husbands and wives. Its purpose was to extend to married residents of the entire United States the tax benefits of the community property method which result from the ownership by each one of a married couple of one half of the community property.

1 For a full discussion of insurance facets of tax planning and complete citation and discussion of cases see Berman, Joseph, "Federal Tax Advantages Derived Under Proper Planning of Life Insurance and Annuities," Miss. L. J., May 1952, pp. 962-970.
2 I.R.C. § 935(c).
2a I.R.C. § 1004(a)(9).
2b I.R.C. §§ 1000, 1001, 1000(b); Reg. 108, §§ 86-18 and I.R.C. § 811.
2c I.R.C. §§ 813(a), 933(b). For a full discussion see note 3.

The *Revenue Act of* 1948 repealed the 1942 community property amendments, whereby a surviving spouse's one half of the community property escapes estate taxes because it recognizes the fact that for tax purposes the property was owned by the survivor before decedent's demise; and granted the "marital deduction" on non-community property since one-half of the property which would otherwise be entirely taxed is passed on free to the survivor.

The marital deduction is not allowed on "terminable" interests, which do not possess the characteristics of a survivor's marital interest in community property. Terminable interests which qualify for the "marital deduction" are exceptions to the rule, and therefore they must be fully and strictly complied with in regard to the terms as specified by the Act under which the exceptions are allowed.

The "marital deduction" is allowed in estates of married United States citizens or residents who died after December 31, 1947. The survivor need not be either a citizen or resident of the United States. It applies to separated married couples but not to divorced ones at time of death. It does not apply to estates of non-resident aliens, even though survivor is a citizen or resident of the United States.

It put residents of community property states back where they were before the 1942 amendments, and permits "property splitting" between married people in non-community states. For Federal estate and gift tax purposes the property now owned by two married persons is treated as though it were owned half by the husband and half by the wife. Now residents of non-community states like New York have the same tax saving opportunities as those of community property states. In computing the Federal estate tax the "marital deduction" can cut the taxable estate by the value of whatever property passes from the estate to the surviving spouse outright. This is based on the community property philosophy that one-half of the marital properties already belonged to the surviving spouse, therefore the marital deduction is limited to roughly one-half the gross estate.

This "property splitting" theory is also carried over to the gift tax. Gifts from one spouse to the other are reduced by one half, while gifts to third persons (including children) may be reported as though made half by the husband and half by the wife. Its effect on gift and estate taxes is to virtually double the exemptions and exclusions previously available to married people. Through coordination of both the gift and the estate deductions maximum savings can be achieved. Furthermore, it is necessary to keep in mind the eventual taxes on the estate of the surviving spouse.

If the main object of your client's planning is to cut his immediate estate tax, then it is to his benefit to leave at least half of his property to his wife so that he

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8 For a full discussion see the following articles: Berman, Joseph, "Effect of the New Tax Law on Wills and Trusts" Bar. Bul. N.Y. Co. Lawyer Ass'n, May 1948; Berman, Joseph, "Reduction in Estate Taxes Resulting from Etsate Planning" Comm. L. J., Aug., 1951; Berman on "Estate Planning", Miss. L. J., March 1953, 57 Dick. L. Rev. 307.

will get the maximum marital deduction. Leaving less than half wastes part of the marital deduction. Intestacy may be costly because the survivor may get less than half. If the decedent leaves too much, the survivor may disclaim her share.

The husband may transfer properties to his wife by a testamentary trust and still get the marital deduction, if the trust passes these new tests:

1. The surviving spouse must be entitled to all the income from the corpus of the trust for her lifetime or for the trust's duration whichever period is shorter.

2. The income must be payable annually, or at more frequent intervals.

3. The survivor must have the sole power to appoint the entire corpus to herself or her estate.

4. If another person is given the power of appointment, it must be exercisable only in favor of the surviving spouse.

Similar tests are provided for life insurance proceeds. Rigid adherence to the four rules above will help the decedent qualify for the full marital deduction. The assets will then be included in the estate of the survivor. This last point is important. The savings under the marital deduction are so large that they tend to obscure the possibilities to be found in saving the second estate tax on the wife. In the case of an independently wealthy survivor, or one of advanced age, the savings of the second estate tax may offset the "marital deduction" and make it less desirable. These decisions should be made only after detailed computations.

Other changes were made in the estate tax law. They affect valuation, powers of appointment, and previously-taxed property.

Valuation of Property for Estate, Gift and Income Tax Purposes[4]

The rules governing valuation vary with the type of property involved, rather than with the type of tax to be assessed. Therefore it is possible to consider such rules without particular reference to either estate, gift or income forms of taxation. There are only a few instances where litigated questions concerning the valuation of property have turned on matters of law, since valuation is primarily a question of fact to be resolved under the circumstances of the given case and to be decided upon the basis of the particular evidence produced. Therefore its essence involves not the putting up of a strong legal argument but the proper presentation of all the relevant facts, strengthened by all pertinent data and buttressed by the use of opinion evidence furnished by those specialists whose expertness is beyond question.

The essential inquiry turns on the "fair market value" of the property on the taxable date which is "the price which would probably be agreed upon by a seller

[4] For a full discussion, cases, citations and notes see articles by Joseph Berman in Chi.-Kent Rev. Sept. 1951; Monthly Digest of Tax Articles, Jan. 1952, and Proceedings of Probate and Trust Law Divisions American Bar Association, Sept. 15-17 1952 p. 44. Berman, Joseph, "Valuation of Annuities, Business Interests, Copyrights, Goodwill, Life Insurance Policies, Patents, Trademarks. Trust Interests for Federal Tax Purposes," 58 Dick. L. Rev. 58.

willing, but under no compulsion, to sell, and a buyer willing, but under no compulsion, to buy, where both have reasonable knowledge of the facts."

Therefore the factors to be taken into consideration are: (1) the existence of a market for the property under consideration; (2) the representative character of sales made on that market; and (3) similarity and dissimilarities between the property so sold and the particular property in question.

While value, at any given time, is a "fact", it is based upon a number of other facts such as the size, location and yield of real property, or the presence or absence of corporate earnings in the case of shares of stock. Valuations based on substantial evidence are rarely rejected as courts are inclined to respect the soundly formed opinions of others. *Conversely, property is rarely considered as being absolutely valueless, particularly for estate or gift tax purposes.*

The burden of proof as to correct and proper valuation lies on the taxpayer's shoulders. If the Commissioner expresses disagreement, he has the power to redetermine value and the resulting tax liability. For this purpose he may have recourse to any proper evidence tending to establish value such as the opinion of expert appraisers, reference to comparative sales, or purchase options given by the taxpayer.

The taxpayer is handicapped where the Commissioner disagrees, since his assessment is presumed to be correct and the taxpayer would be forced to rebut the presumption. In such case, the taxpayer must produce evidence which would not only enable but also require the Tax Court to make an independent determination on the facts, particularly since, in the absence of such concrete facts, the presumption of correctness favoring the Commissioner would not be overthrown.

The burden of proof resting on the taxpayer would appear to be heavier in the case of a suit to secure a tax refund than is true where review is sought in the Tax Court on a redetermination of valuation. Choice of procedure, therefore, should be given more than off-hand consideration.

Negotiation of a closing agreement is possible where valuation controversies have led to consummated transactions, but the Commissioner will refuse to settle, as a matter of policy, where the proposed transaction is only in the planning stage. The taxpayer should beware of the possibility of error in his own valuation, for he will generally be bound by the figure he himself has set and can obtain relief only where he clearly committed an error.

Date. In case of gift taxes, the precise date of the gift might need to be determined. In estate tax cases, of course, the controlling date is the date of death of the decedent whose estate is subject to tax, unless the optional valuation date is utilized.

Real Estate Valuation is usually achieved on the basis of opinion testimony furnished by qualified experts or on appraisals provided by qualified appraisers. The expert valuation should be predicated on facts not conclusions, on observable data and not "hunches".

Comparative sales prices furnish desirable evidence of real estate value, provided the test sales are not made under compulsion, because they reflect the opinion of the market.

Rental value or investment value may not only be relevant but may be decisive, for earning power may furnish a reliable guide. Assessed valuation may throw some light on the subject, but a person relying thereon should be prepared to prove that the tax assessor's judgment in the matter is based on full fair market value. Book values or actual or replacement values have sometimes been utilized, but again they furnish inadequate proof unless tied up with fair value.

Personal Property Valuation follows closely along the line laid down for real estate valuation, the prime issue being to determine the "fair market value" thereof on the controlling date. Its fair market value is generally the amount of cash which could be realized under a free and unhampered sale.

Active listed securities will be valued on the basis of a mean between the high and low prices recorded on the exchange on the particular day, or on a date closest to it, since the sales there recorded most closely reflect the presence of a free market between willing sellers and buyers.

Inactive and unlisted issues are likely to present problems on account of the difficulty of finding an acceptable comparative basis. Other sales made on days too remote from the valuation date will be disregarded, as would also be sales not made at arms length. Prices obtained under forced or compulsory sales will not be recognized any more than those which indicate a manipulated, misinformed or an exhausted market.

The valuation of large blocks of stock on the basis of sales prices obtained for small lots would be improper because of unusual factors in the case of the former. For this reason, a "blockage" rule has been formulated which should be taken into account.

In the absence of market valuation, stocks may be valued by comparison with shares of similar enterprises possessing a market sales value, or by reference to internal data relating to the particular corporation whose shares are involved. For this purpose, such factors as net asset value, earning power, dividend-paying capacity, both past and prospective, and book value of shares may become important. Offers and options to purchase shares may be considered in an effort to arrive at a fair value. Conversely, the presence of valid restrictions on the sale of shares should be noted for these may materially affect value by limiting the potential market.

Notes and mortgages will generally be valued on the basis of the amount of unpaid principal plus interest accrued to the valuation date. In the case of notes, attention should be given to such factors as (1) collectability or subsequent actual collection, if had; (2) the terms of the note including the element of negotiability; and (3) the presence or absence of collateral security and the worth thereof.

To these factors, in the case of mortgages, should be added all available information relating to trends in the general mortgage market. The worth of securities pledged as collateral to secure indebtedness must be included in the deceased owner's gross estate at full market value, but credit for the outstanding indebtedness may be taken as a claim against the estate.

Conclusion. Valuation is essentially a question of fact, hence the marshalling and preserving of all pertinent data is a matter of prime importance. The attorney should be prepared to substantiate all valuations made with acceptable documentary evidence as well as with convincing and admissible testimony.

Tax Advantages Derived from Planning of Life Insurance and Annuities[5]

Without adequate planning, clients could fall into these pitfalls:

(1) The beneficiaries may lose some of the benefits under their policies by increased taxes.

(2) The gain in taking a cash surrender value of a policy may be converted into a capital gain.

(3) A joint and survivor annuity contract can be very costly taxwise.

Life insurance policies and endowment contracts offer an attractive means for tax planning.

(1) The beneficiary who is entitled to the proceeds of the policy on insured's death, will receive a tax-free income for life if he decides to avail himself of such option.

(2) On the contrary the tax law is unfavorable to annuity contracts. Under the present 3% rule it is often an impossibility for the purchaser of an annuity contract to get back his original investment tax free.

(3) Accumulated dividends and post mortem dividends paid to the beneficiary after the death of the insured are most likely not taxable. Even though paid after maturity of the policy, they arose prior to the death of the insured and as such would be tax exempt; or they can be considered part of the proceeds of the insurance and exempt on that ground. Therefore they are not taxable "excess interest dividends".

(4) Proceeds of a life insurance policy received as a result of the death of the insured are excluded from income and are not taxable to the recipient, and it does not matter whether the proceeds are received in a single amount, in installments or otherwise. Nor does it change in any way if the payments are received by the estate of the insured or by an individual, partnership or corporate beneficiary or made directly to a trust.

It is not affected in any way by the fact that the beneficiary is also the person who took out the policy and paid the premiums on the deceased's life. The proceeds are also exempt where a creditor collects insurance taken out on the life of his debtor or a corporation collects insurance on a key employee, etc.

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5 See note 1 supra.

There are three exceptions to the rule that life insurance proceeds paid on death are exempt: (1) Payments are taxable, at least in part, where the policy or the right to the proceeds were assigned or transferred. (2) Proceeds received by a divorced wife in an alimony settlement are taxable. (3) Proceeds left with insurer under a contract to pay interest on it are taxable.

Payments made to beneficiaries under dividend interest or other participation rights are not exempt and not considered proceeds of the policy.

Even though the exemption of insurance proceeds extends to corporate beneficiaries, the proceeds are included in earnings and profits available for dividends and can still be taxable as to stockholders when distributed.

Proceeds paid to a partnership are exempt in the partner's hands when distributed because the individual partners just pick up partnership income, as is, for reporting purposes.

Pensions, retirement pay, or other compensation paid to an employee after he leaves his employ, given to him gratuitously, are not taxable annuities.[6]

Conclusions. Taxes can be cut: (1) By postponing part of the taxpayer's income to the future through an insurance plan; (2) by arranging pensions and profit sharing plans; (3) by setting up stock bonus plans and stock purchase plans; (4) by arranging favorable stock option plans; (5) through group term life insurance, where employer pays the premium, the employee designating the beneficiary; (6) by employer's binding agreement to pay up to $5000 to employee's beneficiary upon his death; (7) by group medical care and hospitalization in cases where the employer is allowed to deduct premium payments as a legitimate business expense; (8) by employer furnishing medical examinations and treatment; (9) by employer paying the premiums of employee's accident and health insurance.

The following deferred payment contracts are the safest in avoiding present high tax rates:

(1) Agreements by executives or employees to give up deferred compensation if he quits or is discharged before deferred pay is due.

(2) Agreement by executives or employees not to compete or work for a competitor during his retirement, when he could lure away important accounts.

(3) Agreement to remain available for consulting or advisory services.

(4) Agreement to waive the deferred pay if the company's earnings or sales, or some other index of its well-being falls below certain stipulated levels in the pay out period.

Family Trusts

The last few years have produced an increase in the number of family trusts organized by businessmen. They can be comfortable tax protection to married

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[6] For a full discussion, notes and citations see Berman, "Pension and Pension Trusts—Its Advantages and Disadvantages", B.U.L.Rev., Jan. 1953, p. 52-67 and Taxes, April 1953. Herbert Shainberg et al. v. Commissioner, Docket Nos. 26,838 and 26,845, and Commissioner v. Culbertson, 337 U.S. 733.

men and an accepted device for anyone who desires to provide a reasonably certain income for his family, without turning over to it immediate, or complete control of his capital funds. The beneficiary of the trust gets only the income from the trust during the term of the trust. The vesting of the principal is postponed until some specified event set forth in the trust agreement occurs.

There are two kinds of trusts generally used: (1) testamentary trusts, set up under wills and (2) inter vivos trusts, created during life. They convey an individual's property to a trustee—another individual, a bank or trust company, or an aggregate of both—to be held for the benefit of a third party beneficiary.

There is no immediate estate or income tax advantage in a testamentary trust but it may be used as a convenient control device for a family group.

Living trusts can be revocable, irrevocable or short term. A revocable trust is one which the creator has the right to change after he transfers his property to the trustee. There are no income or estate tax savings in the revocable trust but it is useful for testing the plan while the client is still alive.

The revocable trust is useful for family planning on a provisional basis. It saves delay in the transfer of property to dependents, saves probate expenses and avoids the publicity of the will.

An irrevocable trust is a complete surrender of the property and should be used only by people who will never be squeezed for funds. This generally relieves the creator of the trust from tax on the income from the principal of the trust. The property also usually escapes estate taxes. Creator may have to pay a gift tax on setting up the trust, which is 25% lower than estate taxes.

A short term trust is an irrevocable trust generally limited to a specific number of years. It must be for more than 10 years for it to get any income tax benefits. At the end of the term the original creator of the trust gets back his principal. This type of trust can be used to support parents, contribute to charity, build savings for creator's family or carry insurance on someone else's life. The number of lives for which property can be held in trust varies with the laws of the different states. The Tax Court in several cases[7] decided that trusts created by gifts made by associates are entitled to enter partnerships. The Commissioner had refused to recognize their status as such and assessed deficiencies against four principals.

Before closing this article we would like to add a check list of typical problems--some tax, some non-tax—that must be faced in any critical estate planning analysis. This check list is by no means complete, but we hope it will stimulate you to add to it.

1. Is client aware of the fact that the government makes an independent appraisal of his assets for estate tax purposes on his demise and that the government's appraisal includes "good will"?

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7 Ibid.

2. Does he know that often this appraisal is higher than that of the owner of the property involved?

3. Has the executor all the necessary proof to establish the value of client's assets on his demise?

4. Does he know the size of his estate tax?

5. Has he provided the cash necessary to pay for it?

6. If he does not have the cash, has the client decided what assets can be sold at least sacrifice to provide for it?

7. Does client know that unless his will is properly drawn his estate may be taxed twice on the same assets?

8. Has the client's will been revised recently to check the possible advantages of the marital deduction permitted by the Revenue Act of 1948?

9. Conversely, has the will been rechecked recently to make certain the client still wants to take the marital deduction?

10. Who will bear the brunt of the state tax—his family or his estate?

11. Shall client pay for wife's share of the estate tax?

12. Is client aware of the fact that jointly owned property, life insurance and certain other assets which do not pass under his will are nevertheless taxable?

13. Does his will make proper provisions in case of common disaster?

14. Is his will drawn so as to reduce income taxes?

15. In the case where trusts were created in client's will, is it so drawn that no part of the principal can ever be used, regardless of how inadequate the income may be?

16. Is client's will so drawn that one child may receive more than another if the need arises?

17. Does the will give the executor the power to continue client's business?

18. Has the client inadvertently forced the probate court to make future business decisions?

19. What adjustments shall be made if the wife has any assets of her own?

20. Is wife's will drawn so that it integrates with client's will?

21. What steps has the client taken to prevent the government from placing a higher value on his business than he thinks it is actually worth?

22. Unless client desires that his business be carried on by his family, what has he done to assure its sale at a fair price?

23. Would client like to be in business with his partner's widow and children, or some stranger she may marry? If not, what provisions have been made by his business agreements to cover this?

24. Does client know the benefits he may now get through his corporation which can prevent liquidation of the rest of his estate?

25. Has client taken advantage of the right recently granted by Congress to leave his family some tax-free income?

26. Does client know under what conditions the government will subsidize his retirement through his business, by means of a pension plan?

27. Does client know about the triple tax benefits permitted by law if his business adopts a qualified pension plan?

28. Does client's wife own any insurance on his life and pay the premiums on it? Do his children?

29. Is any of client's life insurance so arranged as to be free from estate taxes?

30. Are there any policies on client's life with different people as owners and beneficiaries?

31. Is client doing all the law allows him to save income taxes on his life insurance for his family?

32. Does client know under what conditions his wife and children may not receive all the life insurance he leaves them?

33. Has client taken all the steps to safeguard his life insurance from his creditors and those of his beneficiaries?

34. Has client unintentionally cut off any of his children from their rightful share of his life insurance?

35. Is client taking full advantage of his right to make tax free gifts?

36. Does client know that he can transfer assets from his higher estate tax bracket to the lower gift tax bracket?

37. Does client know that he can increase his family's spendable income by the making of gifts?