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TAKE IT OR LEAVE IT

(How to "Do" Estate Planning With or Without the Federal Estate Tax)

The drama of estate tax repeal, which began in 1999, reached a temporary climax on January 1, 2010. Thousands of estate planners across the country put aside their newspapers that holiday weekend and displayed shocked expressions to whoever might be looking. They had just read of the "repeal" of the estate and gift taxes, and they were worried about their jobs and about what to tell their clients.

It's an unusual "repeal" because it will self-destruct. In fact, without further Congressional action, it *will* self-destruct on December 31, 2010, and we'll all revert back to the rules in effect in 2001. Thus, estate planners face a dilemma different from the potential loss of their jobs. How do you advise your clients what to do in the face of the uncertainty created by the politicians in Washington? Do you plan that there *will* be or that there will *not* be a federal estate tax? If there will be one, *which* one do you plan for?

In a sense -- a very important sense -- the dilemma is unreal, and the questions miss the point. Even while the estate tax has been an established part of the "national consciousness," it has never been the proper starting point for the estate planning process (although it has been used as the starting point more often than not).

A more fruitful starting point for the process has always been a question like this: <u>What purpose will my wealth serve</u>? Most estate owners would answer that question by saying, "Why, to provide for my family, of course." An answer like that prompts a follow up question: "How much money will you need to continue to enjoy your lifestyle?" That conversation often leads to estate owners and their advisors completing a cash flow analysis and beginning to build a retirement income plan which will be the foundation of the whole estate plan. This foundation is necessary for all estate owners, even for those of modest wealth.

Most families who hire estate planners aren't finished at that point. They typically have enough wealth so that they never outlive their means. The estate planner must ask the clients what they intend for the excess. What is the purpose of the wealth they are clearly *holding for others* -- the wealth they will never consume? The typical response will still emphasize supporting the family.

"Support" has a special meaning. Training wheels on a bicycle *support* the inexperienced rider, but they must eventually be removed if the independence of the rider is valued. Just so, the wise estate owner recognizes that too much financial support for a beneficiary with limited vision robs that beneficiary of independence, initiative and other valued qualities. And so it is that estate owners whose wealth exceeds what they regard as an appropriate inheritance eventually find themselves considering other charitable purposes and destinations for the excess.

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Consider how much work would have been done to this point: The estate owners have thought about how they'd like to spend their retirement -- where they'd like to travel, what hobbies they'd like to pursue, what protections they'd like to create against economic hardship, catastrophic illness, nursing home confinement, and the loss of control. They have looked at each of their major assets and income streams and identified which assets will be needed to support the lifestyle they love. They've talked about their children, their grandchildren, their own brothers and sisters -- possibly even their elderly parents. They've identified what they'd like to make available for the support of each of these people.

The only taxes they've talked about are the income taxes they expect to pay while they're still alive. In planning terms, they've accomplished a great deal without concerning themselves about whether the estate tax is "to be or not to be." *That* is *not* the question. The "purpose" questions will always be in the vanguard of a properly structured planning process, and greater financial results will invariably follow.

For estate owners with any excess, once questions of family well-being have been settled, attention turns to purposes and destinations beyond the family. "What will be our impact on society at large?" "What will our name signify for future generations?" And now, for the first time in the planning process, the estate tax becomes relevant.

It has always been an essentially voluntary tax. Only two kinds of estate owners pay it -- those who choose to pay it and those who are not well advised. They are the estate owners who make their societal impact namelessly and facelessly through the federal government's wide variety of social welfare programs.

If an estate owner doesn't like Washington's programs, then that estate owner may choose to become a private philanthropist. As such, the estate owner controls through the estate plan the distribution of the charitable dollars and "disinherits" Uncle Sam to the extent desired.

If the estate tax remains or returns, the choice between governmental and private philanthropy is the same. If the estate tax some day goes away and stays away, estate owners will continue to enjoy a rich variety of choices for their purely voluntary philanthropy.

Once all the beneficiaries -- a surviving spouse, children, grandchildren, collateral relatives, dear friends, an alma mater, a hospital, other charities -- have been identified, the question becomes: What's the most efficient way to get the gifts to those beneficiaries? If there's an estate tax which the estate owner prefers not to pay, efficiency in giving will require more steps and more structures than when there is no estate tax.

But the bottom line for wise estate owners is the same either way. Take it or leave it, the estate tax *does* not . . . *will* not . . . can *never* . . . determine the purpose of wealth. Without the dreaded tax beast to distract them, estate owners and their advisors can get down to the real business of making a difference.

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