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THE BENEFITS OF ESTATE PLANNING TO THE CPA AND HIS CLIENT

by David J. Vander Broek

It is often necessary that members of professional firms take time out from their busy schedules to contemplate and review the actual operation of a particular segment of their professional practice . . . for all too often action which is necessary is not taken.

It might be revealing if we CPAs were to stop for a moment and critically review an important but sadly neglected segment of our practice: that of pre-death estate planning. The tendency is to ignore our clients' very pressing needs in this area. In the process, of course, our own professional

practices suffer along with our clients' best interests.

DEATH AND TAXES

The argument for pre-death estate planning is overwhelming. A client can spend the major portion of his lifetime striving to build his personal fortune. Question him, though, on the time and effort spent on planning an orderly and desirable distribution of assets after his death and silence may be your answer.

CPAs provide a multitude of valuable services to clients in the audit, tax, and management services areas. In most instances these could be classified as service covering their current or annual operational needs.

If our services to individual clients, in particular our tax services, stop with this annual type of current service and ignore the area of pre-death estate planning, we really have not provided them with the complete service they have a right to expect.

I need not labor the fact that death, along with taxes, is a certainty for us all. When a client dies, an estate is created. The representatives of the estate must then settle the client's final accounting with the Government. This estate may be large or small, taxable or nontaxable, planned or unplanned, but exist it does and it must be accounted for before the final transfer of the decedent's assets to the heirs.

TYPES OF ESTATE PLANNING

Estate planning can be divided into two basic categories: pre-death planning and post-death planning.

With proper pre-death planning, post-death planning often can be limited to those statutory options and procedures available to the Executor or Administrator of the estate. Thus, in this article, we are primarily concerned with the pre-death aspects of estate planning. The objective, of course, is to arrange the client's estate so that his dispositive wishes will be most effectively realized on the one hand, and the post-death problems for his Executor and heirs minimized on the other.



In view of our heavy responsibility to both the client and his heirs, we will attempt to spell out some of the pre-death measures the CPA can take to fulfill his obligations in this vitally important area of accounting.

BEN FRANKLIN'S APPROACH

Benjamin Franklin once said:

"If all printers were determined not to print anything until they were sure it would not offend anyone, there would be very little printed indeed."

The implications of this quote to CPAs in the estate planning area are apparent. The fact is that we CPAs often do not do enough estate planning for our clients. Some of us may think we are incapable of doing this type of work. Or we may be fearful of treading upon the client's sensitivities.

Upon analysis, it is difficult to accept such thinking on so important a segment of our practice. As CPAs we are ideally equipped to function properly and effectively as part of the client's estate planning team. Furthermore, as estate team members, it is incumbent upon us to take the initiative and play a major role in formulating our client's estate planning programs.

THE ESTATE PLANNING TEAM

Why is the CPA's role in estate or family planning so vital? It would be well at this point to examine the "Cast of Characters" in the Estate Planning play. In addition to the client, our cast may include the attorney, accountant, bank or trust officer, insurance man,

investment counsel, and others.

However, it is a fact that only two of the characters are absolutely necessary: the client himself, and his attorney. Thus it is fair to ask, "Is the CPA really needed?" In the answer to this question lies the critical role that the CPA should play in planning his client's estate. Therefore, let us examine the question in more detail by a closer observation and analysis of the two principals involved.

CLIENT—THE ABSOLUTE INGREDIENT

In the Estate Planning drama, the client, of course, is the leading man. Clients, as we all know, represent a variety of ages and stations of life. After working many tax seasons, and dealing with these people on a year-round basis, we CPAs often have cause to wonder at the strange and wonderful client mix we encounter. It thus follows that a CPA can also expect a variety of reactions from his clients when the subject of estate planning is posed. Briefly, one might classify the various client reactions to estate planning as follows:

1. The "Presidential" Client

I am told that Calvin Coolidge's will consisted of just 27 words: "Being mindful of my son, John, I leave everything I possess to my wife, Grace, and hereby appoint her my sole beneficiary and Executrix of my Estate".

Without delving into the estate situation of this President, one cannot help but speculate that a more effective job of planning could have been done. However, before being too critical of Mr. Coolidge's estate planning, we should also be aware that for many of our clients, the passing on of their assets at death is a very simple procedure, and that the brevity which this President obviously admired has many points in its favor.



2. The "I Don't Think of Death" Client

We also have clients who have taken little or no estate planning action simply because they will not permit themselves to think of a death situation involving themselves or their loved ones. We can all sympathize with this attitude. Still, the presence of advisors who continue to press tactfully for estate planning is obviously in the client's best interests.

Pre-death estate planning from the client's viewpoint involves a delicate balance of thoughtful consideration and a realistic assessment of desires and needs. If the client persists in the attitude that "whoever is around when I die gets whatever is left" it will reflect unfavorably on the men he relies upon for guidance and advice.

3. The "I'm Too Busy" Client

Another client whose estate planning is usually neglected is the individual who always meant to update his planning but is always too busy to get the job done. Here one may find that the last time the client reviewed his estate plan, including wills and trust arrangements, was many years ago when his personal situation was vastly different from what it is today. Happily, we often find that this type of client is only too willing to correct the situation if the advisor who brings the matter to his attention will offer the necessary services with a minimum effort on his part.

4. The "Average Joe" Client

Possibly the largest number of clients who lack estate planning are those who believe that estate planning is only for the wealthy. They cling to the notion that unless one has accumulated a fortune, the need for planning does not exist. This, of course, is completely unrealistic. Even when ignoring all planning attributes but taxes,

substantial savings can often be realized on estates possessing assets as limited as \$100,000 to \$200,000, if proper tax provisions have been made.

In summation then, it is clear that all too often, for a variety of reasons, many clients today do not have sound estate planning programs in effect. It is probably also fair to conclude that some measure of responsibility for this situation rests with the clients' estate advisors.



THE ATTORNEY — A NECESSARY INGREDIENT:

If it is essential, as previously noted, that a client be present for estate planning purposes, it is also necessary that an attorney participate in the planning and draw the appropriate wills and trust instruments.

In addition, the attorney is the one character in our play who, by training and profession, can actually do all things necessary (alone, if need be) for his client in the estate planning area. The problem, how-

ever, is that all too often the attorney has not done the complete job of estate planning that would serve the clients' best interests. And it should be added that it is not necessarily the attorney's fault that such work has not been properly done.

For one thing, many of our clients' personal affairs are such that they find little or no need for an attorney. Many clients use the services of an attorney at rare intervals only — when they purchase a home or business property, or when involved in an accident. Thus we often find that the client has no personal attorney who can bring the benefits of estate planning forcefully to his attention.

Experience also shows that some attorneys, like some CPAs, shy away from discussion of pre-death planning with their clients. There are numerous reasons for this reticence. These would include real or imagined problems involving professional ethics, inexperience of some attorneys in the estate planning area, and lack of profitability in this type of work if improperly administered. In addition, a thorough review of clients' existing estate plans will often reveal instances where the current pre-death planning consists only of a written will containing a marital and residuary trust arrangement and little else of consequence to the estate. When this is the case, it fre-

quently becomes apparent that, although a will exists, much pertinent information essential to proper estate planning has been ignored. It is a prerequisite of good estate planning that all pertinent details be reviewed and that plans be kept up to date.

THE CPA — TEAM CATALYST

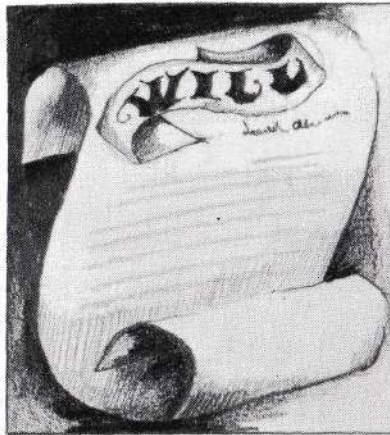
If, as we so often find, the client's pre-death estate planning has not been properly and thoroughly considered and implemented by his personal attorneys or other advisors, who then should assume responsibility in this area? It has long been my personal belief that the CPA must step in and act as team catalyst in the Estate Planning play.

The argument is further strengthened when one considers how natural and convenient it is for the CPA to be working on estate planning for his clients. All that is required can be done, and should be done, within our normal working relationships with our clients.

Consider too that normally, over a period of time, we CPAs grow close to our clients. We gain their respect and confidence. In addition, our normal annual tax return services make us privy to most of their financial affairs, including closely held company relationships and the like. Accordingly, we are often in an excellent position to judge, with the information we already possess,

a great deal about our clients' estate situations before even talking to them specifically about estate planning. By the same token, we are in contact with many of these clients throughout the year as well, and are in a position to observe any changes in their financial affairs which might require changes in their existing estate plans.

Add to this the continuous updating of our knowledge regarding changes in estate tax



laws, regulations and procedures which could influence the current estate planning of our clients. Finally, bear in mind that in many instances we act as overall financial or business advisors on various aspects of client operation.

After reflecting on the overlapping estate planning roles of the client, attorney, and CPA, it seems proper to draw a conclusion on these roles. This may well be that in many cases the CPA is the **only** advisor who is ideally placed and qualified to initiate—in conjunction with the client, his attorney,

and other members of the team — a truly meaningful and effective estate planning program.

WHY DON'T CPAs DO MORE ESTATE PLANNING?

There are probably a multitude of responses to explain why many CPAs play so limited a role in the area of client estate planning. However, many of these responses would fall into one of the following four areas:

1. Many clients are unaware that we provide estate planning services. Simple though this explanation may be, we can test its validity by asking ourselves whether, within the last several years, we have discussed estate planning needs with **all** of our clients. In short, with how many clients have we blissfully assumed that such needs have already been adequately taken care of by another member of the estate planning team?

2. It is suggested by some that attorneys frown upon CPAs participating in the area of estate planning, since they believe that this is strictly within the province of legal activity and as such should be done exclusively by attorneys. A discussion of "the practice of law" is beyond the scope of this article, although I personally do not believe a CPA's practice involved in the past, present, or future determination of his client's federal tax positions involves the unauthorized or

unlawful practice of law.

In practice there is really no reason attorneys and CPAs should not function smoothly together in this estate planning area. Our attorney friends are not strangers to us in our CPA practices. Indeed, we work with them almost daily on a variety of client affairs. Far from alienating them, the conclusion of a combined estate planning venture, properly performed, should result in strengthening our relationships with them.

What should be appreciated, however, is that depending on the actual situation, the CPA's estate planning role may well be secondary to that of the attorney. We may in many instances initiate and suggest changes alone, but should always review our work with the attorney for his approval and presentation to the client on a team basis. The task of preparing the wills and other legal instruments, of course, is rightfully that of the attorney alone.

Properly advanced and implemented, what attorney could think ill of the CPA who initiates additional services for him and cooperates to eliminate much of the burdensome detail involved?

3. Needless to say, technical competence in the area of estate planning is an essential ingredient of a successful estate planning program. Like other specialized tax skills, such expertise can be devel-

oped. Each of us today is a far better technician in his chosen fields than the day we began. This has been achieved by nothing more than hard work and experience gained on the job, along with proper guidance and training.

We can expect the same results in the area of estate planning. The technical competence needed for skillful estate planning can only be gained by actually performing estate plan reviews under proper supervision. It takes more than reading, talking, thinking, or complaining about it. All that is needed is a concrete, feasible plan of skill building that ties into the overall estate planning program of the office in question.

4. Another problem present in the area of estate planning is the question of chargeable time spent vs. the collection of our fee.

To the CPA lacking in estate planning experience, the start-up or experience-gaining cost (investment?) can be sizable. However, with reasonable experience and an organized approach to the estate planning function, the costs of this type work should be as controllable as any other facet of our practice. It should also be remembered that CPAs are not competing for this work against other estate advisors, but are seeking to pool our talents to produce the most effective possible program for our clients.

Most basic perhaps is the

need for our continuing awareness of the importance of this work to our clients. It would be well to keep in mind that only through proper pre-death estate planning can our clients pass along the fruits of their lifetime efforts to those whom they care for and cherish. If it is not done properly and carefully, errors made in developing the plan may be uncovered too late to be corrected. In such a situation, can one generalize a fixed dollar value upon the services necessary to assure a proper estate plan?

In most instances experience indicates that clients do not contest our estate planning fees if they have been properly introduced to the working of estate planning, and if the benefits of our participation have been made clear to them. It is also helpful to point out to clients that, for the most part, the fees for this type service are deductible.

DEDUCTIBILITY OF FEES

In discussing the deductibility of fees for estate planning services, we should remember that these fees are **not** incurred for personal legal services or for drafting legal instruments. Rather they are incurred in a broad and detailed review of a client's complete asset holdings, much of which normally consists of income producing property. In addition to our major counsel regarding current and future tax determinations, our advice is often

directed to investment portfolios, current tax savings plans, survival of closely held company business and, in general, may encompass suggestions for major changes in a variety of asset holdings.

As such, there is substantial support for the position that most (if not all) of the fees paid to CPAs for estate planning services are deductible as expenses incurred in the production or collection of income or in the management, conservation, or maintenance of property held for the production of income. We should then, where applicable, point out to our clients the additional benefit of their being able to view estate planning fees in the same light that they view our fees for CPA services in other areas.

TECHNIQUES NECESSARY

As has been previously noted, it is vital that CPAs participate in estate planning activities in force in their offices. The fact must also be faced that a cost is involved in gaining the necessary experience. Although each estate plan presents its own particular problems, in the majority of cases a standard planned approach or technique covering the complete engagement will facilitate the orderly preparation of the program and pinpoint the problem areas.

I personally have found the following steps, taken in order and performed by the appropriate individuals, invaluable

as a training mechanism, without adversely affecting the quality of the plan or increasing the time spent on the engagement.

1. Step one is to discuss with the client his needs and our capabilities to solve his problems. At the same time, experienced personnel who are well acquainted with the client should identify with him his basic estate desires and objectives in general terms.

2. All current financial and historical data necessary to determine the client's present estate situation should be obtained. This would include a complete listing of assets, details as to joint ownership of property, and the source of funds used to purchase such joint property, insurance details, wills, trust instruments, company benefit plans, etc.

The development of this necessary information can often be facilitated by the use of a standard estate inventory checklist, partially completed beforehand from information maintained in our own work papers.

3. Armed with this data, a relatively inexperienced individual can determine an estimate of the existing status of the client's estate plan as to death taxes, estate liquidity, beneficiary inheritance, etc. Ordinarily, preprinted formats can be successfully used to achieve this purpose.

4. With the present status

of a client's estate plan in focus, an experienced person should review the existing plan and weigh it against the client's known estate objectives. This will generally spotlight the problem areas. Suggestions for bringing the revised plan into proper agreement with the client's wishes can then be made by an experienced man.

5. The estimated effect of the changes can then be calculated by the inexperienced individual and the revised estate plan presented in such a manner as to underline the benefits of adopting these changes. Again, a preprinted format can be used in this process.

6. At this point, the estate plan can be discussed with the client's attorney (and other applicable advisors), their suggestions for modification adopted, and presented to the client.

Although certain of these steps may need to be modified because of specific situations, the basic technique has proven extremely useful, both for training purposes and for efficiency in completing the plan.

