Estate Planning Strategies Post SECURE Act

By: Sol S. Reifer, J.D. LL.M-Estate Planning, and Director at Coats Rose, P.C.,
and Kyle Post, J.D, LL.M-Tax

1. **Consider Splitting Primary Beneficiaries** With the "death of the stretch" for non-spousal IRA beneficiaries (with a few uncommon exceptions, including chronically ill and disabled), it may be prudent to name a child and the surviving spouse as the primary beneficiaries. This assumes the surviving spouse has enough non-IRA assets to live. If you have a $2 million IRA, a surviving spouse can stretch his/her 50% interest over his/her lifetime and a 40-year-old child can start his/her 10-year distribution on $1 million instead of $2 million had the child only inherited on the surviving spouse's death. When the surviving spouse passes, the child will have a new 10-year period on the other half of the IRA. This could substantially increase the distribution period and, therefore, reduce the tax bill.

2. **Look at Using Charitable Trusts to Generate Longer Streams of Income.** A charitable remainder trust (CRT) is an estate planning tool that can be created either during your lifetime or upon your death. If you are charitably minded, you can create the CRT now and donate assets but also create an income stream while you are alive. This involves donating appreciating investments to a trust, skipping the immediate exposure to the capital gains on a sale, getting a charitable income tax deduction in the year of contribution, and generating an income stream to the grantor. On death, the remainder is given to charities of the grantor's choice.

   After the SECURE Act, you can name a CRT as an IRA beneficiary and rather than name the grantor as the lifetime non-charitable income beneficiary, you name your child as the income beneficiary. This would allow that child to stretch the distributions out for more than 10 years. At the death of the child or the end of the term of the trust (i.e. 20 year maximum), the money will pass to the designated charities. Another alternative is to leave the IRA to the surviving spouse so he/she can do a "spousal rollover" and stretch the IRA over his/her life expectancy, and have the survivor create a testamentary CRT upon his/her death with the child as the income beneficiary for life or a maximum 20-year term, and then pass same to the designated charities.

   You may also want to simply name a charity as the beneficiary of the IRA and use life insurance to replace the economic value of what is given to the charity. That way, your family will receive the equivalent value of the IRA and receive the life insurance death

proceeds income tax free and over their lifetime if the insurance is held in an insurance trust! But, even if a CRT is preferred, that plan can still be paired with a life insurance trust to replace the value of the assets ultimately passing to charity under the CRT requirement.

3. **Consider Making Roth IRA Conversion.** Generally speaking, for many individuals the low-income tax years will be between retirement and age 72 when RMDs must begin. So, conversion of your traditional IRAs to Roth IRAs between that sweet spot may be optimal timing! Your tax bill will be lower during that time period than it will be after age 72 when RMDs kick in, so making the conversion pre-72 may be less costly! With a Roth IRA there are no RMDs for the owner-participant and the money passes tax-free to the downstream beneficiaries, but the Roth IRA will be subject to RMDs for those downstream beneficiaries! Stated differently, with a Roth IRA acceleration does not increase taxes since the distributions are tax-free. The acceleration just means loss of future tax-free growth due to the 10-year payout.
4. **Revise or Get Rid of the Trust Earmarked to Receive Your IRA.** If a trust for the IRAs is not necessary for asset management purposes and/or to protect against spendthrifts taking more than the RMDs, then consider not naming a trust as a beneficiary!

Please contact a member of the Trust and Estate practice at Coats Rose, P.C. to discuss.

COATS | ROSE
A PROFESSIONAL CORPORATION

Sol S. Reifer

Director

14755 Preston Road, Suite 600
Dallas, Texas 75254

Phone: 972.788.1600
Fax: 972.702.0662
sreifer@coatsrose.com

Sol is a Director in the Dallas office, with over 39 years' experience in probate administration, trusts and estate planning law, as well as, asset protection. He is involved in structuring family estates to maximize the amount of assets that pass to succeeding generations through the use of various types of trusts and business entities that will minimize the amount of shrinkage due to "transfer taxes" pertaining to such transfers (i.e, the estate, gift and generation skipping taxes). His practice includes legal consultation and structuring of business and family investment entities to protect key family assets from litigation risks. He counsels clients that estate planning done correctly is multi-generational. His philosophy is that estate planning is a lifetime "process" of planning for the accumulation, conservation and distribution of wealth between the generations.

Sol has received the designation as an Accredited Estate Planner from the National Association of Estate Planners, 1995, and was selected to "5-Star" Wealth Manager in 2010-2019 and to the Texas Super Lawyers list in 2011-2019.

Admitted

- Texas, 1980
- U.S. Tax Court

Education

- LL.M. Estate Planning, 1982, University of Miami in Miami, Florida
- J.D., 1980, Southwestern University
- B.A., cum laude, 1974, The University of Texas

Affiliations

- Dallas Bar Association
- American Bar Association
- Dallas Estate Planning Council
- National Association of Estate Planners

Honors and Awards

- Accredited Estate Planner
- Named to the Texas Super Lawyer list in the area of Trusts and Estates, 2011-2019
- Selected as a "5 Star" Wealth Manager, 2010-2019

Publications and Presentations

- "Are Living Trusts for You," T.A.L.S. Docket (March 1991)
- "Structural Considerations for a FSC," Prentice-Hall, U.S. Taxation of International Operations (October 9, 1985)
- "Choosing a FSC Jurisdiction," Prentice-Hall, U.S. Taxation of International Operations (September 25, 1985)
- "The Foreign Sales Corporation-An Analysis of Its Impact, Attributes and Planning Opportunities after the 1984 Tax Reform Act," Prentice-Hall, Tax Ideas (Fall 1985)
- "Section 401(k) Plans-An Alternative to an IRA," Warren, Gorham & Lamont, The Review of Taxation of Individuals (Spring 1985)
- "Auld Lang Syne for Professional Personal Service Corporations," State Bar of Texas, Texas Bar Journal (May 1983)

Activities

- Estate Planning Instructor, SMU Certificate Program for Financial Planning (2010-present)
- Adjunct Professor in Estate Planning, School of Business, University of Texas-Dallas (2015-2017)
- Estate Planning Instructor, Graduate School of Business at the University of Dallas (1995-2010)
- Professional Development Institute at the University of North Texas (May 1993-June 2010)
- Southeastern Paralegal Institute (June 1992 – May 1998)
- Judicial Law Clerk for Judge Jack Swink in the Probate Court of Los Angeles (1979)