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## PARTICIPATION BY THE CERTIFIED PUBLIC ACCOUNTANT IN ESTATE PLANNING

JOHN G. LARSON\*

THROUGH THE medium of a will a person directs the disposition that is to be made of his estate. The size of the estate will depend to a large extent upon the amount of estate and inheritance taxes to be paid and the costs of administration. It may also depend upon what planning was done during the life of the decedent and whether any gifts he made were motivated by considerations associated with life or constituted substitutes for testamentary disposition.

Since estate taxes and administration costs do not weigh heavily on smaller estates, the accountant generally will not be concerned with planning for persons whose estates consist primarily of life insurance or with community estates of husband and wife with a value under \$120,000. It would be appropriate, however, even in those cases, to inquire whether wills have been prepared, how recently, the plan of disposition, and whether the insurance program has been co-ordinated with the testamentary disposition. It is desirable that the clients of every accountant be made more conscious of the importance of estate planning.

As indicated, participation by the accountant in estate planning increases in importance with the size of the estate. It also depends upon the character of the assets and to some extent upon whether the accountant, the attorney, the life underwriter, or the bank initiated the client's interest.

In the larger accounting offices the clientele will include large corporations, quite a number of medium size businesses, some small concerns, and a number of clients for whom service is limited to income tax. In addition to periodical audit examinations, the services rendered will ordinarily include corporation, partnership, fiduciary, and individual income tax returns, gift tax returns, assistance on estate and inheritance tax reports, and settlement of controversies with the Bureau of Internal Revenue and state taxing agencies. These special tax problems are usually handled in co-operation with the client's attorney

In addition to regular audit examinations, many are for special purposes such as valuations under buy and sell agreements, mergers, sales

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to outside interests, and other situations where valuation problems are involved.

Accountants frequently render a substantial amount of service to executives in the handling of business problems, recommending forms of business organization, in establishing budgetary controls, in the improvement of organization structure, modernizing accounting and cost systems, devising internal reports for management, and many other accounting phases involved in management problems.

With broad experience gained in public accounting, the accountant is usually in a position to make many helpful suggestions in collaborating with bankers, attorneys, and insurance counselors in estate planning.

Obviously all of the foregoing services rendered by public accountants are not prerequisites to participation in estate planning. However, an accountant who has handled many accounting, tax, and financial problems for clients ordinarily will acquire a broad understanding of the problems involved in estate planning. Even though he has had no prior contact with the person, the accountant should be of substantial assistance to the attorney, or other adviser, who finds that estate planning problems are of such character that the accountant's experience and ability to obtain reliable basic data will be helpful.

To facilitate present discussion with respect to participation by the accountant in estate planning, a check list is submitted at the close of this paper. This list in some respects goes beyond the matters with which the accountant is directly concerned.

For this paper it will be assumed that the client requested his certified public accountant to make a study of his estate situation. To avoid any misunderstanding and to assure his client of proper service, the accountant should explain at the outset that all legal matters would be referred to the client's attorney, that if the planning should involve a testamentary trust, this subject would be discussed with a trust officer of his bank, and any matters pertaining to life insurance would be reviewed with the client's life underwriter. The accountant should further explain that estate planning is largely a matter of judgment and that the client would profit most if he availed himself of the counsel of his attorney, his banker, his life underwriter, and, where applicable, his investment counselor. This calls for team work of the highest order. Which adviser will captain the team will depend largely upon who initiated the study or in whom the client has greatest

confidence. In most instances the problems will be primarily legal with the result that the attorney will have the major role. The personal preference of the client need not complicate the way in which the team functions. Team work is so important that it may be appropriate to submit the following thoughts:

1. The adviser who initiates the study should see to it that other advisers have appropriate opportunity to confer with the client, to study the facts, and present their recommendations. Where the recommendations conflict, they should be reconciled by conference among the advisers so that the client will not lose confidence in his advisers. Carrying this out will require that each person completely subordinate any personal interests to that of the client. This requires the highest degree of objectivity

2. While there should be an understanding of the areas where each may best serve the client, there is a certain amount of legitimate overlapping of those areas. The advisers should not be insistent upon any rigid demarcation, but this does not imply that legal work could be handled by anyone other than by an attorney. Generally, the areas are:

(a) Attorney—based on the facts, the client's objectives and the assistance of the other advisers, he will prepare the "plans and specifications" of the family's future in the form of the will and donative and other instruments.

(b) Life underwriter—interpret the values and functions of present and proposed insurance.

(c) Accountant—ascertain the facts as to the estate and interpret their present and future flexibility, the economic status of the family, and with the attorney, set forth the tax phases.

(d) Trust man—because he will be called upon to assemble at least part of the elements into a workable structure, he should challenge the planning in the light of his broad experience.

3. There may be rare instances where the client will have definite views with respect to the participation or nonparticipation of certain advisers, but in all cases some way should be worked out so that where the advice of a life underwriter, an accountant, or a trust man is essential, it be obtained.

The following refers to the steps set forth in the accompanying check list and discusses the extent of the accountant's participation.

#### A. *Obtaining the Facts*

1. *The Family.* The information as to the members of the family group and the data for each person can generally be obtained by the accountant. But wherever there has been any divorce or separation, or where persons have moved from one state to another, or where any situation exists that is in any way special, the attorney should be consulted.

2. *Estate Inventory.* The task of marshalling all the pertinent facts with respect to assets and liabilities of the client and of the members of the family group is a task which the client is often reluctant to do. The accountant can relieve the client and the attorney of most of this work. It will be necessary to determine which assets are community and which are separate property and obtain the attorney's guidance where the situation is complicated.

The valuation of capital stock in a closely held corporation or of a partnership interest requires a comprehensive study for the tax reporting and the final settlement of the estate, inheritance, and gift taxes. While the study made for estate tax planning need not be so extensive, the planner should have in mind the factors that enter into value determinations. The following are major captions taken from an outline used in the presentation of this subject and indicate the more important problems involved in valuing what is frequently the most important asset in a man's estate:

A. *Book value or net worth*

Receivables—possible losses, deferred income on installment accounts

Inventories—cost, market, obsolescence, inventory reserves

Plant and property—single, limited, or general purpose, appraisal for insurance, value in use and salvage, comparable location, depreciation policy

Intangibles—patents, trademarks, leases

Assets not on books—cash value of life insurance, fully depreciated properties

Liabilities—reserves for product guarantee, litigation, income taxes, other contingencies

B. *Excess earning capacity*

Percentage allowance for normal return

Percentage at which to compute value of excess earnings

Periods selected for computation

Type and hazards of business

Partnership—adjust for partners' salaries, surviving partner's right to the name

c. *Dividends*

Yield basis

Extent to which dividend policy is controlled by client and family

d. *Comparable companies*

Actual sales on markets in relation to book value and earnings

Stocks generally—price-earnings ratio, dividend yield, relationship of company to stocks in the comparatives

e. *Actual sales of capital stock*

Arms length, factors which may distort price

Consider bona fide offers and negotiations

f. *Restrictive agreements*

Between corporation and stockholders

Between stockholders

Effective before death, after death, or both

g. *Other*

Deduction for preference shares

Consider death v income tax brackets

Blockage theory on substantial holdings of listed stocks

Controlling v minority interest

Effect of death of principal officer, key man insurance

Future prospects of company—future management, patent expiration

Optional valuation date—intervening sales or distributions

Expert opinions by investment analyst, banker, or others

While a valuation finally agreed upon with taxing authorities will usually be a compromise, careful consideration should be given to all factors entering in the determination of value. Although the accountant can do a substantial part of the work in assembling the basic data, the client's judgment as to valuation is usually quite reasonable but is not necessarily what should be used. If the attorney and trust officer are close to the affairs of the company, their judgments should have weight in arriving at the values to be used.

The life insurance coverage should be discussed with the life underwriter.

Prior gifts often are highly important. It may be found that substantial gifts have been made and not reported for gift tax purposes or

reported at less than fair market values. The gift motives may raise serious questions.

The distributions provided for in existing wills, or what they would be in the absence of wills, should be scheduled, and the accountant's interpretation of the wills checked with the attorney

Existing agreements with business associates may require revision. Often they provide for periodical determinations of values and the parties neglect to make such determinations.

Many other items in the check list call for special attention in the proper marshalling and presenting of the estate inventories of the client and other members of the family group.

The inventories, together with the life insurance coverage, should then be reviewed with the client. This review may result in recollections of additional assets or of liabilities. Often, for the first time, the client will realize the amount of his personal net worth and that of the other members of the family group.

Next will come the calculation of the transfer costs (federal estate tax, state inheritance tax, and cost of administration) Usually a flat percentage for administration, depending upon the size and nature of the estate, will be close enough for practical purposes. These transfer costs should be computed two ways: (1) if the husband dies first and then the wife, and (2) if the wife dies first and then the husband. Where the family group planning includes others, such as grandparents who have substantial estates, additional calculations should be made.

The resultant transfer costs will in many instances be quite startling to the client. He will be deeply concerned with the liquidity of the estates as he will realize that it is necessary that these costs be paid within fifteen months after death.

The attorney and others involved in the planning should be informed by this time as to the details of the estates and the transfer costs. The best way is to furnish copies of the statements to all parties concerned. The client may be reluctant to have his personal affairs and those of his family disclosed, but only through having all parties informed can the best results be obtained.

#### *B. Ascertaining the Objectives*

Except perhaps as to the client's desires with respect to who will be expected to manage the business upon the death of the client, the accountant may have but little information as to the client's objectives. This subject should be discussed in its most intimate details by the

person having the closest relationship with the client. The legal aspects obviously are of the most importance.

### C. *Formulating the Estate Plan*

1. *Indicated Result if Client's Objectives are Carried Out.* It might be advisable to again calculate the transfer costs and the resultant distributions. This might show that the client's objectives could be carried out and the taxes paid without sacrificing assets. Or, the plan may lack flexibility and the estate assets may be in such non-liquid form as to make the execution of the plan impossible or at least very difficult.

2. *Development of Plan.* In most instances it will be necessary to give very careful consideration to the various arrangements referred to in the check list.

The accountant may in a broad way outline to the client the purpose of these various arrangements and contribute much in the development of the plan and computing the financial effects thereof. This will pave the way for the attorney, trust officer, and life underwriter to develop in detail the steps required to consummate the plans.

As to some of the specific problems that might be present, the following captions will suggest what requires consideration.

#### A. *Single proprietorship*

If small, may be convenient to sell

Consider taking in partner who may be in a position to purchase community interest or husband's half with decedent's wife as new partner

Consider incorporating after income tax consequences, etc., are calculated

#### B. *Partnership*

Complications arising due to dissolution by death

Sale to surviving partners under buy and sell agreements coupled with life insurance appropriately arranged

Executor and trustee reluctant to function as partner, requiring dissolving or incorporating, compute income tax effect

#### C. *Corporation*

One class of stock—valuation problem for gifts, adverse values, may create future estate tax valuation problem, gift or other distribution dilutes voting power control



### Preferred and Common Stock.

Two classes provide flexibility

Preferred seldom presents valuation problem, is a convenient medium for gift, usually has no voting rights, income more constant

Check current attitude of Bureau of Internal Revenue with respect to stock dividends or reorganizations creating preferred stock

Flexibility permits retention by family of either common or preferred stock, depending on whether client desires family to retain equity stock with voting rights or preferred class, thus facilitating sale of remaining stock

#### *D. Buy and sell agreements between stockholders versus retirement of capital stock by corporation*

This refers to plans under which, through use of additional life insurance, the proceeds are used to acquire capital stock from decedent's estate. Under buy and sell agreements coupled with third party insurance a better plan is usually evolved than can be obtained by use of proceeds from key man insurance. Problems arise with respect to estate tax valuation of capital stock where key man insurance is carried, and income tax treatment of such proceeds used to retire capital stock.

While the making of gifts is not deemed a part of estate planning, it frequently happens, however, that when a client considers his personal financial affairs, he thinks of the financial protection of his children and of the gifts he has been intending to make for one reason or another. Thus, gifts frequently are then made as a result of estate planning under motives connected with life, which taxing authorities frequently challenge as made in contemplation of death. Accordingly, gifts to be made in connection with estate planning should be carefully considered as to their purpose and effect.

3. *Checking the Estate Plan.* It is at this point that the developed plan should be challenged from all angles. The accountant can assist by calculating transfer costs, ability of estate to meet transfer costs, and the financial protection of surviving spouse and children.

#### *D Executing Estate Plans*

While the accountant should be present at conferences in connection with the execution of the plan and may be of some assistance on vari-

ous aspects of the documents and papers, the attorney should be the draftsman.

#### E. *Periodical Review*

After the plan is in effect, the accountant can be of considerable assistance in the future to observe changed situations requiring possible revisions in the plan.

One approach is to prepare annual inventories of the estates and compute the transfer costs. These statements furnished annually to the client will keep him up to date as to the liquidity of the estate and will be of assistance to him in maintaining or acquiring the necessary liquid position.

It has not been the intention in this paper to discuss the tax problems that arise in connection with various forms of trusts, under what circumstances insurance proceeds may be subjected to income tax, the trend of Treasury Department thinking on the subject of stock dividends, treatment of proceeds to an estate or others from retirement of capital stock, or numerous other matters which present important income, gift, estate, and inheritance tax problems. Ordinarily the attorney and the accountant co-operate in the handling of such matters.

The attorney who is skilled in the drafting of wills, who has had considerable tax experience, who is a good business counselor, and who enjoys the confidence of the client and his family, is admirably fitted to direct the planning of estate matters. He will make full use of all the benefits that corporate trust arrangements offer and will be keenly interested in the adequacy of life insurance protection. For those attorneys, the accountant can by reason of his broad experience greatly facilitate the formulation of the plan and determine its effect.

As to life insurance, the accountant should bear in mind that no widow has ever complained that her husband was overinsured. Consideration should always be given to how best to handle the insurance, option settlements, and type of coverage. While these are judgment factors on which the life underwriter is best qualified, the client often attaches considerable importance to the advice of his attorney, accountant and trust officer.

## CHECK LIST FOR ESTATE PLANNING

Following are the five principal steps

- A. Obtaining the facts
- B. Ascertaining the objectives
- C. Formulating the estate plan
- D. Executing estate plans
- E. Periodical review

The matters to be considered under each step are next presented.† Frequently it is not practical to limit the planning to the affairs of one person. For community property the planning must be for both the husband and the wife. The parents and children of the client may have estate problems also, and if possible the plans of all should be integrated with due consideration to elimination of multiple tax on transfers. This will call for planning for each person involved. The following has been prepared primarily from the standpoint of planning the estate of a man active in his business, having a wife and children.

## A. OBTAINING THE FACTS

1. *The family* (husband, wife, children, grandchildren, parents, brothers, sisters)
  - Names
  - Relationship
  - Residence
  - Date and place of birth
  - Date of marriage and in what state
  - Previous marriage
  - If divorced, date of final decree, complete property settlement, children by previous marriage
  - Health
  - Dependency
  - Prospects of additional children
  - Income requirements
  - Business ability
  - Previous places of residence
  - Special situations

† THE LAW FORUM, No. 1, Vol. 1949, published by the College of Law, University of Illinois, pp. 5-15, contains considerable material very helpful in the preparation of this list.

2. *Estate inventory*

For each item ascertain.

- Whether separate or community property
- Name in which property stands
- Income tax basis and date acquired
- Income derived therefrom
- Mortgages and liens
- Present value
- Business interest:
  - Single proprietorship
  - Partnership
  - Joint venture
  - Corporation.
    - Listed
    - Closely held
    - Family held
    - (Nature of business, management, etc.)
- Real estate.
  - Home
  - Investment
- Other investments
  - Preferred stock
  - Common stock
  - Bonds (U. S. and other; on U. S. Savings, how registered)
  - Mortgages, notes, and other receivables
  - Royalties
- Cash.
  - Checking accounts (type of account)
  - Savings accounts (type of account)
- Annuity contracts
- Life insurance policies
  - Beneficiaries
  - Option settlements elected
  - Guaranteed rate
  - Protection afforded
- Life insurance trust
- Personal property
  - Household goods
  - Automobiles and boats
  - Jewelry, art works, hobbies, etc.
- Revocable trusts

- Remainder and reversionary interests
  - Powers of appointment
  - Interest in trust funds
  - Interest in undistributed estates
  - Expectancies
  - Other miscellaneous property, claims, etc.
  - Debts, in addition to mortgages, etc.
3. *Prior gifts, or transfers without adequate consideration*
- Date
  - Description
  - Donee
  - Value at date of gift
  - Donor's income tax basis
  - Were gifts reported and at reasonable values?
  - Has the donor retained any control?
  - Have the gift tax returns been examined by the taxing authorities?
  - Remaining unused lifetime exemptions under federal and state laws
  - Irrevocable trusts—review in light of present tax laws and decisions
4. *Present wills*
- Disposition (and alternate beneficiaries) provided for in wills of:
    - Husband
    - Wife
    - Parents of husband and wife
    - Children
    - Other relatives if members of family group will receive a portion of their estates
  - (Note: Where family consists of husband, wife and children, always consider practically identical wills for husband and wife with testamentary trusts for the children but with life income to surviving spouse with right of trustee to invade principal for benefit of surviving spouse.)
  - Distributions in absence of wills
5. *Existing agreements with business associates*
- For sale of partnership interest
  - For sale of capital stock.

For purchase of above interests in event of prior death of associate

Insurance arrangements to finance above

Arrangements through corporate trustee

#### 6. *Transfer costs*

Statement of taxable estates on basis of present values and present insurance coverage, arranged to show liquidity

Computations of transfer costs.

Federal estate tax.

State inheritance tax

Administration.

Executor

Attorney

Appraiser and others

Miscellaneous probate costs

Other deductions:

Federal income taxes and possible deficiencies for prior years

State income taxes

Real estate and personal property taxes

Tax on security transfers

Debts of decedent

Medical and funeral

Widow and children's awards

These computations to be:

If husband dies first

On subsequent death of wife

Total.

If wife dies first

On subsequent death of husband

Total.

Comparison of transfer costs with estate assets of a liquid nature to ascertain ability of estate to pay transfer costs

## B. ASCERTAINING THE OBJECTIVES

The person whose estate affairs are being planned must impart his desires as to who are to receive the net estate, the portions or amounts for each, and when and under what circumstances. If the desires have not been formulated, the planner may be of considerable assistance. Some of the matters to be considered are:

1. *Surviving spouse (wife) having her own half of a community estate*  
Income for life:  
Insurance  
From net estate  
Invasion of principal for benefit of wife  
Widow to receive all
2. *Children*  
Revocable trusts  
Irrevocable trusts or outright gifts for immediate protection  
Distribution by executor  
In trust with income distributions after death of wife, and principal distributions at certain ages  
Sons to take over business interest
3. *Relatives*
4. *Religious, charitable and educational organizations*  
Present time or at death
5. *Older employees*  
Present time or at death
6. *Business*  
Single proprietorship.  
To be conducted by family or a member of family (son)  
Sold as a unit or liquidated  
Partnership.  
Could son be succeeding partner?  
Sold to another partner.  
Buy and sell agreement  
Liquidated  
Corporation (the situation depends largely on extent of family holdings)  
Retain common stock  
Retain preferred stock  
Sell to other stockholders.  
Under buy and sell agreement  
Sell to outsiders  
Corporation retire all the holdings of the estate  
Would the business be carried on in its present legal form, and should its operations be curtailed?
7. *Life insurance*  
Guaranteed life income to widow  
Sum to meet transfer costs  
Under buy and sell agreements

Corporate owned—for stock retirement

8. *Allocation of death taxes*  
Whether recipients of insurance proceeds are to bear share of taxes
9. *Attitude as to executor—surviving spouse, other family member, business associate, bank*

### C. FORMULATING THE ESTATE PLAN

1. *Indicated result if client's objectives are carried out*  
Lifetime gifts.  
Contemplation of death  
Transfer costs, revised after considering variation from estate distribution set forth in existing wills, or under law in absence of wills  
Allocation of death taxes, and deductions for other transfer costs  
Resultant distributions:  
(At this point, it may be apparent that:  
Client's objectives could not be carried out because of high costs of transfer, or  
Transfer costs could be reduced by revisions in the client's plan, or  
Client's plan could be improved upon with respect to greater liquidity, increased income and more flexibility.)
2. *Development of plan*  
Following are the principal arrangements to be considered in the development of the plan.  
Living trusts (simplifies administration)  
Gifts. (consider motive)  
Direct  
Through irrevocable trusts  
Selection of gift medium  
Bequests and devises  
Testamentary trusts  
Life insurance—payable to estate v. named beneficiaries, key man, another party (consider additional coverage)

Stock purchase agreements (corporation) company v. stockholder purchase, funded with life insurance

Buy and sell agreements (partnership) funded with life insurance

Funding by other than life insurance

Revision of legal form of business structure

Revision of capital structure of corporation

Management of widow's community half

### 3. *Checking the estate plan*

After the plan has been outlined, it is necessary that the results thereof are computed on the basis of death under the present situation as to family status, tax rates and structure, and values. Frequently it will not be possible to carry out a complete study of all phases of estate planning because it will appear too complex to the client and therefore it will be necessary to accomplish first the most important revisions. Other steps will then be discussed with the client from time to time. However, it is advisable for the person in general charge of the planning to develop at least a tentative over-all plan. Before such plan is in shape to submit, either in total, or piecemeal if the client does not care to undertake or understand the entire plan, the planner should check it along the following lines:

Computation of transfer costs, and allocation

(While the minimizing of such costs is not the prime objective, it is necessary to know how much will be left of the estate for the heirs and legatees)

Liquidity so as to pay transfer costs

Adequate provision for the surviving spouse—management, income, emergency needs

Adequate provision for the children

Adequate provision for legatees

Continuity of business, if that is an important objective

Integration of testamentary trust, life insurance (and of gifts) — (parallel trust instrument with common trustee and common administration)

Integration of estate, gift and income taxes

Integration with estate plans of other members of the family group

Where separate property is present, has proper consideration been given to the use of the marital deduction or to not using it?

Because the time of death, future values and tax structures cannot be anticipated, does the plan permit flexibility?

Allocation of death taxes—insurance and other items included which, while not administered, enter into total upon which taxes are based. Payment out of general estate?

Executor—Washington law gives surviving spouse right to administer community estate. Consider coexecutor, surviving spouse and bank

## D. EXECUTING ESTATE PLANS

### 1. *Drafting of documents*

Wills (a separate check list is desirable. An example appears in the December, 1948, issue of *Taxes*)

Additional life insurance policies

Endorsements to existing life insurance policies

Endorsements to existing annuity contracts

Revisions of partnership agreements  
 Buy and sell agreements  
 Stock purchase agreements  
 Amendments to corporate charter, and minutes  
 Management agreement for widow's community half  
 Living trusts  
 Irrevocable trusts

2. *Conferences with client and others*

Client  
 Spouse  
 Children  
 Other members of family group  
 Life insurance counselor  
 Trust officer  
 Accountant  
 Investment counselor  
 Business associates  
 (The conferences will have been held at various times throughout the planning, but final conference may be advisable to ascertain that the papers drawn conform with everyone's understanding of the objectives.)

3. *Execute documents and carry out each step*

E. PERIODICAL REVIEW

1. *Planning for review*

It is advisable that the client, attorney, trust officer, accountant, and anyone else concerned with the planning understand that whenever a change takes place which may have an important effect upon the plan, that either the attorney or the client be advised.

Changes that may require revisions of will and of plan generally

Family  
 Death of a member  
 Birth  
 Marriage  
 Divorce or separation

Business.

Increase or decrease in value  
 Changes in management  
 Failure  
 Entering new business  
 Sale of business interest  
 Retirement from business  
 Son enters or leaves business

Investments.

Increase or decrease in values  
 Material increases or decreases in holdings

Insurance.

Taking out additional coverage  
 Death of a business associate insured under a buy and sell agreement

Changes in laws, regulations or important decisions.

Income tax  
 Estate tax  
 Gift tax  
 Trustee's responsibilities

2. *Regular review*

The ideal situation would be that annually, following the audit of the accounts of the business (if the investment therein is the principal asset of the estate), and preparation of income tax returns, an inventory be made of the estate and the transfer costs computed. This will indicate whether the transfer costs can be met without upsetting the plan.

If the client furnishes this statement to each person concerned with the planning, there can be a periodical challenge of the soundness of the plan and it should prompt suggestions from the client and all others.

3. *Revisions*

The original study, and any later changes, will furnish the background for any appropriate revisions.