TAX AND WEALTH ADVISOR ALERT: HOW MUCH SHOULD A TRUSTEE BE PAID?

Let's say you have been named trustee of a loved one's trust. Now, you've just found out how much time and work it will take to fulfill your trustee responsibilities and duties. How much should you be paid to be trustee?

Because every situation is unique, there are no hard and fast rules in Wisconsin on what constitutes "reasonable compensation" for a trustee. Most trust documents will say that the trustee is entitled to "costs and reasonable compensation," but what does that really mean?

First, you should check the actual trust provisions to see if the document provides more specifics on how much you should be paid. If the trust document does not provide specifics, Wisconsin statutes and case law give *some* guidelines on how much you should be paid. Wisconsin statutes specify that trustees are entitled to compensation that is "reasonable under the circumstances." The factors taken into consideration include the size of the trust estate, its complexity, the trustee's skill and experience, the risk assumed in administering the trust, including making discretionary distribution, the amount of time the trustee puts in, and the quality of the trustee's performance.

It is worth noting that if a trust is administered by a corporate trustee, a corporate trustee would normally charge between 1-2% of the trust assets.

A trustee is entitled to be reimbursed for expenses that were properly incurred in the trust administration. This can include the trustee's travel expenses to administer the trust. A trustee should keep all of his or her receipts for these expenses.

Finally, in order to avoid a conflict, a trustee should be transparent with the trust beneficiaries about the trustee's fee. The trustee should clearly document the time he or she spends overseeing the trust so that the beneficiaries know that the requested trustee's fee is made in good faith. The trustee could ask the trust beneficiaries to unanimously agree in writing upon a trustee's fee to take the ambiguity out of the situation, but this can get complicated if the beneficiaries are minors or are disabled.

If you have any questions, please contact Kelly M. Spott at kelly.spott@wilaw.com or 414-276-5000.

TAX AND WEALTH ADVISOR ALERT: WHAT SHOULD BUSINESSES KNOW ABOUT THE TAX PLAN?

If you've been following our posts, this is the third installment in our series on the Tax Cuts and Jobs Act, the tax-legislation overhaul passed by Congress and the President at the end of 2017. Previously, we highlighted the most important changes affecting individuals and non-profits. This week, we're discussing big changes affecting businesses claiming deductions. Most people have heard that Congress reduced the corporate tax rate, but people may not realize that Congress paid for that reduction by changing how businesses claim deductions. We'll discuss some of those changes here.

To start, net operating losses (NOLs) can no longer be carried back to prior tax years, and taxpayers must limit their deduction to 80% of their taxable income instead of 100%. These changes may increase taxable income for businesses each year (relative to what taxable income would have been without this change). The good news is that NOLs may now be carried forward to future tax years indefinitely. So, businesses won't lose the benefit of their NOLs, they just lose the benefit of timing.

For businesses claiming research and development expenditures, they can no longer immediately deduct them. Instead, businesses have to capitalize these costs and deduct them over five years. This means businesses have to reduce their taxable income slowly over time instead of claiming a larger deduction immediately. This will increase taxable income; however, businesses have until 2022 before this rule takes effect.

The Act reduced some businesses' ability to deduct interest expenses. Starting in 2018, businesses must determine the amount of interest they can deduct based on a formula. Luckily for small businesses, Congress created an exception to this limitation. "Small businesses" are those with average annual gross receipts of $25 million or less. You might wonder if partners and S corporation shareholders get around this rule because their businesses pass through taxation–they do not; however partners and S corporation shareholders may be able to carry forward interest expense unused by the partnership or S corporation to future years.

Although not great news, the Act explained the above-mentioned changes relatively clearly. Congress explained another change less clearly, and it's causing disagreement among tax practitioners. Previously, businesses could claim a deduction for meal and entertainment expenses, ranging from 50-100% of those expenses. The Tax Cuts and Jobs Act made several changes to the rules governing this deduction, including eliminating the deduction for entertainment expenses (yes, this means those company Brewers tickets are no longer deductible), reducing the deduction for meals provided to employees at the employer's convenience from 100% to 50%, and *potentially* eliminating the deduction for meals with clients, referral sources, and business prospects. For relationship-based businesses, this latter change may be substantial. Tax practitioners interpreting the plain meaning of the law say those meals with clients, referral sources, and business prospects will not be deductible. Tax practitioners interpreting the intent of the law say those meals will still be deductible because Congress didn't eliminate this deduction on purpose. At this point, the confusion makes it nearly impossible for these businesses to plan for their tax liability in 2018.

On April 2, 2018, the American Institute of CPAs (the AICPA) asked the U.S. Treasury Department and IRS to issue guidance on this issue immediately. Until the Treasury or the IRS speaks up, businesses taking a conservative approach to tax planning might assume these expenses will not be deductible. As with all changes to the tax code, we will keep an eye out for updates and advise our clients as guidance is released.

TAX AND WEALTH ADVISOR ALERT: WHAT SHOULD NON-PROFITS KNOW ABOUT THE TAX PLAN?

If you've been following our posts, this is the second installment in our series on the tax plan. Previously, we highlighted the most important changes affecting individuals. (Read full article here) This week, we're discussing the most important changes affecting non-profits. Spoiler alert: the tax plan may cause non-profits to see less revenue and owe more tax in the future! Why would Congress disadvantage non-profit organizations, you ask? In most instances, non-profits were collateral damage.

For starters, we discussed in last week's post that Congress doubled the standard deduction, which will benefit some individuals. By doubling the standard deduction, fewer taxpayers will itemize deductions. Because those who claim the standard deduction do not receive a tax break for donations to charity, those taxpayers have less incentive to donate. This means non-profit organizations may see fewer donations coming through the door. All hope is not lost, however, because the tax plan increased the itemized deduction available to those taxpayers who do receive a tax break for donations to charity. However, this may mean non-profits have to push for larger donations from fewer donors.

Not only did Congress reduce the incentive to give to charity each year, but it reduced the incentive to give at death, too. We also discussed in last week's post that the tax plan doubled the amount someone may leave at death estate-tax free (up to $11,200,000 in 2018), which will benefit the wealthiest individuals. Because fewer estates will receive a tax break for donating to charity, it's possible fewer individuals will provide for charitable donations in their estate plans.

If non-profits weren't already panicking, they should take a seat for the next few changes to the tax code. The tax plan tried to curb what some see as excessive compensation by imposing a 21% excise tax on salary and benefits paid to any one employee in excess of $1,000,000. Although $1,000,00 may seem lofty for a non-profit and may seem like an appropriate limit for non-profit employees such as college football coaches, this change will hurt charitable organizations trying to attract talent away from the private sector through competitive compensation packages. This excise tax may make such compensation packages cost prohibitive.

Further, non-profit organizations may see an increase in the tax they owe on Unrelated Business Taxable Income (UBTI). For those who aren't familiar, the UBTI rules require a non-profit organization to pay tax on income earned through activities unrelated to charitable purpose. Previously, if a non-profit organization engaged in multiple activities unrelated to its charitable purpose, it could offset the gains and losses from those activities against each other, possibly eliminating taxable income. Going forward, non-profits can't offset gains and losses across activities. UBTI will also be increased by certain fringe benefits paid by a non-profit organization to its employees. Again, this will make it more difficult for these organizations to attract talent away from the private sector.

In sum, non-profits should know that they will see a handful of changes to their tax returns, and they won't likely be happy with the changes. These organizations might consider separating operations into different legal entities to avoid the $1,000,000 cap or condensing unrelated activities to avoid the rule against offsetting gains and losses. As of now, we will continue brainstorming creative solutions for our non-profit clients so they can pursue their charitable missions with tax efficiency.

TAX AND WEALTH ADVISOR ALERT: WHAT SHOULD INDIVIDUALS KNOW ABOUT THE TAX PLAN?

I'm sure you've heard the news by now–Congress passed sweeping tax legislation at the end of 2017. These changes to the tax code will affect everyone from hairdressers to private equity fund managers. Everyone now wonders, what do I need to know about the tax plan? Over each of the next several weeks, we will tailor our summary of the tax plan by interest group, providing you with what you need to know based on your interests. This week, we will discuss the most important tax law changes affecting individuals. In the following weeks, we will discuss the changes affecting non-profits, businesses claiming deductions and credits, and businesses considering pass-through or corporate taxation.

When I said this week's post would discuss tax law changes affecting individuals, you probably thought to yourself, doesn't that mean everyone? Yes, it does. Any individual who files an individual income tax return (Form 1040) will see a change on his or her tax return for 2018. You've likely heard about the big-ticket changes–the elimination of many itemized deductions, the doubling of the standard deduction, and the overall reduction of the tax rate. It's important to note that Congress left unchanged the preferential 20% tax rate for long-term capital gains and qualified dividend income. Also, Congress modified the alternative minimum tax (AMT) system, meaning fewer individuals will be subject to AMT than before.

The tax bill made numerous changes to the deductions available to individuals. For those who itemized in the past, the deductions you once claimed may have been eliminated, like the miscellaneous itemized deduction for tax preparation fees or the deduction for interest paid on home equity lines of credit, or the deductions may have been limited, like the deductions you claimed for property taxes and state and local income taxes (now limited to $10,000 combined). By doubling the standard deduction, many individuals who itemized previously will now claim the standard deduction. Although this sounds like it will cause you to pay more tax, the modification of the tax brackets and reduction in tax rates (such as the top rate changing from 39.6% to 37%), may balance out your tax bill.

For the wealthiest individuals, the tax plan gives your estate a break at death. In 2018, individuals can leave $11,200,000 free of estate, gift, and generation-skipping transfer tax (up from roughly $5,500,000). The other rules affecting the estate and gift tax regime, such as the surviving spouse's ability to use the deceased spouse's remaining exemption, remain unchanged. This means married couples have an exemption of $22,400,000.

Now that we've discussed all the major changes, what changes to the tax code have received less media attention? For starters, the tax plan repealed the deduction for moving expenses and the exclusion from income for moving expenses reimbursed by your employer. These changes will have a negative impact on your tax bill if they apply to you. Alternatively, the tax plan expanded the qualified use of section 529 plan funds (a tax-advantaged savings plan for education expenses) to elementary or secondary public, private, or religious school tuition and eligible expenses. This change will have a positive impact on your tax bill if it applies to you.

For those taxpayers subject to the "kiddie tax" (the regime previously applying the parents' income tax rate to a child's income), they will see a change on their tax return going forward. Now, earned income will be taxed at rates applied to single filers, and unearned income will be taxed at rates applied to trusts and estates. These changes will likely increase the amount of tax owed on a child's income. For those taxpayers borrowing from their retirement plans, the tax plan gives you more time to pay off that balance, potentially saving you income tax.

As you can now glean, the new tax laws are all over the map–some increase the amount of tax you will owe and others decrease it. It's important to note that most of these changes will expire on December 31, 2025. Until then, we'll continue helping clients assess important decisions in light of the new tax code.

TAX AND WEALTH ADVISOR ALERT: FINANCIAL ADVISOR SUCCESSION–PART ONE: GOAL CLARITY

Given my combination of experience (13 years in the home office of a national life insurance company) and expertise (working with clients on the creation and execution of succession strategies), a growing part of my practice is in leading financial advisors in the creation of a succession plan that ultimately leads to the sale of a practice. It only takes a glance at the demographics of the advisory world to understand what is at stake. The average age of an American financial adviser goes up materially every year as the recruiting and retention statistics in the industry continue to get more dire. In the next few blog posts, I wish to explore some issues that must be dealt with in the transition of an advisory practice:

1. Goal clarity of both the selling and buying advisor.
2. Valuation of the practice.
3. Transition of client relationships.
4. Managing the risks to the buyer.
5. Taxation of the transaction to the seller.

FINANCIAL ADVISOR SUCCESSION–PART ONE: GOAL CLARITY

I think it might have been A. A. Milne in the book "Winnie the Pooh" that first coined the saying: "If you don't know where you are going, any path will get you there." With something as intellectually and emotionally challenging as financial advisor succession, it is critical for both the buyer and seller to be very clear and precise about what they want and need from the transition.

In my experience working with advisors, the set goals are rarely clear; however, the seller wants to get as much purchase price as possible while the buyer wants to pay as little as possible. Certainly price is a factor. The goal of the business owner in developing a succession plan is to maximize value and take care of the people the business owner cares about. But, the successful advisors I have worked with share a common attribute, their financial success is due to their selflessness. Their systems, structures, practices, values and beliefs all center on the achievement of their clients' wishes, hopes, dreams and desires.

With this cultural mindset, it is not uncommon for the number one goal of the seller to be ensuring his or her clients are taken care of. I am working with a seller right now whose top transition goal is "making sure my clients are taken care of as well or better than I promised. In fact, I want the top goal of this transition to be just that; the buyer must be committed to delivering the promises I made to my clients." Powerful, right? But also, clarifying. That goal has had immense impact on client transition strategy, staff retention, and even price and terms.

So, as I reflect on the numerous financial advisor transitions I have quarterbacked, here is a representative list of seller goals:

- Client satisfaction
- Providing an advisor who is young enough to "be around when my clients most need the advice"
- Staff retention
- Strong "fit" with referral sources and advisory team members (including other advisors, attorneys, accountants, bankers and investment bankers)
- Values align
- Personality consistency

Again, maximizing price to the seller, particularly on an after tax basis, is always on the list. But, again in my experience, it gets little focus compared to other goals, probably due to the fact that these advisors built attractive businesses by concerning themselves with doing the right thing rather than the proceeds of any particular transaction.

On the buyer's side, the goals tend to surround client retention. We will talk in a later blog post about typical pricing in these transactions, but, to put it in the simplest terms, the "typical" price of an advisory practice is very enticing to the buyer if the buyer can retain a high percentage of the client relationships and their resulting revenue. With that in mind, the buyer's goals tend to focus on the transition period:

- The seller's advocacy of the buyer as the right person for the client
- The successful transition of client relationships
- The successful transition of referral relationships
- An in depth understanding of the seller's systems and processes and how those impact the client experience

- Oftentimes, a desire to be mentored by the seller on business, relationship building and substance

As to where the most common goal conflicts exist, the top one is the contingency of the purchase price. As I stated above, simply put, in my opinion, if retention is high, when a market common purchase price of 1.5 to 2x recurring revenue is used in the sale of an advisory practice, the buyer is getting a great deal. Given that, most of the time, the seller is not willing to make the purchase price contingent upon retention. But, again given the critical importance of retention, it is as common for the buyer to want a purchase price contingent on retention. The buyer's strategy is twofold: one, obviously, is to shift the risk of retention to the seller. The other is to financially motivate the seller to economically own retention and to take all possible steps to insure the client stays with the buyer. One place where we have sometimes bridged this gap is to use a contingent purchase price wherein the seller gets the full purchase price with average retention and gets a material increase in purchase price with high retention.

The other common area of goal conflict is staff. This conflict is natural and understandable. The seller believes strongly in the staff he or she put together and sees it as the most obvious way to keep the clients and their revenue intact. The seller believes the client has bought "the team" and thinks the buyer would be crazy to change it in any way. The buyer, on the other hand, often has a different style with different strengths. These differences might mean that the buyer's best team has different strengths and skills than the seller's perfect team. Also, the buyer might have a team already and want to use that team to service the seller's clients. These conflicts can often be resolved with creativity, but, in my experience, lack of agreement on the post-transaction team is the issue that craters the transaction.

So that is the first step to a successful advisory transition. Capture each party's goals and see if they are consistent. If so, then the transaction can move forward. If not, the parties need to determine if they can creatively compromise. If they figure out a workable solution, it is on to the next topic- valuation or, stated another way, an agreement on price.

TAX AND WEALTH ADVISOR ALERT: CREATING A SUCCESSFUL SUCCESSION PLAN: VALUE

A successful succession plan maximizes the value of the business in order to take care of the people the owner cares about. Of course, that raises an important question: "What factors maximize the value of a business in transition?" That question leads to another important question: “Why does a buyer want a particular business?” The answer to this question is of course that the buyer wants a business that will produce sufficient post-transfer cash flows to provide the buyer with (1) sufficient cash to service the debt or equity raised to facilitate the purchase, and (2) earn a rate of return commensurate with the risk of the purchase. Essentially, a buyer wants a business where post-transaction cash flows are projected to grow. With that in mind, here are some of the factors the buyer will find important:

1. A large, diverse customer base – the more customers that are producing the revenue that leads to cash flow, the safer the cash flow will be to the buyer. Contrarily, if the revenue comes from fewer customers, the riskier the replication and retention of the cash flow, and the less the buyer will be willing to pay.
2. Available capacity – the more the business’s revenue can grow from the current capital and people, the more the buyer will be willing to pay. The reason, of course, is that any growth in revenue should lead to a commensurate growth in profit. On the other hand, if revenue growth will require substantial investments in people and capital, the less the buyer will be willing to pay.
3. Innovative product or service – the more unique and valuable the business’s product, the more the buyer will be willing to pay. If the product or service is easily replicable by competitors – or worse, is viewed by the marketplace as a commodity – the less the buyer will be willing to pay.
4. Is the owner Michelangelo? – The question I often ask my succession planning clients is, “how much would you pay for Michelangelo’s sculpture studio?” The answer, of course, depends on whether Michelangelo will continue to sculpt. If so, you would pay top dollar (presuming Michelangelo will not demand all of the profits in compensation for his unique skills). If not, you would pay nothing. Likewise, if the cash flow depends on the skills or relationships of the seller, the buyer will pay less. If, on the other hand, the revenues depend on the talents and relationships of the team the seller has built, the buyer would be willing to pay full value presuming that team is willing to stay.
5. Age of the capital and/or team – if the revenue-producing equipment and/or people are getting too old to be counted on for the long term, and as a result the revenue generation capabilities of the business depend on finding and investing in new equipment and/or people, the buyer will be willing to pay less than if the equipment and team have a long useful life.
6. Do the financials tell the true story? – Again, the buyer is purchasing future cash flows, and certainly the best indicator of those cash flows is the business’s historic revenues and profits. Oftentimes, the seller has used the business checkbook to pay for personal items, and when that has happened, the seller will seek to add back expenses to cash flows to “normalize” expenses; in other words, to show the buyer what the business is expected to produce when run as a business, not as part business, part personal checkbook. The problem is, the more add-backs the seller applies, the less credible the books become to a sophisticated buyer (not to mention the greater the perceived business risks for a company that was not run compliantly).

With these value drivers in mind, for a seller looking to transition his or her business, it is important to audit these factors and, if possible, remedy the weaknesses. If the owner can better empower the team, report expenses accurately, and focus more on customer diversity, the seller can potentially add 20-25% to the purchase price. And, of course, the time to start addressing these concerns is 3-5 years before the business is to be sold. Any time later than that has a much lower probability of success.

TAX AND WEALTH ADVISOR ALERT: BUY-SELL PLANNING: THREE MISTAKES TO AVOID

One of the critical planning tools a closely held business plan should have is a buy-sell plan. A plan that addresses what happens to ownership of the company upon certain "triggering events," such as the death, disability, or termination of an owner. A buy-sell plan is a common document for a closely held business, and these plans often contain the same design flaws.

1. **It provides for a fixed price.** At its heart, a buy-sell plan frequently requires someone (an owner) to purchase the stock of someone else (another owner) upon a specific event (the owner's death). Therefore, the agreement needs to establish the price and terms of the stock sale. Price can be established in one of three ways: (a) an agreement between the parties, (b) a formula, or (c) an independent third party appraisal. It is not uncommon for the business owners to agree between themselves on the value of the business and use that value in the buy-sell agreement. There is nothing inherently wrong with that strategy; if no one knows whether they will be the buyer or seller when a triggering event happens, both parties should negotiate a fair value. The problem comes when the owners fail to update their buy-sell plan and the so called "stipulated value" becomes stale over time. The solution is not to avoid a stipulated value; rather, it is to put a provision in the agreement that when the stipulation is too old (18 months is common), the business must be valued in an alternate fashion (such as by appraisal).
2. **It is inconsistent with the succession plan.** I work with a second generation company that has done a very good job of bringing the third generation into the business. The new generation had to work elsewhere first, come in on the ground floor, and now are in a position to take the company to the next level. If you asked the second generation, upon a "triggering event," they planned to bring in the third generation as owners. Indeed, most of the long term strategic planning was centered around making the third generation owners. All of that is awesome and well done. The problem? The buy-sell plan had the second generation owner-siblings buying each other's stock. If things played out the way they actuarially should, the youngest second generation sibling would end up owning 100% of the stock. Another problem? A second generation sibling has children in the business, and one of the main ownership transition strategies of using family gifting does not work under the plan.
3. **It is not funded.** Generally, the purchase terms of a buy-sell plan require the purchasing party to use cash or a promissory note to buy the equity. Consider a

$5,000,000 business with two owners. If death is a triggering event, and one of the owners passes away, generally the other owner will not have $2,500,000 in cash lying around to purchase the deceased partner's equity. So, under most buy-sell agreements, this purchase would have to be made with a large long-term promissory note.

But let's take a quick look at that transaction post-death. Presuming both partners were critical to the business's success, the business is likely to suffer some economic loss following the death of a partner. If that partner had a large role in revenue generation, the loss could be dramatic. The surviving partner will be in a situation where a weakened company needs to support his household income and service a sizeable promissory note. On the other hand, the financial future of the deceased partner's family is dependent on a weakened company's ability to service the note. Not to mention the fact that there will be little or no capital available to invest in company growth.

It is largely for this reason that I insist my clients fund their buy-sell plans with life insurance. A $2,500,000 life insurance policy gives the survivor exactly what he needs (cash to purchase the decedent's equity), the decedent's family what it needs (risk free cash), and the business what it needs (full access to all of its capital to weather the storm and grow). While life insurance is not free, at least it can be paid for while both partners are alive and the business is not in a post-death weakened condition.

So, for closely held business owners, first make sure you have a plan of ownership and leadership succession. Then make sure the buy-sell plan effectively implements the succession strategy, provides for a fair price at transition, and is appropriately funded.

For more information on buy-sell planning contact Joe Maier at 414-276-5000 or joe.maier@wilaw.com

---

TAX AND WEALTH ADVISOR ALERT: CHOOSING A TRUSTEE: IT IS ALL ABOUT TRUST PART 1—DISCRETION VS. DIRECTION

Virtually all of my clients leave property to the next generation through trusts. Generally, these trusts last for the lifetimes of their children and oftentimes for further generations, as well. We setup trusts this way to protect those children from creditors, predators, and divorcing spouses, and previous blog posts have fully described how and why this works. This blog post covers a different issue—the amount of specific direction the trustee should receive regarding management of trust property.

At one extreme, the client can give the trustee very little guidance and allow the trustee to make all of the decisions over the trust. For example, the trust document can allow the trustee to decide what to invest in, who to retain for advice and counsel to the trust, and when (and for what reasons) to make distributions to the beneficiaries. At the other extreme, the trust document can give very specific direction. For example, the trust document can require that the trustee invest only in ETFs or dividend paying stock, maintain a 60/40 equity to debt allocation, and name specific advisers. The trust document can limit distributions of principal except in times of hardship, require the trustee to distribute an amount equal to five percent of the trust property each year or an amount equal to the beneficiary's W-2 income, or limit distributions for education unless the beneficiary maintains a 3.0 GPA. But, which method is better—discretion or direction?

Clients ask me this question often. I respond by reminding them that their estate plan needs to implement their own strategy to take care of the people they care about. Their strategy needs to be an extension of their parenting beliefs and values; at its best, it should mimic what they would do if they were alive and had no personal economic need for the trust property. With that context in mind, we begin to consider certain scenarios that test those beliefs. The answers to those "what if" questions provide guidance as to the right framework.

An example might be helpful. One of the fears of leaving large sums of money to children is a fear of laziness. To avoid their children becoming "trust fund babies," parents might put a provision in the trust that the trust shall make a distribution to the child each year equal to the child's W-2 income. On one hand, that is a perfect solution; the child is incentivized to be very productive and double his or her income. But, then we start scenario testing. What if your child was a doctor making $500,000 per year and wanted for nothing? If you were alive and had the money available, would you transfer another $500,000 to the child? The answer is consistently, no. What if your child was a teacher making $30,000 and, based on child care needs and the like, needed $50,000 to "make ends meet"? If you had it, would you give $50,000 to that child? Often the answer is, yes. What about a stay-at-home parent without W-2 income? Would you give that child nothing if you had plenty to give?

These discussions often lead to the client envisioning ever more complicated structures. For example, we could solve the doctor problem with a maximum distribution, the teacher problem with a "teacher (or other respected but underpaid profession) multiple," and the stay-at-home problem by creating a "stay-at-home-parent compensation equivalent." But, of course, for every solution, there is another question—what if the teacher is married to a well-paid CEO?

The point of this exercise is to point out the value of being able to solve each of these problems given their unique facts. I might still decide to provide money to the hard-charging doctor who is investing everything into her practice and her retirement to give her family some “fun money” to take a well-deserved vacation. I might decide not to give the teacher anything because he blows his paycheck at the bars and the casino. Simply put, if the test is what the parent would do if he or she were alive, the answer almost always is “we would make each decision as it comes and not constrain ourselves in any way.” So, with that in mind, isn’t the best trust design to provide the trustee the same full discretion to consider all of the circumstances and make a real-time decision?

The answer is yes, with one huge caveat. Is there a trustee the parents trust? And “trust” is not simply a matter of having a true-north moral compass; trust means the parents have to choose a person who can execute on the parents’ values and beliefs. In other words, in the same situation, a trustee that would do what Mom and Dad would have done if they were alive. Perhaps surprisingly, in a vast majority of situations that I deal with, that person exists, and we have the perfect structure: A parental stand on whom we place no restriction. But what if that person does not exist? While some practitioners and clients then want to shift back to specific rules, in my opinion, there is a better way. We should still provide strong discretion to the trustee, but incorporate specific values and beliefs rather than hard or fast inflexible rules. For example, instead of matching the W-2 income, incorporate the parents’ value of hard work, disdain for sloth, and respect for a stay-at-home parent. Instead of a hard and fast 3.0 GPA cut off for education expenses, we can provide a values statement that education expenses are an investment in a productive future wherein the child’s coordinating investment needs to be hard work and academic rigor. The trustee can then determine whether a 2.5 GPA is the result of a hard-working child overstretching his abilities or a kid on the “Malt Monday, Tequila Tuesday, Wine Wednesday” education plan.

So, my advice: make the trust flexible enough to deal with every changing circumstance and ever-evolving people. Do not restrict the trustee, but rather choose a parenting clone, and if that perfect parent clone does not exist, pick a trustworthy, smart, thoughtful decision maker and have the parents put their values and beliefs in the trust document as a decision-making GPS for the trustee. This is the structure that will best take care of the people the client cares about.

TAX AND WEALTH ADVISOR ALERT: CREDITORS, PREDATORS AND DIVORCING SPOUSES ARE WHY HAVING A TRUST MAY BE BETTER THAN A

WILL

As I have stated before, when people find out what I do, the most common "cocktail party" question I get is "do I need a will?" Over time, my answer to that question has evolved. I used to respond by asking a couple of questions: Do you have minor children? Who do you want to get your property when you die? Now, my answer is "you don't need a will or an estate plan, but let me tell you why you want one: to protect your loved ones from creditors, predators, and divorcing spouses."

As I have mentioned in previous blog articles, virtually all of the plans I have created in the last three years, leave Mom and Dad's assets not to the children, but to lifetime trusts for their children's benefit. As I tell my clients, the reason I recommend this structure is simple—if you could control your property and still keep it protected from creditors, you would. Unfortunately, under the laws of most states, the clients cannot do that. In general, they have a choice; own the property and expose it, or give away the property—along with control and enjoyment of the property—and protect it. Generally, clients are appropriately reluctant to give away the property they worked hard for and are left accepting creditor risk.

But, those same rules do not apply if Mom and Dad leave property in trust for the children. In that case, those children can control the property as trustees and enjoy the property as beneficiaries. However, because those children did not create the trust (Mom and Dad did), if the children engage in dumb behavior and get sued, unlike property left to children under a will which would be exposed to creditors, the property left in trust is not exposed. Or, if the children make poor investments in a business and sign personal guarantees, the property in trust cannot be seized by the bank, whereas property left outright to those children can be seized. And, perhaps most important, given the statistical likelihood that a child's marriage will end in divorce, property left to the child in trust, will stay with that child, and not go to the person that broke the heart of Mom and Dad's baby.

So, do you need a will? Maybe not. Do you want an estate plan that protects your family from creditors, predators, and divorcing spouses? Absolutely.

TAX AND WEALTH ADVISOR ALERT: BUILDING A GREAT PLAN… STEP FOUR: RESULTS, BEHAVIORS, AND BELIEFS

My last blog post focused on how to build the plan to get from where you are to where you want to go. The plan, to bridge the gap to our most awesome future, requires us to figure out what we need to stop, start, and continue doing to get from where we are to where we want to be. Of course, it is not nearly that simple.

Think of all of the situations in which we profess to want change. Maybe we want to have greater sales success. Maybe we want to lose 30 pounds. We might want to cut spending, so that we can save more. Oftentimes what we need to start, stop, and continue doing is obvious or even simple. Yet we consistently fail to do what needs to be done. Why?

I do a lot of performance, executive, and life coaching. This question is the crux of 95% of what people need help with: “I know what I need to do, but I am consistently failing to do it. What is wrong with me?” Answering this question requires us to step back and be a bit analytical about how results are achieved and think about the vision. The vision is a collection of results that will make us feel a certain way, for example, one of my current clients would like to increase his business profits by 30% because that is what is needed to allow his spouse to stay at home with their children. Another client would like to increase his commission income by 20% so that he can purchase his first BMW. As I stated, the “why” is critical, but so is the “what.”

Again, going back to the science, the 30% profit growth or the 20% commission growth is the desired result. The first question, then, is “what behaviors do I need to engage in to achieve the result?” Stated another way, the results driving the vision are the natural results of certain behaviors one chooses to start, stop, and continue doing. In both of these cases, with both of these clients, those behaviors are pretty obvious. In other words, each knew what he had to do differently to achieve his vision.

But each month, the focus of our coaching seems to be what he did not do and why. The reason they are not doing what they need to do is both simple and complex. Let’s start with the simple. The reason they are not reaching their goal is that the necessary behaviors to do so violate a belief. For example, take the person who wants to lose 30 pounds. After doing a start, stop, and continue analysis, it is determined that the vision can be attained by no longer eating a bowl of Ben and Jerry’s ice cream every night. So the behavior is to cut out the nightly Ben and Jerry’s. Most people will stop eating the ice cream, for a while. But then they will have a tough day, or a great day, or see a commercial with ice cream, and have a bowl. Once they have one, they might quit again for a day (and beat themselves up for being weak), but then have another bowl a day or two later. Eventually, the plan is broken, as the necessary behavior of avoiding ice cream is regularly violated. This is just one example of a perceived “inability” to change necessary behaviors in the long-term. We see this all the time, where people spend rather than save, do not pick up the phone to make introductory sales calls, or do not terminate a culturally cancerous employee. They know the behavior that will lead to the result over the long-term, but they choose not to do what needs to be done.

So why, in our example, did the person eat the ice cream? At first blush, it seems simple; he likes ice cream, but there are a lot of things that we like, that we avoid, so why give in? And that question requires the deep introspection necessary for long-term change. This is when the complexity of the plan starts to take form. What belief do I have that causes me to eat ice cream I should not eat? That is a question that is rarely answered easily, but is critical to achieve the vision. Maybe the answer is that Ben and Jerry's makes me happy, and I believe that it is necessary to eat ice cream to make me happy when I am sad. Or, maybe it is that I have always associated ice cream with celebrations, so to me, a win is not a win without Chunky Monkey. Or, maybe it's that my vision is wrong. Maybe, while I would like to be 30 pounds lighter, it is not important enough for me to give up ice cream.

The ice cream example is a good one because it is relatable, but in my coaching, I see this frequently in the professional world. Let's go back to the advisor who needed to grow commissions by 20% to buy the BMW. He knew that he needs to make 90 calls a day to meet the goal, but was only making 40 calls every other day. He knew what needed to be done, but was not doing it. So we had to dig down to figure out why. What did he believe that caused him to not pick up the phone as much as he should have? With him, after a lot of discussion, he admitted that those calls made him feel like a "cheesy salesperson" rather than a professional advisor. Digging even deeper, we discovered he is an introvert and hates "forced conversations" with strangers. Also, as a millennial, he knew he lacked phone skills and was more comfortable with email and texting. If I would have stopped where most coaches do, by simply telling him to make more calls, the vision would have never been achieved. The vision is only achievable by first addressing the belief that is getting in the way—"phone conversations make me uncomfortable." You then have to figure out a way to be true to that belief, while still achieving the vision (i.e., email and texting as a way of communication). Building a team to delegate those activities (i.e., hire a phoning assistant) could also achieve the vision. Or perhaps, coming to the personal conclusion, that while phoning is an unpleasant task, it is worth it to achieve the vision.

So, to accomplish true change, the process needs to be:

- What behaviors accomplish the vision?
- What do I need to start, stop, and continue doing to achieve those behaviors?
- Then go to the "third why." Why am I not currently engaging in those behaviors?

For example, to meet my retirement goal, I need to save 10% of my income, but I am currently only saving 2%—why?

- Under my budget, I can only afford to save 2%—why?
- My budget takes into account my large lease payment on my car—why do I have a large lease payment and an expensive car?
- I believe people will see me as more successful if I drive a nice car, and I believe successful people will only do business with someone successful—why do you believe

> that? What evidence exists that shows that belief is true? Wouldn’t a successful person be able to save 10% of their income for retirement? Is this really about what I want and am I projecting my beliefs onto others?

As a mentor once told me, all the power is in the third “why.” I believe that—and the reason is the third “why” is not the reason or the assumption, but rather the emotion, be it fear, insecurity, arrogance, or whatever that is really at the core of the behavior, that is preventing you from getting where you want to go.

So as you now build the plan, the steps are:

- Paint the vision (where am I going and why?)
- Determine, using empathetic honesty where I am right now
- Figure out the behaviors necessary to get from where I am to where I am going
- Determine what I need to start, stop, and continue doing
- Figure out what beliefs are getting in the way by going to the third “why”
- Either change the belief, change the behaviors, or change the vision
- Measure the results and recalibrate if necessary

At the end of the day, the truth is, if the vision is important enough, you will achieve.