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MORE THAN DEATH AND TAXES

There are many reasons for business owners to plan ahead

BY MARTIN DAKS

Experts say a small business owner's company may be the biggest part of her estate. But a recent survey from Caring.com found that only 42 percent of U.S. adults currently have estate planning documents like a will or living trust; and the number is even lower, at 36 percent, for those with children under the age of 18. However, some strategies can let you pass your business on to your intended heirs while reducing the tax bite, and integrating your business succession plan with your overall estate planning. And even if the federal estate tax is eliminated, planning—while you're still around—is important.

Dulling the tax bite

"One of our clients owned a closely-held printing company and wanted to minimize the tax bite when his company was sold," said **Rita M. Danylchuk**, who leads the trusts and estates practice at the Newark-based **Gibbons** law firm. The owner planned on eventually selling his business, so several years before the sale, he transferred one-third of his interest in the business to a dynasty trust for the benefit of his children and grandchildren, she said.

The transfer to the dynasty trust was considered a gift that utilized part of the owner's lifetime federal gift/estate exemption. But by the time the company was sold to an outside third party, the trust's ownership value in the business had grown by \$5 million—and when the owner died the value of the trust assets passed to his heirs outside of his estate.

"By moving some of the business interest into a trust sufficiently ahead of the sale of the company, the owner was able to essentially pass the appreciated value of the gifted business interest to his descendants free of federal and state estate taxes," Danylchuk said.

An opaque crystal ball

What happens if the federal estate tax is indeed eliminated, as the Trump administration has vowed? And if the New Jersey estate tax, which is scheduled to sunset after January 1, 2018, also disappears?

"There's still some uncertainty whether either or both of those will happen," Danylchuk cautioned. "But if they do, estate planning will remain important. For example, say a business owner has company stock and real estate that she acquired for \$3 million a long time ago, and their market val-

ue is now \$20 million."

If she leaves the property to her son through a traditional will and he eventually sells it, under current law, ignoring estate taxes the son will still pay capital gains tax on the difference between the value at his mom's death [thanks to a "step-up in basis" to the current value] and the sale price.

"If the sale is close in time to the mom's death, the son pays minimal or no capital gains tax," said Danylchuk. "But if the estate tax is eliminated, it is uncertain if the step-up in basis rules will remain in place or if the beneficiary will only inherit the original cost basis the mom had in the inherited asset."

So estate planning likely will be important to address under any new law. "Also non-tax factors will continue to exist for proper estate planning," she said. "Such issues as deciding whether your beneficiaries should receive assets outright or in trust, who should be the executor of your estate or guardian for minor children, and how to plan for operation of a family business passing to the next generation will all still be important."

Avoiding family feuds

Careful estate planning may

also reduce family squabbles, said **Pasquale Rufolo**, chair of the private client services group at the law firm of **McElroy, Deutsch, Mulvaney & Carpenter**.

"It's not unusual for a business owner to have multiple children, but only one is interested in actually going into the family enterprise," he said. "Let's say the parent's estate is worth \$30 million, and the business represents \$20 million of it; but the parent wants to give his kids an equal inheritance. How do you equalize the value passing to the children?"

One solution would be to restructure the enterprise and give two of the children non-voting stock or other non-voting interests in the firm to equalize their inheritance. "But now the two non-involved kids will have a continuing relationship with the sibling who's actually doing the day-to-day work. That could create friction down the road. Another solution might involve planning with life insurance to provide liquidity to equalize the children's inheritance," Rufolo said.

Different situations call for different approaches. But it all starts with careful planning ahead of time.



Pasquale J. Rufolo, chair of private client services group at MDM&C.