



LINE OF SIGHT

CHANGING CONVERSATIONS: VALUES DRIVEN ESTATE PLANNING

For most estate planners, the issue that has guided our planning (and maybe even our entire careers) has been taxes. We have our own copy of the Internal Revenue Code and Regulations (at least the estate and gift tax provisions, if not the entire Code). Many of us would describe ourselves as tax professionals. We can cite Code provisions in casual conversations and read new Private Letter Rulings, Revenue Rulings and Tax Court cases as if they were part of an irresistible novel or serial. And in truth, our approach was correct. Taxes were the guide star of estate planning, providing the form, if not the substance, for most estate plans, and requiring certain provisions and structures to be used to obtain the most beneficial tax results.

As an offshoot of this approach, or perhaps because of it, our conversations with our clients also were shaped by taxes. We listened to their goals with an ear towards how to fit them into the form required to provide the anticipated tax result. In many cases, the structure was so absolute that the changes required for each client, while very important, were oftentimes limited to a relatively small number of issues (distribution standards, possible ages of withdrawal, granting and scope of a power of appointment and similar issues).

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*The first in our
"Changing Conversations"
series of articles on values
driven estate planning.*



Of course, the relatively low unified credit that existed prior to the 2001 Tax Act made this approach even easier. Because the exemption remained at \$600,000 for so many years, nearly every client or potential client needed an estate plan, and the estate planner could show how the use of the proposed plan would save the clients tens or hundreds of thousands of dollars, even for a client of modest wealth.

2012 AMERICAN TAXPAYER RELIEF ACT (ATRA)

For many planners, though, ATRA changed all of this. At its most basic, the Act made the estate and gift tax regime irrelevant for a huge percentage of existing and prospective clients. The vast majority of clients have less than \$10 million (adjusted upwards for inflation) in assets (and many have less than \$5 million), so any tax planning required is relatively basic. In addition, with portability now permanent, even less tax planning may be required (even if it remains beneficial).

What does this mean for estate planning? In some sense, it means we need to return to the beginning, to the reason why people who are not estate planners look to create an estate plan: to provide for loved ones and/or establish a legacy. When clients talk about the need for a plan, their first thought is rarely about taxes – it is about making sure their spouse is provided for, or their children are able to attend college, or their grandchildren will receive some benefit from the family wealth. They have their own ideas about what is important to them – and now that is what must be important to us as well.

WHAT CLIENTS CARE ABOUT

With some clients, it is easy to ascertain and subsequently memorialize what they care about and what role they want wealth to play in the lives of their children, grandchildren and future generations. Many have benefited from the careful thinking of prior generations, and they feel strongly that they have an obligation to provide in similar ways for their own descendants. They know, for example, that funds must be provided to retain the family home and to help ensure that members of the family are able to enjoy it. Or they feel strongly that family philanthropy must continue and want their descendants to have a role in a family foundation that will maintain that legacy for future generations.

Many other clients, however, have never even considered these questions. Prior estate planning fit into the standard form, and there was little reason to consider if it was the “right” form, since it worked well by providing a significant tax benefit.

Now in the aftermath of ATRA, with increased exemptions and a portability election, there is a new emphasis in the discussion. The driving questions now include:

- What role do you want wealth to play within your family? Between members of your family?
- What do you want the family wealth to be used for – daily maintenance of future generations, educational needs, big-ticket items like a home, philanthropy or something else entirely?

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- Is it okay for future generations to live off the funds, or is it important that all members of the family work? If the goal is to have everyone work, does that apply even if the individual wants to stay home to raise a family or spends all of his or her time volunteering for various charities?
- How much control should future generations have to change goals or intentions laid out in the estate plan?

These are the issues that many people have not considered, and most planners are less comfortable discussing. Yet, because taxes are no longer the primary driver for so many clients, these issues are likely to take center stage in our estate planning discussions with clients. So we as planners and close advisors must adapt our conversations to help clients think in broader, or at least different, terms, about what they want to accomplish with their wealth, before then turning to how their plan can make those goals happen.

CHANGING THE CONVERSATION

Northern Trust can help with these changing conversations. Based on the lessons we have learned in our 120-year history of managing trusts of all types, we are able to offer our unique perspective not only on how to discuss some of these issues, but also how these issues may play out in the estate plan. For example:

- If a client has total assets well under the applicable exclusion and also has a power of appointment over assets held in an existing trust, how can the power be exercised to further the family goals?
- What kind of discretionary language can or should be included in documents to provide a trustee with flexibility to address future circumstances?
- How is precatory language viewed by trustees? When should it be used and when should it not?
- What is a trustee's perspective on long term trusts, and how they can be designed to carry out client goals?
- What role do trust protectors play?
- How can clients create a statement of intent that reflects their broader goals for their family and their wealth?

We will address these and other issues over the coming months, drawing on the expertise of Northern Trust partners across the country who have many years of experience in these areas, as well as from our close relationships with you and your clients over those years. We value the relationships that we have formed and maintained over many decades and look forward to participating in these changing conversations in the years to come.

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“Changing Conversations” is a series of articles authored by Northern Trust thought leaders from across the country intended to present unique perspectives on the new trends and approaches to wealth transfer planning resulting from the myriad of recent tax law changes. Our goal remains to provide fellow advisors with our best insights on topics – some familiar, some not – and to foster and enrich new conversations with clients as we work together to chart a course through often unfamiliar waters. Please contact us to continue the discussion offered in any of these pieces or to provide your feedback.



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