The AEP® ALERT, a publication for Accredited Estate Planner® Designees

THE TECHNICAL CORNER

SEPTEMBER 2017

Provided by Gregory E. Sellers, CPA, AEP®
Warren Averett, LLC · Past President of NAEPC

Eido Walny, JD, AEP®, EPLS
Founder of Walny Legal Group, LLC

Things Remembered (or Learned) While Administering Complex Trusts and Estates

Over the past year, we have had the good fortune to work on some extraordinary estate, trust and probate administrative cases. While working through these engagements, as indicated in the title, we have remembered and yes, even learned some very important "factoids" that we felt worthwhile to pass along to other professionals.

1. **<u>Time flies when you're having fun</u>** – Right after death of a client, nine months sounds like a long time, and fifteen months seems like an eternity. Don't forget that time sneaks up on you. Assembling the team, interviewing and engaging appraisers and valuation experts takes time, and then working the projects into their schedules can be challenging. We all have clients and their family members that fit into one of the two buckets - The ones who wants to distribute and close the estate the week after the funeral, and the ones whose grief will not allow them to address the "business" of an estate until months down the road. Our job is to manage the entire engagement, being sensitive to the "griever", and putting the brakes on "Mr. Speedy".

2. **<u>Identify challenging areas of the estate early and stay on top of them</u>** – Often, we know that certain areas of the estate are, and will be, more challenging than others. Large parcels of timberland, family owned businesses, intellectual property valuation, collectible tangible personal property, and other such components of large estates require immediate action, and valuation and administration will take longer than expected to accomplish. While it is satisfying to feel the accomplishment of completing the small tasks, these large components will always lead to stress if pushed to the end of an estate tax filing.

3. **<u>Communicate expectations</u>**– It is important to manage and communicate expectations from the beginning and throughout an engagement. Clients often have pre-conceived ideas about a specific issue which they bring to the initial meeting. Such expectations and information often result from "internet research" which they have undertaken prior to engaging you. In order to effectively manage this dynamic, practitioners should be clear about the process and timeline of the engagement and be up front with any issues which could arise. Oftentimes this "research" is inaccurate and can derail an engagement if not confronted and corrected during the initial meeting.

   Such expectations should also be translated to other professionals who may be involved in the administration as well. A good example can be found in appraisals. Some appraisers might consider this an effort to control the output, but our experience is that sometimes there is confusion about the approach or method used in arriving at an appraised value. This discussion needs to be with the executor and the appraiser so all are on the same page. A recent review of a jewelry appraisal for an estate revealed that the executor asked the appraiser to perform an appraisal for insurance purposes, so the appraiser used "Insurance Replacement Cost". While this determination of value is useful for the heirs to obtain adequate insurance coverage, when it was provided for use in the estate tax return, the likely

The AEP® Alert and Technical Corner are brought to you by the National Association of Estate Planners & Councils.
This material may not be duplicated.

outcome was a higher estate tax payment on jewelry values than would have been due if a "Fair Market Value" appraisal had been obtained. The appraisal profession contains many terms, such as Fair Market Value, Market Value, Auction Replacement Value, Retail Replacement Value, and Retail Value, that are often-times thrown around without a detailed understanding of the differences between each term. Up-front conversations and understandings eliminate misunderstandings that might not be illuminated until after the issuance of the appraiser's report.

4. **Always obtain a draft** - Develop the time frame and method of appraisal value delivery which includes a verbal discussion prior to issuance of a written "DRAFT". Verbal discussions and written "DRAFTS" avoid misunderstandings and final reports that have errors.

5. **The "Team"** –Each and every estate engagement reminds us that a team of cooperative estate professionals makes for a better outcome for the client (and the professional team). Each member of the team brings their unique skill and knowledge to the table, where then those at the table have a chance to learn from and to teach each other. With knowledge and experience, we then reach the goal of the collaboration, which is to provide the best service possible to the client.

6. **Prepare for an Audit**- With the increase in the federal estate tax exemption amount to $5.49 million in 2017 (and adjusted annually for inflation), fewer and fewer estates are required to file an estate tax return. The number of estates filing a return has plummeted in recent years. In 2006, 49,050 estate tax returns were filed while only 11,917 were filed in 2015, a drop of nearly 76%.[i] While there are fewer estate tax returns, that does not necessarily mean there are fewer audits. In fact, due to the decline in returns filed, the IRS has focused more on ultra-high net worth estates. The larger the estate, the greater the risk of audit. Due to this increased scrutiny, practitioners should prepare returns with the expectation of an audit, which may affect how information is reported as well as the positions taken.

7. **Valuation will likely be an issue**. One of the main issues which is likely to be challenged in an audit is the value of the estate assets. As the number of estate tax returns filed has decreased, the IRS has been more aggressive in attacking the valuation of a decedent's estate. Practitioners should be cognizant of the procedures and methods used to determine the estate's value. Red flags which the IRS is likely to examine include related-party transactions, stale valuations, as well as valuations based on "book value" per the terms of a corporate document. In order to mitigate the risk, all valuations should be completed by a qualified and objective appraiser. In addition, practitioners should review all related transactional documents, including buy-sell agreements regarding valuation provisions as well as review any prior transactions.

8. **Families fight frequently over money.** While clients may insist that their children will "get along" after their deaths, more often than not, that is not the case. In reality, we frequently are involved in cases in which siblings and/or beneficiaries do not agree on how the estate should be administered and what the settlor's true intentions were. When confronted with an inheritance, there is a strong likelihood that beneficiaries who were once on friendly terms will devolve into fighting over their inheritance in comparison with other beneficiaries. While some of these issues can be traced back to their childhood and resulting family dynamics, money is also a driving factor. If you suspect that such issues may come into play at some point in the administration, the settlor's final wishes and intentions must be documented and their estate planning documents shall clearly reflect such intentions. Ambiguous or unclear language will certainly increase the likelihood of fighting, and possibly litigation, among family members.

[i] https://www.irs.gov/pub/irs-soi/2015estatetaxonesheet.pdf