

Make hay while the sun shines

MY father used to say, "You have to make hay while the sun shines." We all know what that means. You cannot do some things except when the conditions are right, and if you need to do those things, you have to act when the opportunity presents itself.

Start making hay

In 2009, Bob and Sue were in their early 80s. Sue was in good health with a sharp mind, but Bob's Alzheimer's disease was getting serious. Sue and their four children acknowledged they had not done proper estate planning, and panic was setting in.

Bob and Sue's estate consisted of about \$2 million in savings, securities and a home, plus farm ground appraised at more than \$8 million. Half of the land was in a corporation and the other half held in joint tenancy. Incidentally, the appraiser was conservative. I know they would not have sold that land for under \$11 million.

At the time, the Illinois death tax exemption was \$2 million per person, and the federal exemption was \$3.5 million. The lifetime gift tax exemption was \$1 million. Both state and federal death taxes were set to expire for 2010, with the federal death tax to return at \$1 million in 2011.

Had they died in 2009 and the Internal Revenue Service appraised the property at \$11 million, the death tax would have amounted to more than \$1 million to Illinois and around \$2.7 million to the U.S. (If the federal exemption dropped back



Estate-Plan Edge

By CURT FERGUSON

to \$1 million, you don't even want to see that number!)

The family agreed they better make hay!

How we solved their tax problem

What I am about to write must be read with caution. I am leaving out very complicated details to give you an overview of what has turned out to be a very effective plan.

The first hurdle was how could Bob plan at all? He was not of sound mind. This definitely clouded the haymaking sky. Fortunately, a few years ago he signed a very broad power of attorney, giving Sue the right to give assets away and to create trusts on his behalf. That was a very unusual power of attorney; in many cases I advise against it. But under the circumstances, it was a lifesaver. Sue could plan on Bob's behalf.

We formed a foreign limited liability company, or FLLC, to hold the land and corporation. Sue formed a revocable trust and an irrevocable trust, and did the same on Bob's behalf. Sue created another special trust for their home that allows the children to own it after three years. Doing so was considered a gift of about two-thirds of the actual value of the home.

After appropriate business appraisals

were performed, Bob and Sue each gave a small fraction of their FLLC to their irrevocable trusts. Each reported a gift of just over \$200,000, and no tax was due. Each sold their remaining FLLC shares to their irrevocable trust in exchange for an installment note paying about \$125,000 annually to each of them. They held the rest of their assets in their revocable trusts.

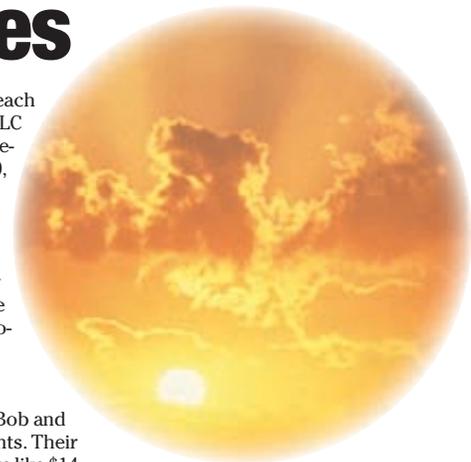
Fast-forward to 2011

Life goes on for two years, with Bob and Sue receiving two annual payments. Their farmland has appreciated to more like \$14 million. The 2010 Tax Act changed the lifetime gift tax exemption from \$1 million (of which each had used about \$200,000) to \$5 million. Time to make the next crop of hay!

Bob makes another gift of \$1.25 million, but will continue to receive payments from his irrevocable trust in the amount of \$75,000 per year for seven more years, longer than his life expectancy. Sue makes another gift of just under \$1 million, and will receive \$125,000 per year for life, but increasing 4% annually.

No gift taxes have been paid or are due. Bob has made gifts of \$1.45 million and still has an estate of \$1 million, which will shrink every year by about \$70,000. Sue has made gifts of \$1.275 million, and her remaining estate is less than \$550,000.

So long as the death tax exemptions



(state and federal) remain \$2 million per person or greater, their mostly federal death tax will be between \$125,000 and \$0, depending on how long Bob lives; the taxable estate goes down every year, so "long live Bob."

Because of the type of trusts used, \$16 million of family wealth will pass death-tax-free for as many future generations as the children choose to let it.

Ask the expert

Curt Ferguson is an attorney from Salem who helps families accomplish estate-planning goals. Go online to www.tlcpplanning.com to learn more.

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