

TAX NOTES

by C. Arthur Robinson II

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MUSINGS FROM THE TRENCHES: *Media Bias, Class Warfare, and Political Posturing*

by: C. Arthur Robinson, II, Esq.



In the wake of the Great Recession, from the standpoint of an estate planning professional, it has been interesting to observe the political rhetoric regarding wealth. We have heard much talk about the wealthiest Americans, a class that seems to have a somewhat elusive definition, and whether they should differentially bear additional taxes when, arguably, the 5% of households which are the highest income earners, already pay approximately

50% of the individual income tax.

It is interesting to note that there appears to be a media bias which has a particularly populace bend in the recent debate. As no doubt every reader of this newsletter is aware, virtually every organization within the free press in the United States seems to have some political bias. Because of the contrast in the wealth of households, and income for those still employed during the recession, the rhetoric has grown increasingly sharp. To make matters worse, that rhetoric has been both utilized and has become the source of significant conflict between members of Congress on both sides of the aisle, on spending, taxation, and the debt ceiling.

As an observer, I must acknowledge that I have watched with some dismay, as from my point of view, responsible government has been subsumed into political agendas and political posturing. As is often the case, the news of day, as it has been of late, has been somewhat gloomy. We have seen in the popular press musings about the decline of the United States as a world power, how the best days for the country are behind us, and how the problems of the day seem to be intractable.

As an independent observer, I am of the opinion that while these headlines may very well sell newspapers and television commercials, they are both counterproductive and in a great many ways not representative of the experience of every day Americans. We would do well to ignore, and oftentimes do ignore what is said in the press with good reason. A few facts and observations lay out a case for a much different picture of the current situation.

Based on available statistics, in 2009 at the height of the Great Recession, approximately 7.8 million households out of approximately 120 million in the United States were millionaires, that is, they had net worth exceeding \$1 million. In that same year there were approximately 12 million millionaires worldwide out of a population of 7 billion people. Statistically, approximately 2% of households in the United States had net worth of greater than 1 million dollars while worldwide, 12 million millionaires represented approximately 0.2% worldwide.

On income measures, rates of unemployment and a number of other measures, while the contrast is not quite so stark, nonetheless, the United States, as a differential matter, has fared the Great Recession in relatively good shape. A defining characteristic of the U.S. over the last century has been that economic opportunity has permitted people from virtually every walk of life to be upwardly mobile economically. In fact, my experience bears out the fact that at least in this area, those millionaires who we often identify as target for additional taxes, by and large, very much resemble their neighbors, with some differences.

The typical millionaire, in my experience, is an individual or married couple who have spent 30 to 35 years working hard to build a business or a professional practice, they have lived below their means and reinvested in their business or in other enterprises, and have slowly and patiently built their net worth to where it is today. For every one person I represent whose wealth is inherited, perhaps 50 clients walk through my door and explain with some patience how they got where they are, and express concerns for preserving what they have worked for a lifetime to build, to try to make their children better off than they were. This is a quintessential story which, in my view, has not changed in recent years.



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DEFERRED COMPENSATION: *A Business Owner's Solution*

by: *C. Arthur Robinson, II, Esq.*



Every business owner is familiar with and probably has direct experience with some form of retirement planning, both for themselves and for their employees. A large variety of qualified plan alternatives are currently available in the marketplace and virtually every business has some form of retirement savings alternative.

Everything from simple IRA plans to more complex arrangements such as 401K and profit sharing plans, and more rarely in these times, the occasional defined benefit plan.

One common denominator of all of these plans is that because they are tax qualified plans, they must meet significant non-discrimination requirements and be broadly available to all employees in an enterprise. Certainly, from the standpoint of broadly encouraging retirement savings, the current structure of qualified plans, as a matter of policy, makes sense. There are, however, alternatives for a business owner, that in addition to and as a supplement for qualified retirement planning, will permit the owners to take significant additional steps to plan for their retirement. These non-qualified plans are generally referred to as deferred compensation plans.

The basic paradigm for deferred compensation is that the owner sets aside in a relatively secure investment vehicle within the business, amounts which will be used to pay compensation in the future, either at retirement or under a variety of other circumstances when it is needed. The design of such deferred compensation, since it is non-qualified, is permitted to discriminate and can be done in favor of a given class or type of individuals within an enterprise, and as a consequence, it can provide a significant financial resource for the owner/managers of a business under the right circumstances.

As is to be expected, in an area such as this, the law is complex and while there are reduced requirements relative to qualified plans in terms of compliance, the design of the plan is quite critical. There are a number of alternatives available and therefore this is an avenue many business owners should explore in dealing with their business.



If the idea of additional retirement savings done through a vehicle which allows the business owner to select those employees within their enterprise who will be benefited interests you, then you should consider speaking with us about deferred compensation.

We at Wolcott Rivers Gates are experienced and knowledgeable concerning deferred compensation plans and will be happy to help our business owners design a plan which can meet this need.

This article has been authored by C. Arthur Robinson, II, Esquire, who practices in the areas of tax planning and reformation, tax sensitive transactions, estate planning and estate administration. Please call Mr. Robinson at 757-470-5551 if he can be of any assistance to you with the matters mentioned in these articles or any other matter in his areas of practice.

MUSINGS FROM THE TRENCHES:

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It does explain, however, that the challenges presented by the current political climate are as great as they have ever been. There are a number of things that we can all do in the political and other arenas to change the dialogue which is taking place in our popular press and in Washington, and those things should be done. From the standpoint of an estate planner, we live in a particularly challenging environment because it is apparent that the recent and very significant economic downturn has put substantial pressure on households at every socioeconomic level.

For many in our economy, the challenge still remains to find productive employment. Further growth in the economy is essential to this goal, and the current political rhetoric leaves one to wonder how that growth will be achieved without reinvestment. Focusing specifically on our clients, we believe that the solution at the individual level is relatively simple. You should take steps to reduce your tax burden wherever possible, and notwithstanding the current political climate and gloom and doom in the media, it remains the case that an investment in your business and investment in other enterprises continues to be, as it has been for the last 100 years or more, the road to financial security and prosperity.

We at Wolcott Rivers Gates can be a part of the solution to these various problems. We urge to contact us so that we can assist you in addressing any concerns relative to tax and risk you currently have.

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POST-MORTEM PLANNING: *Lions, Tigers & Bears, Oh My!*

by: C. Arthur Robinson, II, Esq.



We often talk about the importance of estate planning and the ways in which our clients can actively affect the outcome for the benefit of themselves and their heirs. It is, however, human nature to procrastinate with respect to this sort of planning, and on occasion, our clients and others fail to take steps to opti-

mize their estate plan for a variety of reasons. There are, however a number ways that even without optimized estate planning, it is possible to produce vastly different results if post-mortem planning and careful attention to estate and trust administration is given.

The typical individual, whether their estate plan is optimal or they have done no planning at all, leaves behind what can be a confusing array of assets, and some family member, friend, or other trusted person will be responsible for administering the estate. The executor or administrator faces a complex process known as probate which has a number of procedural complexities as well as taxation and legal issues surrounding everything from who is entitled to the property to who will be in control of various assets. If mishandled, these complexities can create enormous confusion and vastly increase the potential for administrative expenses, taxes, and significant delays in time in conveying assets to their ultimate recipients.

By the same token, this basic fact pattern offers multiple opportunities to increase efficiency, dramatically increasing the amount which flows to beneficiaries by saving sometimes hundreds of thousands or millions of dollars in administrative costs and income and estate taxes, and can, if properly managed, have an enormous positive impact both for the executor or administrator as well as the beneficiaries.

We frequently deal with lay executors or administrators who can and do take on the basic responsibilities of administering an estate. Where post-mortem planning makes the difference is in the procedural and technical aspects of both the transfer of property through the probate process as well as dealing with estate property and estate tax issues.

Finally, income taxes which are omnipresent continue to present both problems and opportunities after the death of an individual whose estate must be administered. In all of these instances, there are a variety of

techniques which, if employed properly, can make a significant difference in efficiency thereby reducing the cost of administration and its concomitant expense as well as, in some instances, creating very substantial savings in income and estate taxes.

We frequently see situations where, if an executor or administrator had taken a different course of action, the results which would have been obtained would have been vastly better than the actual results. Oftentimes, in those situations, the executors and administrators are subject to substantial criticism and perhaps even claims by beneficiaries if appropriate steps are not taken. This is an area in which the perils abound. However in estate administration, there are also opportunities to vastly increase efficiency, decrease costs, lower the tax profile, and otherwise benefit the heirs of an individual which can have a profound impact going into the future.

Our trusts and estates department on a daily basis deals with not only planning but also administration issues. We are constantly assisting clients with implementation of post-mortem strategies which increase efficiency, decrease costs, and save taxes. Please call us if we may be of assistance at whatever stage of the planning or administration process.

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