

LEITMAN,  
SIEGAL, PAYNE &  
CAMPBELL, P.C.  
ATTORNEYS AT LAW

TO: OUR CLIENTS AND FRIENDS  
FROM: JACKSON M. PAYNE  
DATE: JANUARY 1, 2012  
RE: FINANCIAL STRATEGIES FOR YOUR LIVES AND BUSINESSES

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**A MESSAGE TO OUR CLIENTS**

We strive to provide you with the finest legal services available, and hope that we have met and surpassed your expectations in 2011.

As we enter this new year, we wish to sincerely express our appreciation for your business. Your trust is important, and we are inspired by the confidence you place in us.

All of us at Leitman, Siegal, Payne & Campbell wish you and those you love a joyous, healthy and rewarding 2012.

**RETIREMENT PLANNING: DON'T JUMP THE GUN ON SOCIAL SECURITY**

One of the benefits of advance planning is that it can allow you to delay taking Social Security for as long as possible. Depending on your financial situation, life expectancy and other issues, that could be a wise move.

Unless a person is terminally ill, there is little upside for someone in their early 60s to tap Social Security. By collecting at 62, rather than at the government's "full retirement age" of 66 for people born from 1943 to 1954, you would slash your monthly benefit. Wait until age 70, however, and you would get 132% of the monthly benefit you would collect at your full retirement age.

A retiree eligible for \$18,750 a year in Social Security at age 62 who waits to collect \$33,000 a year starting at age 70 could substantially increase the after-tax amount he could spend by age 95. Assuming the benefit would increase 3% a year for inflation, and that the retiree was in the 25% marginal income-tax bracket, he would get \$850,000 in all by starting the benefit at age 62—or \$1.4 million by waiting until age 70.

One in four of today's 65-year-olds will live to 90, and one in 10 to age 95. So, if your family members typically live into their 80s or 90s, and you think you could too, you should consider delaying the benefit as long as you can.

Of course, the big challenge in postponing Social Security is figuring out how to fill the gap between age 62 and whenever you start collecting benefits. Couples in which both spouses worked could try to live off the early benefit of the worker with the smaller paycheck, saving the larger one for later.

Another strategy, living off retirement-account withdrawals for a few years, might help cut future tax bills. Starting in their 70s, retirees generally have to take mandatory withdrawals from retirement accounts, and pretax contributions and earnings are subject to income tax. By lowering those account balances in their 60s, at the same time they aren't drawing Social Security income, they might be able to take smaller mandatory withdrawals later and also pay tax on those withdrawals at a lower rate.

The bottom line is that if there's a good chance one of you will live into your 80s, delaying Social Security is a good way to guarantee your rate of return on your collective lives.

***ESTATE OF PETTER V. COMMISSIONER OF INTERNAL REVENUE***  
**(Decided August 4, 2011)**

Anne Y. Petter ("Taxpayer" or "Anne") transferred membership units in a family-owned LLC partly as a gift and partly by sale to two trusts and coupled the transfers with simultaneous gifts of LLC units to two charitable foundations. The transfer documents include both a dollar formula clause—which assigns to the trusts a number of LLC units worth a specified dollar amount and assigns the remainder of the units to the foundations—and a reallocation clause—which obligates the trusts to transfer additional units to the foundations if the value of the units the trusts initially receive is finally determined for federal gift tax purposes to exceed the specified dollar amount. Based on an initial appraisal of the LLC units, each foundation received a particular number of units. But after an Internal Revenue Service ("IRS") audit determined that the units had been undervalued, the foundations discovered they would receive additional units. Everyone agrees that the Taxpayer is entitled to a charitable deduction equal to the value of the units the foundations initially received. But is the Taxpayer also entitled to a charitable deduction equal to the value of the additional units the foundations will receive? The Tax Court answered that she was. And the U.S. Court of Appeals for the 9<sup>th</sup> Circuit Court agreed.

**CRUMMEY TRUSTS STILL SMART**

There's nothing crummy about a Crummey trust—even in a period of higher exemptions for estate and gift taxes. The trusts, which got their name from a Methodist minister who won a fight with the Internal Revenue Service in the 1960s, are typically used to protect life insurance from federal estate taxes, though they can contain a variety of assets, including stocks and bonds.

They make sense now despite the fact that Congress raised the lifetime threshold for tax-free giving to \$5 million in 2011 and 2012 from \$1 million last year. The ceiling could fall back down again in 2013, or the government could decide to "claw back" gift- and estate-tax savings from this year and next.

Here is how a family can use a Crummey trust: Have your estate planner set up one to buy a life insurance policy and fund the premiums with annual gifts. (Each year, a person can give unlimited separate gifts of up to \$13,000—the current annual ceiling for gifts to individuals.) That gets money out of the estate while skirting the gift tax. Since the trust owns the policy, the death benefit ultimately goes to the trust, shielding it from federal estate taxes.

Crummey trusts are used in many circumstances, but are best suited for making gifts to minors—especially when a parent is giving money to a young child who isn't ready to handle a large sum. Grandparents, on the other hand, often are giving money to grown children, or have already helped fund a college savings 529 plan.

One catch: The trustee must send out “Crummey letters” each year, informing the beneficiaries that they can withdraw the gifted amount during a window of time, say 30 days. Usually, the beneficiary leaves the money in the trust. But the IRS considers it a tax-free gift only if the person has the right to take it in the short term, and the Crummey letter proves that he had that right.

Such so-called Crummey powers giving the beneficiary the right to withdraw money can be added to different kinds of trusts. A dynasty trust that transfers assets to family members over many years, or a generation-skipping trust that benefits grandchildren directly, can effectively be turned into a Crummey trust by adding withdrawal powers.

A recent Tax Court case came down on the side of an estate in which the person who died neglected to send notices to beneficiaries of their rights to withdraw his lifetime gifts to an insurance trust. But the decision, in *Estate of Turner v. Commissioner*, shouldn't be taken as a license not to send Crummey notices. While the IRS lost this one, the agency still is going after trusts when no notice is given.

Very often, a trustee in charge of Crummey letters is a family member or friend, not a professional estate adviser. In these cases, the letters can really become a headache. Our advice: Have an accountant or attorney help each year to make sure the “I's are dotted and the T's crossed.”

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