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What's New at CFANY

Julie Sciandra Has Joined Our Team

We are delighted to announce that Julie Sciandra has joined our team at Capital Financial Advisors of New York. Julie's academic background and her extensive, relevant business experience complement our expertise. Julie earned her BA in economics from St. Lawrence University and her MBA from Columbia University. She was a manager at William Pietersen Consulting and a senior consultant at Accenture as well a project manager and consultant for other businesses.

What Does "Fee-Only" Really Mean?

A Fee-Only financial advisor charges only for his or her advice or ongoing investment management. Fee-Only financial advisors receive no other financial reward from any institution, which means that they do not receive commissions for the actions they take on behalf of their clients. They sell only one thing - their knowledge!

Some advisors hold themselves out as "fee-only investment advisors" while taking commissions on insurance and other products, often through a separate business entity. They are not true "Fee-Only" advisors. Clearly there is an inherent conflict in charging a fee for investment advice or management and selling annuities or other products on commission. Such advisors, who misleadingly advertise that they are "Fee-Only", cannot be members of the National Association of Personal Financial Advisors (NAPFA), the premier organization for "Fee-Only" fiduciary financial planning.

Fee-Based compensation is often confused with Fee-Only, but they are very different. Fee-Based advisors charge clients a fee for advice or investment management. However, they also receive payments from products sold. This is the best of both worlds - for the "Fee-Based" advisor, not the client! In some cases, commissions are credited towards the fee, giving the impression of an overall lower priced option. Nevertheless, the outside compensation invariably impairs the advisor's ability to put the client's interest first.

Investment brokers and many other investment advisors are compensated from commissions on products sold. Clients looking for unbiased advice can never be sure whether the investment being recommended is truly in their best interest or is the most profitable product for the advisor. Consumers should be very wary about engaging an advisor who is compensated solely by commissions. Many may be well intended; however, many may not have the best interest of the client at heart.

A true Fee-Only independent registered financial advisor and investment manager is the only advisor who must always put the client's interest first. The terminology is confusing. However, it is critical for the consumer to understand the distinctions.

CFANY Advisors Adhere to a Fiduciary Standard

Federal and state law requires Registered Investment Advisors (RIA) to adhere to a Fiduciary Standard which requires RIAs to act solely in the best interest of the client at all times. RIAs must disclose any conflict, or potential conflict, to the client and must adopt a Code of Ethics and fully disclose how they are compensated.

Unfortunately, only a small percentage of "financial advisors" are federally or state-registered RIAs. Most so-called financial advisors are considered "Broker-Dealers" by the Securities and Exchange Commission (SEC). Brokers are not held to a Fiduciary Standard. Instead, they are held to the lower Suitability Standard, and they are required to act in the best interest of their employer, not in the best interest of the client.

In fact, the SEC requires broker-dealers to disclose in writing that their interests may not always be the same as the client's and that they are paid both by the client and by people who compensate them based on what the client buys.

Estate Tax Exemption Is Portable (for Now)

To use the exemption portability, the first spouse to die must elect to use portability on his or her estate tax return. An estate tax return must be filed by the first spouse to die to use portability even if the return is not otherwise required to be filed.

Many states have state estate tax exemptions that are less than the federal estate tax exemption. So, while your surviving spouse might not be subject to federal estate tax upon your passing, your surviving spouse may have to pay significant state estate tax if you rely solely on the federal exemption portability.

Recent legislation introduced a new, but perhaps temporary, estate planning concept--exemption "portability." In short, the estate of a deceased spouse can transfer to the surviving spouse any portion of the federal estate tax exemption that it does not use. The surviving spouse's estate can then add that amount to the exemption it is entitled to, increasing the total amount that can be passed on to heirs tax free. This new feature makes it easier for married couples to minimize the potential impact of estate taxes.

The federal estate tax exemption defined

The federal government imposes a tax on the value of your property when you pass it along to your descendants at your death. Any amount that is passed to a surviving spouse is generally fully deductible. The estate is also allowed to exclude a certain amount that passes on to nonspouse beneficiaries. That amount is called the "basic exclusion amount," which is $5 million in 2011.

How the exemption works for married couples

Prior to the new tax law, if a spouse died without having planned for his or her exemption, the deceased spouse's estate would have passed tax free to the surviving spouse under the unlimited marital deduction (assuming all assets passed to the surviving spouse), and the deceased spouse's exemption was lost or "wasted." The surviving spouse's estate could then only transfer an amount equal to his or her own exemption free from federal estate tax. To solve this dilemma, married couples typically set up what is commonly referred to as a credit shelter trust (aka "bypass" or family trust) that sheltered or preserved the exemption of the first spouse to die.

The following examples illustrate how portability can achieve a similar result without the use of a credit shelter trust.

Example: result without portability

Assume Henry and Wilma are married, have all of their assets jointly titled, and have a net worth of $10 million. Henry dies first, when the federal estate tax exemption is $5 million and there is no portability. Henry's estate passes to Wilma free from federal estate tax under the unlimited marital deduction and does not use any of his $5 million exemption. Assume that at the time of Wilma's death, the exemption is still $5 million, the federal estate tax rate is 35%, and Wilma's estate is still worth $10 million. With Henry's exemption completely wasted, Wilma can pass on only $5 million free from federal estate tax. Assuming no other variables, Wilma's estate will owe about $1,750,000 in federal estate tax: $10 million estate - $5 million exemption = $5 million taxable estate x 35% estate tax rate = $1,750,000.

Example: result with portability

Assume Henry and Wilma are married, have all of their assets jointly titled, and have a net worth of $10 million. Henry dies first, when the federal estate tax exemption is $5 million and there is portability. As above, Henry's estate passes to Wilma free from federal estate tax under the unlimited marital deduction and does not use any of his $5 million exemption. Even though Henry's estate owes no tax, Henry's executor files a timely return on which he elects to transfer Henry's unused exemption to Wilma. Assume that at the time of Wilma's subsequent death, the exemption is still $5 million, the federal estate tax rate is 35%, and Wilma's estate is still worth $10 million. Since Wilma has "inherited" Henry's unused exemption, she can pass on the entire $10 million estate free from federal estate tax. Portability of the estate tax exemption saves Henry and Wilma's heirs $1,750,000 in estate tax.

Portability does not eliminate the benefits of credit shelter trusts

Even with portability, there are still tax and nontax considerations that may lead you to use a credit shelter trust, such as:

- The portability feature is in effect for only two years and will expire after 2012, unless Congress enacts further legislation.
- The trust can help protect assets against creditors of the surviving spouse or future beneficiaries (typically children and grandchildren).
- The trust allows the first spouse to die to control the ultimate distribution of his or her assets. For example, in a second marriage situation, one spouse may wish to ensure that any assets remaining after his or her spouse's death pass to his or her children from a previous marriage.
- Appreciation of assets placed in the trust will escape estate taxation in the survivor's estate.
- The portability feature applies only to estate tax; it does not apply to the generation-skipping transfer (GST) tax. Without a trust, any unused GST tax exemption of the first spouse to die is lost.

These Deferred Annuity Mistakes Can Be Taxing

The situations described here relate to deferred annuities. Different tax rules may apply to annuities in the payment stage (annuitization).

The tax treatment of nonqualified deferred annuities (annuities that are not part of a tax-qualified plan such as an IRA or 401(k)) appears to be fairly clear-cut:

- A distribution that represents a return of your investment in the contract is not taxed
- Earnings aren't taxed until they're withdrawn
- Earnings are taxed as ordinary income and not capital gains, and
- A distribution of earnings taken before age 59½ is subject to a 10% tax penalty unless an exception applies

Simple, right? Yes--except for those particular circumstances that trigger unexpected tax consequences.

Ownership by a "non-natural entity"

"Non-natural entity" is tax speak meaning the annuity owner is not a human being, but is an entity (e.g., trust, partnership, corporation). This creates a situation where the annuity is not treated as a tax-deferred annuity, so any earnings will be taxed to the annuity owner/entity as ordinary income during the current year--even if the earnings haven't been distributed.

There are some exceptions to this rule. It doesn't apply to immediate annuities or those considered qualified funding assets (e.g., annuities held for periodic payments due to personal injury settlements). Also, the annuity may not lose its tax-deferred status if the non-natural entity/owner is acting as the agent for a natural person. For example, ownership of the annuity by the estate of a deceased annuity owner, or the trustee of an IRA or qualified plan, will not, in and of itself, remove its tax-deferred status.

Certain revocable (grantor) trusts may also be the annuity owner without negating the annuity's tax-deferred status, as long as all of the trust beneficiaries are natural persons. However, if an irrevocable (non-grantor) trust, such as a credit shelter trust, is the annuity owner, distributions of earnings from the annuity may be subject to an additional 10% tax penalty. That's because exceptions to this penalty that are available to a person/annuity owner don't apply to a non-natural entity. For example, a non-natural entity can't claim to be over age 59½, nor can it be disabled from work.

Gifting an annuity contract

If you make a gift of an annuity you own, special income tax rules apply. If you owned the annuity for some time before making the gift, you are subject to a tax on the difference between the value of the annuity (its cash surrender value) and the amount you have invested in the contract (your premiums). You would have to claim the income in the tax year you make the gift. This rule applies to gifts of annuities to charities and charitable remainder trusts as well. A gift of an annuity contract between spouses generally does not trigger this tax, however.

A trust as your annuity beneficiary

Revocable living trusts are a common estate planning tool. Often, an annuity owner/trustor will name the trust as beneficiary of an annuity. However, if you're survived by a spouse, naming the trust as the annuity beneficiary may remove some settlement options your spouse would otherwise have.

Generally, a surviving spouse named as beneficiary of a deferred annuity has four options available: (1) take the full death benefit in a lump sum (the earnings will be treated as taxable income at the time the benefit is paid); (2) take the annuity proceeds over a period of five years; (3) elect to receive the annuity payments over a period of time not to exceed his or her lifetime (with the last two options, each payment is part nontaxable return of investment and part taxable earnings); or (4) the surviving spouse may also have the unique option of becoming the new owner of the inherited annuity, in which case the annuity can continue in deferral (the spouse doesn't have to take any payments).

However, by naming the trust as beneficiary instead of your spouse, you'd be eliminating the last two options for your spouse--even if your spouse is the beneficiary of the trust. With the trust as beneficiary, the annuity proceeds would have to be paid in a lump sum or over five years following your death. If your annuity has significant earnings, those earnings would be taxed upon distribution, even if your spouse neither needs nor wants the proceeds.

Using an annuity as collateral for a loan

Using your deferred annuity as collateral for a loan may result in the unwanted realization of taxable income to you. For instance, say the basis (premiums paid) in your annuity is $100,000 and it's now worth $150,000. If you use this annuity as collateral for a loan, the collateral assignment is treated like a distribution and all of the gain (i.e., $50,000) will be taxable to you as ordinary income.

The income tax rules for deferred annuities can be tricky, so before making any ownership or beneficiary designation changes, consult your financial or tax professional.

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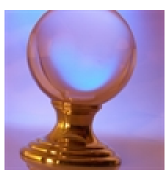
Ask the Experts



What is a funeral trust?

A funeral trust is a contract you enter into with a provider of funeral or burial services. Often, the trust is entered into directly with the funeral home, which may agree to "lock in" costs for future funeral or burial services at an agreed upon price. The funeral home sometimes serves as trustee (manager of trust assets), and you usually fund the trust with cash, bonds, or life insurance. A revocable funeral trust can be changed and revoked by you at any time. An irrevocable trust can't be changed or revoked, and you generally can't get your money out except to pay for funeral services.

Irrevocable funeral trusts may also help you qualify for long-term care benefits through Medicaid. These trusts may be funded with assets that would otherwise be countable resources for Medicaid. They are also often sold through insurance companies, in which case they are typically funded with single-premium whole life insurance. Trust assets, including life insurance death benefits, are not countable resources when trying to qualify for long-term care benefits through Medicaid. And you can fund the funeral trust right before entering the nursing home--there's no "look-back" period for these transfers.

Another advantage of funding your trust with life insurance is that the trust will have no taxable income to report, since life insurance cash values grow tax deferred. Otherwise, income from trust assets may be taxed to you as the trustor (creator of the trust) unless the trustee elects to treat the trust as a qualified funeral trust by filing form 1041-QFT with the IRS, in which case trust income is taxed to the trust.

But what if you want to change funeral homes, or the facility you selected goes out of business? Does your irrevocable trust allow you to change beneficiaries (e.g., funeral homes)? Are trust funds protected from creditors of the funeral home? States have laws regulating prepaid funeral trusts that often require funeral homes to keep trust assets separate from their own business assets--keeping them safe from funeral home creditors. And most irrevocable trusts are transferable to another funeral home should the initial business fail or you change funeral homes.