Through the Looking Glass:
The Future of Estate and Financial Planning

By

Mark B. Edwards
Of Counsel
Poyner & Spruill, LLP
Charlotte, NC
TABLE OF CONTENTS

Prologue ................................................................................................................................................... .

The Impact of Tax Reform (Repeal) - The First Force ........................................................................... .

But My Projection is for 15%! - The Second Force ................................................................................... .

What is That Booming Sound I Hear? - The Third Force ........................................................................... .

The Indefinable Fourth Force ................................................................................................................... .

Life In the Looking-Glass House .............................................................................................................. .

The Dynamic Duo of Management Tools ....................................................................................................

The Power of Attorney: The Center of the Wheel ...................................................................................... .

The DPA and the RLT - Working Together ...................................................................................................

Gifts, the DPA, the RLT - Now Three Must Work Together .......................................................................... .

The Challenge of Retirement Funds ............................................................................................................

The Challenge of the Closely-Held Business Interest ..............................................................................

My Basement is Full of Pornography. - - -But You Don’t Have a Basement!

Epilogue ................................................................................................................................................... .

Example of Durable Power of Attorney for Financial Management
I. Prologue

II. The Impact of Tax Reform (Repeal) - The First Force

E. The specific terms of the Economic Growth and Tax Relief Reconciliation Act of 2001 are well known to all estate planners, but for our purposes, the important thing is its ultimate goal.

F. The ultimate goal of EGTRRA is the abolition of the estate tax. Under its terms, the estate tax is repealed as of January 1, 2010. However, in the best tradition of Congressional statute-making, EGTRRA itself dies on December 31, 2010, allowing the estate tax to be resurrected on January 1, 2011, just as it was in May of 2001.

G. The current status of the estate tax is muddled. The House of Representatives has voted to repeal of the estate tax permanently by deleting the sunset provisions of EGTRRA. A proposal by the House Democrats to immediately increase the applicable exclusion amount to $3,000,000 but otherwise retain the estate tax was defeated. The prospects for outright repeal in the Senate are cloudy.

H. It is impossible to predict what form the resolution of this debate will take. But the mood of the deliberations by both political parties seems to presage some action that will result in the majority of people having no estate tax consequences upon the disposition of their estates.
1. If the repeal is made permanent, there will be no federal estate tax consequences to drive estate and financial planning.

2. If the tax is retained with the exemption set at some figure like $5,000,000 per person, a bare minimum of planning will result in eliminating estate tax consequences for all but the most wealthy of our clients.

I. Of course, if the ultimate answer is the permanent repeal of the estate tax under the provisions of EGTRRA, a whole new set of issues brought on by the elimination of the stepped-up basis at death will be upon us.

III. But My Projection is for 15%! - The Second Force

III.

A. In the first quarter of 2000, the longest and strongest bull market in the financial history of the United States reached its peak. All major indices reached record highs, but then turned down.

1. As measured by the S&P 500 Index, the declines were 9.1% in 2000, 11.9% in 2001, and 23.4% in 2002, a total decline over 3 years of 44.4%.

2. The year 2003 ended the decline, with the S&P 500 Index rising 25.9 %

3. As welcome as these positive returns are, they have not yet replaced the capital lost in the preceding three years, to say nothing of the four years lost in the compounding of asset growth.

   a. A loss of 44.4% requires a gain of 79.8 % to get back to even!

B. What the future will bring is unknown. The economy continues to show signs of recovery, the slide in employment has abated, and deflation is not a current worry. On the other hand, enormous budget deficits, a falling dollar and the twin specters of inflation and higher interest rates appear to be clouds on the horizon.

C. But there does seem to be a growing consensus on two new facts of investment life:

1. First, the total return on U.S. equities in the next fifteen years will be considerably less than the returns of the 1990's. Consider these predications made by well-respected names in the financial arena:

   a. Warren Buffett, in an article in the December 10, 2001, issue of Fortune magazine, said:

      (1) “I would expect now to see long-term returns run . . . in the neighborhood of 7% after costs.”

   b. In the March 5, 2003, issue of the Goldman Sachs Equity Research, the analysts spoke of the future:

      (1) “Future financial asset returns are likely to be much lower than during the 1982-1999 period. During that period, an