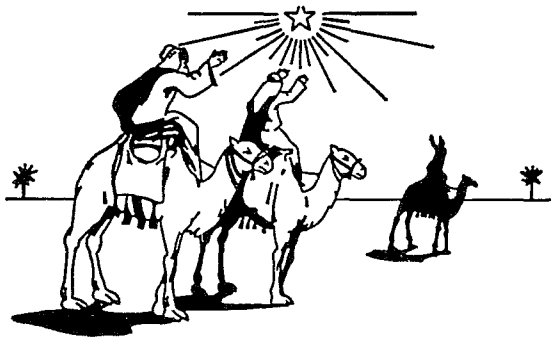


Notre Dame

A Magazine of the University of Notre Dame



*To all who have manifested their support
and encouragement during 1957,
the University of Notre Dame extends its
sincere gratitude. May Our Lady
and Her Divine Son bestow on you
the joyous blessings of Christmas
and the happiness of another New Year.*

THE NOTRE DAME FOUNDATION
AND ALUMNI OFFICE

Contents:

E
S
T
A
T
E
P
L
A
N
N
I
N
G

William J. McNamara

WINTER • 1957

ESTATE PLANNING

by William J. McNamara

The 'Estate Planning' story in the NOTRE DAME, Summer, 1957 issue created much interest among alumni and non-alumni friends. It was thought that an additional article would prove helpful in answering the numerous inquiries received by the Foundation office. William J. McNamara, a Notre Dame alumnus who is an estate planning specialist in Chicago, prepared the following information. Mr. McNamara received a bachelor's degree from the University in 1939 and an LL.B. the next year.

Estate Planning for every thinking individual, and especially for the friends and alumni of the University of Notre Dame, is of great importance today. Our fathers and grandfathers did not have the fruits of their labors siphoned off as we do today with excessive income tax and other Federal, State, County and City taxes while living, and Federal Estate Tax, State Inheritance or Estate Taxes, and Probate and administrative costs after our death. Today there are taxes on everything. When a tax is due, we are morally bound to pay it. But we also have a legal, as well as moral duty, to ourselves and our families to arrange our affairs so as to minimize the taxes we must pay while living and the taxes our estates will have to pay after our death.

The planning required on present day estates has been put beyond the capacity of the average individual, and because of the complexities involved, Estate Planning has become the realm of a small group of specialists. The reasons are obvious when we realize the complexities of modern business, finance and taxation as they exist today. These complexities require that the estate planning specialist be a lawyer, who is familiar with all phases of taxation affecting estates, and a specialist in Wills; Trusts—inter vivos and testamentary; Gifts; Property—real and personal; all forms of business struc-

ture; Contracts—particularly those controlling the transmission of business interests; and he must have a practical knowledge of all phases of life insurance and annuity contracts, and know the practices of the individual companies that issue them.

Obviously, there is no set formula by which the Estate Planning specialist can take any particular estate and apply to it a standardized procedure for saving taxes and for distributing the estate most effectively and economically. No single plan provides the "cure-all" for all estate ills. In fact, in most cases, the problem will involve weighing the relative advantages and disadvantages of several possible procedures in an effort to determine which arrangement can bring the minimum taxes and administrative costs with the maximum benefits and achievement of the individual's objectives.

Many possibilities exist for effecting economies and savings in estate taxes and transfer costs. A partial check list of procedures involving potential savings in the field of Estate Planning is as follows:

1. Change the beneficiary designation on present Life Insurance from being payable to the estate of the Insured to individual beneficiaries.

- a. This procedure will reduce probate and administrative costs; will frequently save on state inheritance tax costs; and will, in most instances, provide an exemption from the claims of creditors of the insured.

2. In many estates there are items in the general estate which do not produce an income, are not being held for growth; in other words, dead weight. These items should be converted to income producing items or the funds from the sale thereof be put into Life Insurance premiums payable to named beneficiaries.

- a. Items in the general estate which do not produce an income are in most instances sold at a substantial loss if there is not sufficient liquidity in the estate to pay final taxes and costs.

3. Provision for adequate amounts of Life Insurance so as to "discount" the potential estate liabilities for the estate instead of from the estate.

- a. The Life Insurance premiums will seldom, if ever, equal the amount of liabilities that can be retired from the cash proceeds at death. This will also prevent forced sale of estate assets, and thus reduce the ultimate shrinkage in estate values. This will reduce administrative costs by making it possible to settle the estate's affairs more simply, with less disturbance and difficulty, and in a shorter period of time. This will also make it possible to take advantage of cash discounts for prompt payment of state inheritance taxes, allowed under the laws of many states.

4. The preparation and execution of a suitable Last Will and Testament.

- a. Only through the execution of a carefully prepared Will can probate expenses and death taxes be held to a minimum. Before any competent attorney can draw a Last Will and Testament, he must know all the facts of the individual's general estate, as well as all the facts pertaining to the individual's estate in Life Insurance, and furthermore he must know the full facts pertaining to the estate of the spouse, and I even insist upon knowing the full facts pertaining to the estates of any of the testator's children, who have started to accumulate a substantial estate in their own right. Only in this manner can the attorney be sure that the maximum estate tax marital deduction will be obtained, if desired, and achieve possible savings in taxes on the death of the testator, the spouse, and/or children of the testator.

5. Creation of a revocable living trust.

- a. In many estates where the individual has an income from his business interests in excess of his needs, and also has considerable income from stocks and bonds, which added income puts him in a higher income tax bracket, it is often recommended that a living trust be created for a minimum period of at least ten (10) years. The income from this trust could be paid to one or more of his children, who are in a lower income tax bracket, or could be

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Winter, 1957

paid during the period of the trust directly to a charity or educational institution, such as the University of Notre Dame, or direct the trust to purchase a Life Insurance policy, on his life, 10 or 15 Payment Life Plan, depending on the length of the trust, and for the trust to absolutely assign the policy by Gift to the charity or educational institution, such as the University of Notre Dame.

- b. This would not cost the donor very much, if anything at all, because it would allow him to retain that much more of his income from his business interests because it would lower his income tax bracket.
 - c. Also, depending upon circumstances, there could be a substantial savings in Probate costs, etc.
6. Placing title to property in names of estate owner and wife jointly, with right of survivorship.
- a. With respect to certain types of property, depending on the facts, particularly bank and savings accounts, and the home, advantages exist in having title to the property placed in the name of husband and wife jointly with right of survivorship. One advantage is that the property passes automatically to the survivor at the death of either party, thus avoiding probate and administrative costs and delays. Another advantage is that such property automatically qualifies for the allowable marital deduction to the extent that it is included in the estate of the first spouse to die, thus to that extent a potential saving of federal estate taxes.
 - b. Savings in some states may also be achieved on state inheritance taxes.
7. Execution of agreement covering purchase and sale of business interests in the estate.
- a. In many estates, substantial problems will arise at the death of the estate owner in the effort to establish a proper value for business interests (proprietorship, partnership or close corporation) in his estate. Where such interests have no well-established market value, considerable and expensive litigation can result from the attempt by the Government to establish the value. However where the business interest is covered by a bind-

ing buy-and-sell agreement, requiring its sale by the estate at a stipulated price or a price arrived at in accordance with a definite formula, after the present owner's death, that price will control for federal estate tax purposes. Such an agreement may consequently result in a tax savings by avoiding an unwarranted high valuation for estate tax purposes under some arbitrary formula, as well as probate costs savings inherent in the avoidance of a prolonged dispute over the proper value for federal estate tax purposes.

8. Establishment of definite domicile.

- a. Estate owners of some wealth frequently maintain an actual domicile and home in one state, with a temporary residence in some other state. Sometimes, for income or other tax purposes, actual residence will be maintained in one state and legal residence in another. Under existing court decisions, such a situation involves danger of inheritance taxation by both such states on the bases of domicile. It is important today that estate owners make certain that their domicile is clearly established in one state, to avoid possible duplication of state inheritance taxes.

9. Re-examination of trusts in other states.

- a. Under present court decisions where a man living in one estate creates a trust, and places property in the hands of a trustee in another state where the trust is administered, there is danger of taxation of the property in this trust by both states. The laws of both states with respect to the taxation of intangible property must be examined carefully if such double state inheritance tax is to be avoided.

10. Use of living gifts of estate property directly and by Irrevocable trust.

- a. It is possible to reduce estate taxes and probate costs by transferring property during the present owner's lifetime instead of at his death. These gifts may involve—

- I. Outright gifts to individuals;
- II. Gifts in trusts;
- III. Gifts of Life Insurance. The 1954 Internal Revenue Code eliminated the premium payment rule and hence it is

now possible for an individual to give or assign by gift an existing Life Insurance policy or policies on his life to his wife, his children or others and though he continues to pay the premiums, these life insurance policies will not be included in his estate for federal estate tax purposes upon his death.

IV. A series of small gifts within the annual gift tax exemption, and

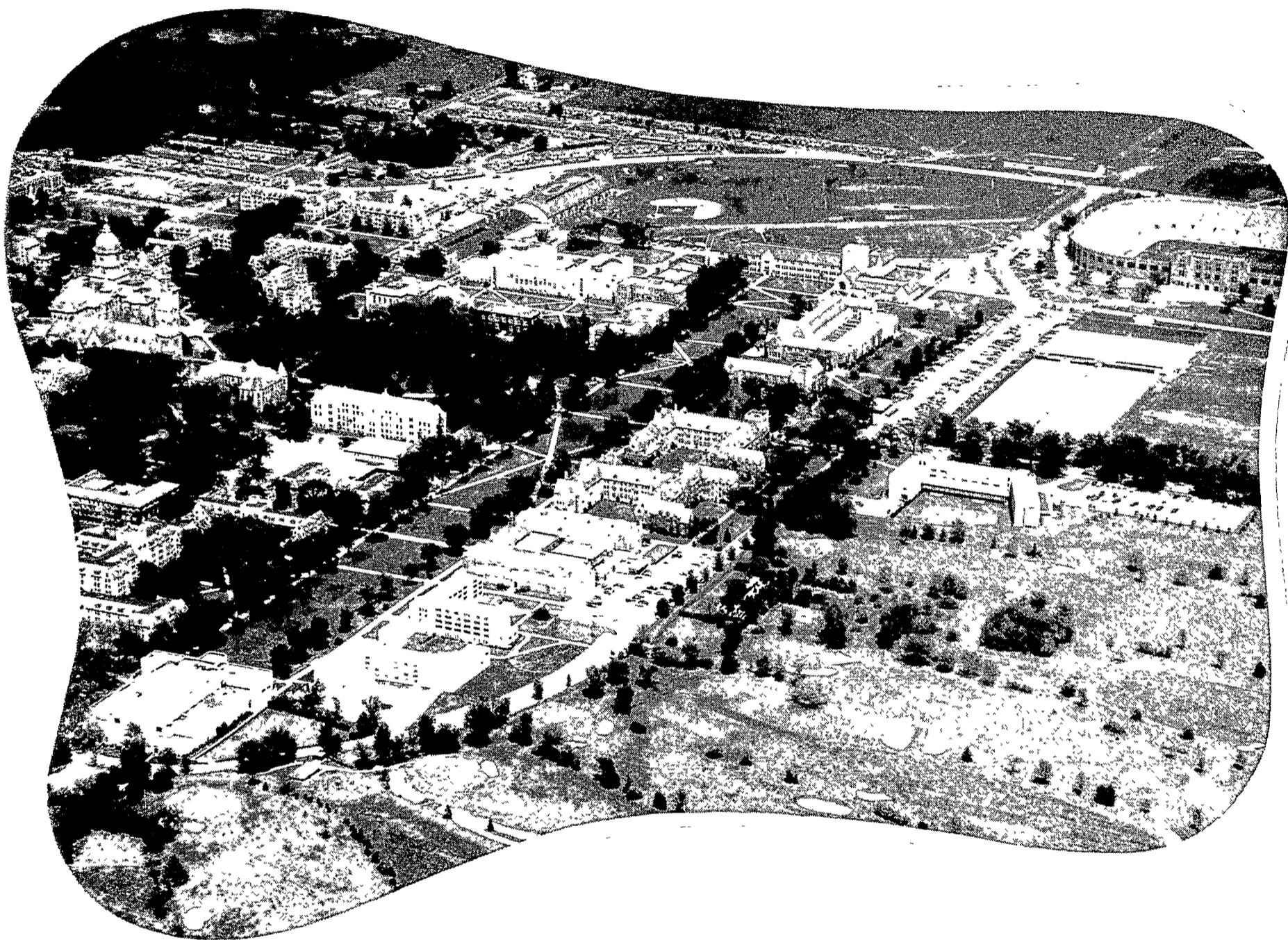
V. Gifts to the University of Notre Dame are free of any gift tax and moreover can be an Income Tax deduction of up to 30% of the individual's "adjusted gross income" for the fiscal year in which it was made.

The above are but a few of the items the Estate Planning specialist must take into consideration when analyzing an estate. His recommendations must be based on the client's facts and objectives for his family and/or others, and moreover present his recommendations in such a manner that the client recognizes the problems and understands the reasons for the particular plan of solution recommended.

One of the ways in which each of us, if interested, could make a substantial donation to the University of Notre Dame is through the gift of a life insurance policy. For example, do you know, that if there are sufficient alumni interested, that it is possible to get one or more of the major Life Insurance companies to issue individual Life Insurance policies on a non-medical basis, in amounts from \$1,000.00 to possibly \$20,000.00, with the University of Notre Dame as beneficiary. With the short form application there would be included an absolute gift assignment of all rights, title and interests in the policy to the University of Notre Dame. Then all premium payments made to the Insurance Company, including the first payment could be an Income Tax deduction of up to 30% of the individual's "adjusted gross income" depending upon the amounts of the individual's other donations.

Additional information may be obtained by writing to the Rev. John J. Cavanaugh, C.S.C., Director of the Notre Dame Foundation, Notre Dame, Indiana. Father Cavanaugh will refer all inquiries to those specializing in "Estate Planning."

Rev. Louis J. Thornton, CSC
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