

A “Baker’s Dozen” of Talking Points

Heckerling Musings 2011

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Here are tonight's "Baker's Dozen" talking points drawn from an extensive outline my colleague Steve Akers prepared on the 45th Annual Philip E. Heckerling Institute on Estate Planning (2011). The full outline is on your Council's website and also available by sending me an email at parthemer@bessemer.com.

The 96 page outline is merely a summary of observations of selected items during the week. We take no credit for any of the outstanding ideas discussed at the Institute.

Much discussion focused on the "Tax Relief, Unemployment Insurance Authorization, and Job Creation Act of 2010" (TRA 2010).

1. Page 1. Brief Overview of TRA 2010

- Two years only
- Portability for estate and gift, but not GST, exemptions
- Reunification
- Change in how taxes are calculated
- Is there a "clawback" issue?

2. Page 14. What was not in TRA 2010

- Short term GRATs
- Basis consistency
- Valuation discounts
- Reinstatement of state death tax credit

3. Page 15. Planning under TRA 2010

- Increased exemptions – use or possibly lose
- Don't forget basis step-up planning
- Future role of credit shelter trusts, perhaps with spouse as permissible beneficiary

4. Page 20. Planning Approaches to Utilize Increased \$5 Million Gift Exemption

- Tax advantages to lifetime gifts (appreciation, discounts, grantor trusts, removal of taxes if survive 3 years, and allocation of GST
- Disadvantages – asset declines in value, clawback?
- How to use? Outright, direct to grantor trusts, forgive loans, unwind split dollar, sales to grantor trusts, leveraged loans to grantor trusts, grats, qprts, charitable lead trusts
- Easier now to plan for same-sex couples and to equalize gifts among heirs

5. Page 31. GST Planning under TRA 2010

- You must OPT OUT of automatic allocations to direct skip gifts in 2010 that are for current bene and not future generations

- Disclaimers in 2011 may result in 2010 direct skips (at 0% tax rate)

6. Page 34. Planning Considerations for Untimely 2010 Gifts

- Disclaimer? Recission? (many are doubtful that wrong prediction of tax law will justify recission)

7. Page 38. 2010 Estates

- Estate Tax versus Capital Gain; report on Form 8939

- Decision may be easy...but may not (impact of formula, prediction of future capital gains rate)

8. Page 42. Decanting

- No rulings will be issued

9. Page 42. Defined Value Clause Updates

- Petter on appeal; another McCord-type case pending

- GRATs, Net Gifts diminish risk of revaluation

- Consider a "spillover" arrangement, and some initial value to spillover transferee

10. Page 46. GRAT Creative Strategies

- Manage mortality risk (life insurance, grantor purchase remainder interest (commutation?), grantor sell annuity interest, 99 year GRAT)

- GST Planning – circumvent ETIP rule by (1) beneficiary selling remainder interest into grantor trust for beneficiary's children, (2) remainder beneficiary creating for full and adequate consideration, (3) setting up GRAT to GST exempt trust; spouse purchases remainder interest

- Omit spendthrift provision

- Other ideas - reverse freezes, leveraged GRATs, and using derivatives

11. Page 84. FLP Annual Exclusion Gifts

- FLP interests denied present interest/annual exclusion treatment (Price 2010)

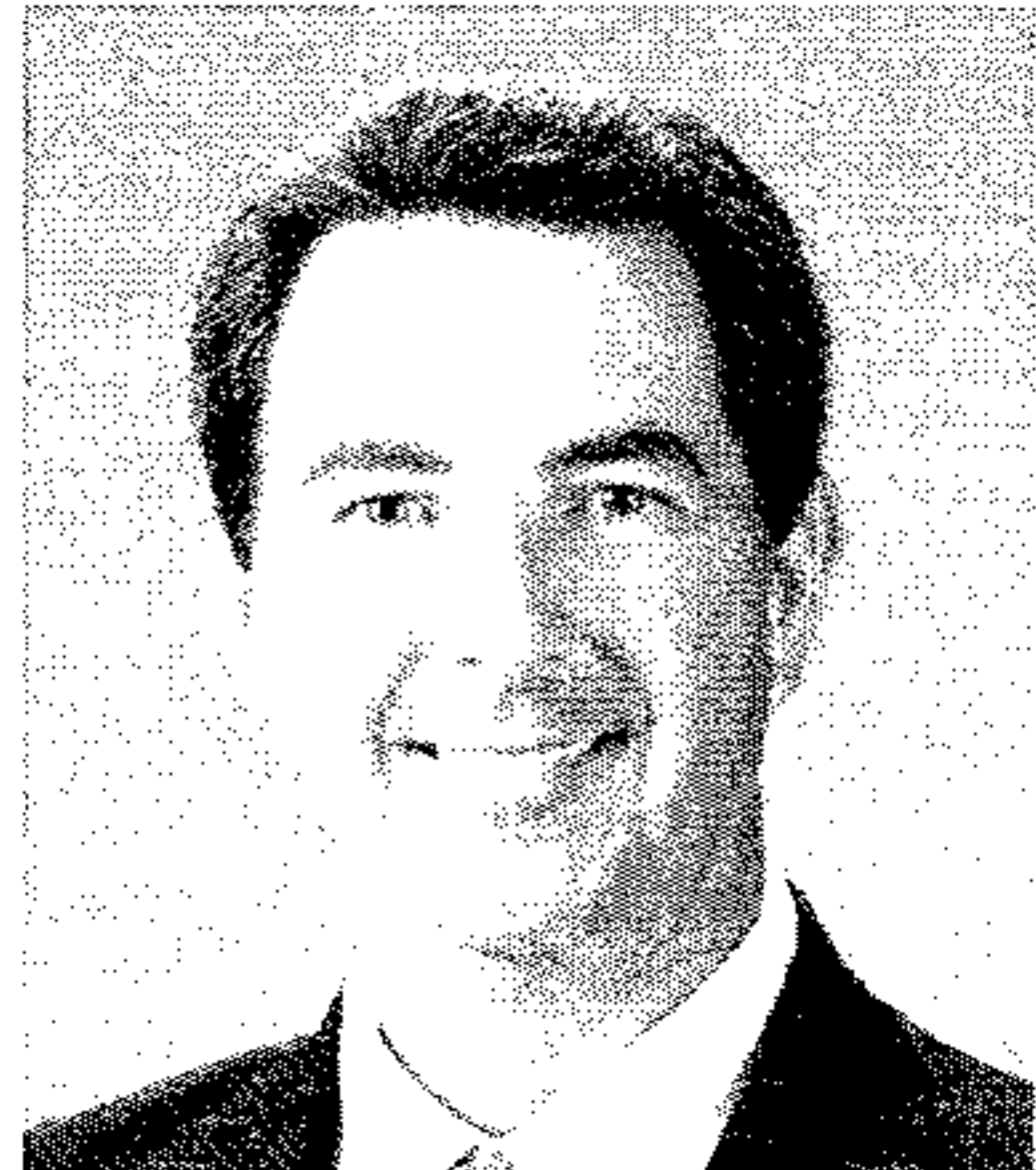
- Embrace holding as Fisher Price case emphasized that LP units have no substantive present economic benefit HELPS marketability discount planning

12. Page 85. Life Insurance in an FLP

- 2009 PLR extended Knipp (1955) - life insurance not in estate, though insured was a partner, sole shareholder of the GP entity, and FLP's only asset was the insurance

13. Page 85. Trustee's Creation of FLP/LLC Held to be a Breach of Trust

- Schumacher v. Schumacher (2010) trustee invested trust assets in FLP or LLC interests



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Mr. Parthemer is Fiduciary Counsel and Head of Legacy Planning for the Southeast Region. He joined Bessemer Trust, an exclusive wealth management firm, in 2004 as a Legacy Planner working with our Florida clients. Prior to joining Bessemer Trust, Mr. Parthemer was in private law practice in Pennsylvania and Florida, most recently as a Trust and Estate partner with Duane Morris LLP. He also spent several years at PricewaterhouseCoopers and was involved in private businesses.

Mr. Parthemer is a frequent national lecturer and published author; Vice Chair, ABA Insurance & Financial Planning Committee; member Florida Bankers Association, Trust Executive Committee, and Chair of the FBA's Trust Legislation Committee; member, Synergy Summit Steering Committee; and member, Florida and Pennsylvania Bar Associations. He also writes a regular column for the Journal of Financial Service Professionals magazine.

He has been faculty for the University of Miami's Heckerling Institute, Adjunct Professor, Widener University School of Law, and a guest lecturer at the University of Miami School of Law's LLM program. He frequently has been honored as one of the Best Lawyers in America and a Florida Super Lawyer.

Mr. Parthemer received his J.D. from The Dickinson School of Law, Penn State University, and his B.A. and B.S. degrees from Franklin and Marshall College.

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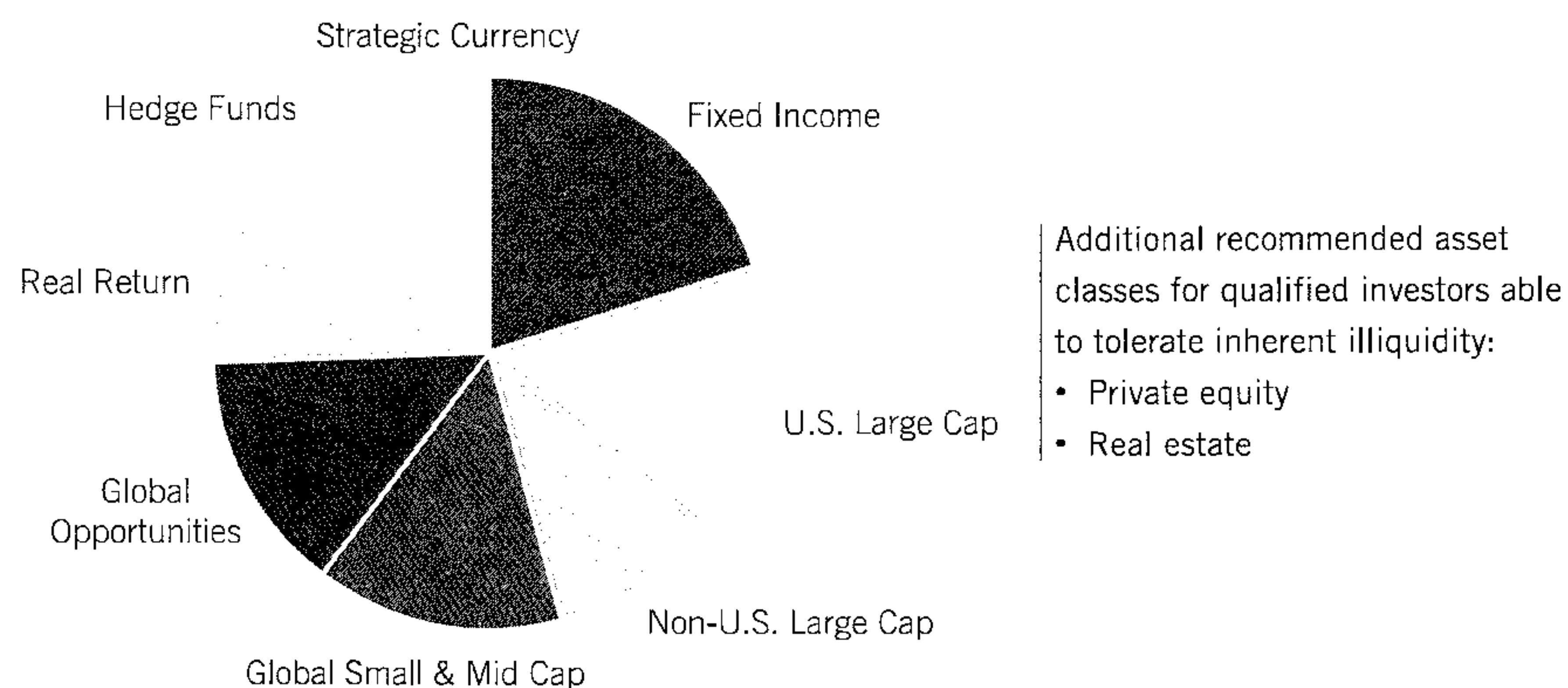
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