**Fountainview**

**2000 Fountainview Drive**

**Monsey, New York**

**Estate Planning Day**

**Rockland County Estate Planning Council**

**May 15, 2015 – 8a to Noon**

**Discussion Agenda**

**Timothy Speiss, MST CPA PFS IAR**

**Partner and Practice Leader**

**National Personal Wealth Advisors Practice**

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[http://www.eisneramper.com/includes/images/logo.png](http://www.eisneramper.com/)

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**Certifications and Registrations**

* Certified Public Accountant (CPA)
* Personal Financial Specialist (PFS)
* Investment Advisor Representative (IAR)

**Specialties**

* Individual Taxation & Planning
* Estate & Trust Taxation & Planning
* Philanthropy & Charitable Giving
* Investment Advisory Services
* Advising Closely Held Businesses & Shareholders
* Advising Public Company Board Members & Executives
* Family Office Services
* International Wealth Advisory Services
* Athletes & Entertainers

**Activities**

* Widener University School of Business Advisory Board Chair
* U.S. Foreign Policy Association
* United Nations Fund to Support Global Business Principles

**Office Locations**

* New York
* New Jersey
* California
* Illinois
* Pennsylvania
* Mumbai
* Cayman Islands

**About Timothy P. Speiss**

Timothy Speiss is the Partner-in-Charge of the firm’s national [Personal Wealth Advisors](http://www.eisneramper.com/services/personal_wealth_advisors/) Practice and Vice President of EisnerAmper Wealth Planning LLC. He is a member of the firm’s Executive Committee and Tax Policy Committee, and co-chairman of the New York Tax Practice. Tim is also a member of the firm’s Technology Committee and Legislation Monitoring Group, community service group EisnerAmperCares.

He has nearly 32 years of experience in providing comprehensive tax planning and related investment, compensation, and financial planning services to senior executives and board members of Fortune 100 publicly held companies, Forbes 100 families, and privately held businesses and owners including celebrities and owners of professional sports teams.  Prior to joining EisnerAmper, he was a partner with a Big Four firm and served as Partner-in Charge of their New York Metro and Northeast Area Private Client Advisory Practice.

Tim is a frequent speaker and author on topics of tax and financial planning, executive compensation, charitable giving, and related matters. He has lectured in various university graduate programs and regularly provides commentary on tax and investment and legislative matters to television, radio, and print media. Tim is also the editor of EisnerAmper LLP Personal Wealth Advisors Knowledge of Wealth.

He was a staff assistant to a former U.S. Congressman and has attended U.S. Treasury hearings on various matters of federal taxation.  He is a member of the United States Foreign Policy Association (U.S. FPA), has been cited as an Outstanding New York Businessperson by a U.S. Senate Subcommittee, and is the founder of the Timothy Speiss Endowed Fund For the Promotion of United Nations Responsible Global Business Principles at Widener University.  Tim serves on the boards of, and regularly advises, numerous charitable and educational organizations and capital campaign initiatives.   His involvement includes the Trustee, Finance and Development Committees of the Harlem Academy; Board Chair (Manhattan) of the Abingdon Theatre Company Corporate Development Committee of the Alliance for Lupus Research; and Chair of the Bishop McDevitt High School President’s Advisory Board.  Tim graduated from Widener University with a B.S. in Business and M.S. in Taxation.

**About EisnerAmper LLP**

EisnerAmper offers responsive accounting, consulting and [tax services](http://www.eisneramper.com/services/tax_services/) with an entrepreneurial focus, providing clients with smart, analytical insights delivered in an approachable style. Firm professionals build strong client relationships based on open communication with each client, and believe that the trust clients put in them is paramount. In February 2015 the firm was named the overall winner of Institutional Investor’s Alpha Awards for hedge fund service providers in accounting. EisnerAmper was the highest ranked accounting firm, best equipped to help managers navigate turbulent markets and complex regulations, in each of the five aspects of service: audit, client service, hedge fund expertise, regulatory & compliance, and tax. Every member of the EisnerAmper team is passionate about rolling up their sleeves and working hard to help clients get down to the business of building success. Our accounting firm works with enterprises as diverse as sophisticated financial institutions and start-ups, global public companies and middle-market companies; as well as high net worth individuals, family offices, [not-for-profit organizations](http://www.eisneramper.com/industries/nonprofit_organizations/), and entrepreneurial ventures across a variety of industries.

EisnerAmper is one of the largest [accounting firms](http://eisneramper.com/newsDetail.aspx?id=1296) in the nation with nearly 1,200 employees, including 180 partners. The firm is PCAOB-registered and provides public companies with audit, tax, internal audit, [pension audit](http://www.eisneramper.com/services/employee_benefit_plan_audits/audit/), executive compensation review and a variety of other services. The firm maintains offices throughout New York (NY), New Jersey (NJ), Pennsylvania (PA), California (CA), and the Cayman Islands.  EisnerAmper is a member of PKF North America, an accounting firm association with independent members throughout the US, Canada and Mexico.  PKF North America is an independent member of PKF International, a worldwide association of accounting and advisory firms in over 125 countries, enabling us to provide clients with the worldwide resources they often need.

Recognized internationally as one of the premier firms providing advisory, [audit](http://www.eisneramper.com/services/audit_and_assurance/), and [tax services](http://www.eisneramper.com/services/tax_services/) to [financial services](http://www.eisneramper.com/industries/financial_services/) entities and portfolio companies, EisnerAmper serves more than 1,200 [hedge funds](http://www.eisneramper.com/industries/financial_services/hedge_funds/), 175 [private equity](http://www.eisneramper.com/industries/financial_services/private_equity/) funds and other fund entities. The firm works with more than 75 broker-dealers serving investment banks and retail brokerages. EisnerAmper was recognized by Institutional Investor as the leading accounting services provider to hedge fund managers and also provides services to more than 150 [insurance entities](http://www.eisneramper.com/Industries/Financial_Services/Capital_Markets/Insurance_Industry/).

EisnerAmper‘s knowledge of the capital markets helps clients seeking advice on issues such as mergers and acquisitions, debt financing, IPOs, international expansion, valuation, due diligence and restructuring. In addition, the firm provides full audit services to clients with off-shore needs through PKF Cayman.

The firm provides a comprehensive set of private business services to closely held companies, high net worth individuals and families including tax planning and compliance, investment planning, [international wealth advisory](http://www.eisneramper.com/services/international_services/) services, risk management, trusts and [estate planning](http://www.eisneramper.com/services/tax_services/estates_trusts_and_private_foundations/), cash flow and asset protection planning.

EisnerAmper professionals have significant breadth and depth of knowledge in key service areas including [consulting services](http://www.eisneramper.com/services/Risk_Advisory_Services.aspx) comprised of [internal audit](http://www.eisneramper.com/services/internal_audit_and_risk_management/internal_audit/), risk management, information technology and compliance. Other primary service lines include asset and business valuation, [international tax](http://www.eisneramper.com/services/tax_services/international_tax_services/), [human capital advisory](http://www.eisneramper.com/services/Human_Capital_Advisory_Services.aspx), [employee benefit plan audits](http://www.eisneramper.com/services/employee_benefit_plan_audits/audit/), [fund services](http://www.eisnerfundservices.com/), [litigation support and forensic accounting](http://www.eisneramper.com/services/litigation_consulting_and_forensic_accounting/), bankruptcy and insolvency and [royalty audit](http://www.eisneramper.com/services/litigation_consulting_and_forensic_accounting/commercial_litigation/royalty_audits/).

EisnerAmper has deep expertise providing audit, tax and advisory services to clients in major industry groups including [life sciences](http://www.eisneramper.com/industries/life_sciences/) and bio-tech, health care, [clean tech](http://www.eisneramper.com/industries/technology_companies/clean_tech/), technology, digital media, entertainment, sports, real estate, construction, [not-for-profit](http://www.eisneramper.com/industries/nonprofit_organizations/), manufacturing, automotive, distribution and retail.

EisnerAmper works with companies from their inception providing [accounting](http://www.eisneramper.com/services/accounting_services/), advisory and tax services. The firm serves incubators and start-ups with accounting services and advice. As companies grow, EisnerAmper assists them every step of the way with a full complement of services to help them reach their goals.

EisnerAmper’s core values are to provide quality service, attract and develop a team of talented and highly trained professionals, stress innovation in all firm activities, act with integrity at all times, and be an effective and financially sound professional enterprise. The firm puts these values into practice at work as well as in the community. Through various avenues, such as EisnerAmper Cares, the Women of EisnerAmper and employee affinity groups, EisnerAmper employees are encouraged and supported to make a difference through volunteer projects and community service.

**EisnerAmper. Let’s get down to business.**™

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**The Use of Annuities in Trust and Estate Planning**

1. **Income Tax Considerations**

**Potential Principal Goals**

* + Definition of an annuity under IRC Sec. 72
    - All gain (or excess contract value over adjusted basis) is taxed as ordinary income, either to the living contract holder or beneficiary
      * In contrast, the death benefit of a life insurance policy is generally received income tax free by a beneficiary
    - Distributions from an annuity (issued post August 13, 1982) are taxed on a “last in, first out” basis (or as gain) until all gain has been distributed. This treatment also applies to life insurance policies that are modified endowment contracts (MECs)
      * Distributions to the living owner of a life insurance policy (not a MEC) are taxed on a “first in, first out basis” All distributions are considered as a return of principal until all contract basis has been distributed
  + Income to estate owner’s heirs: Annuity payments
    - Return of basis (payments as a return of purchase price; nontaxable)
      * Basis step up to fair value at date of death – Note: unavailable step up in basis when annuity is acquired by a decedent
    - Return (payment) in excess of basis – capital gain (20% plus 3.8% (federal))
    - Interest income payment – ordinary income (up to 39,6% (federal))
  + Tools to attain goals: Immediate and deferred annuities
    - Immediate annuities (SPIAs) can provide for annual increases – Advantage
    - Most immediate annuities, once begun, do not permit modification of the payment amount or commutation - Disadvantage
  + Use of credit shelter trusts to acquire a SPIA
    - Dilemmas for trustees and estate planners
    - Income to surviving spouse
    - Growth of principal for remainder beneficiaries

1. **Estate Tax Considerations**

* **2015 the U.S. and New York estate and gift tax regime**
  + Testators
  + Beneficiaries
  + Designations
  + Asset protection
  + Cash flow/distributions control
  + Other
* **Estate, income tax, financial and retirement planning, and investments involving annuities**
  + Variable and fixed, immediate and deferred annuities, and guarantees
  + SPIAs and other annuity vehicles
  + GRSTs and GRUTs
  + credit shelter trusts
  + lifetime gifts to heirs
  + benefits for employees
  + Family financial planning considerations
* **Six planning concepts to be aware of (evaluating annuity illustrations is a must)**
  + Trust acquires an immediate annuity naming the income beneficiary as the annuitant; invest all remaining assets with a growth objective
    - Document risk tolerance and income/capital needs of all beneficiaries; consider an investment policy statement involving all beneficiaries and the trustee(s); Modern Portfolio Theory design strategy; monitor results and fees; watch list and modify as necessary
    - Trust acquires SPIA for heirs outside of a trust
    - Protection from creditors, divorce
  + Immediate annuities for heirs outside of trusts
    - Specific and certain income for specified heirs
    - Disadvantage: overhead costs, surrender charges
  + Purchase of a deferred annuity for heirs
    - When certain income is needed for heirs at a future date
    - Tax deferral of capital gains can arise
    - If the annuity is acquired via trust, creditor protection
    - Disadvantages – costs, unavailability of basis step-up when owned by a decedent and ordinary income tax on distributions
  + Purchase of SPIA by estate owner and spouse – Opportunity to make lifetime gifts
    - Enhances ability and confidence to make lifetime gifts
    - A hedge against the concern of “running out of money”
    - A surviving spouse’s income is potentially enhanced
    - Increase possibility of greater asset transfers to family and charity
    - Both (either) deferred and immediate annuities can be effective, based on facts and assumptions
  + Using a variable deferred annuity to provide death benefit to an uninsurable estate owner
    - A deferred annuity is not life insurance. A contract qualifying as life insurance under IRC Sec. 7702 has a death benefit that is taxed differently (under IRC Sec. 101) than a contract qualifying as an annuity under IRC Sec. 72
    - A variable deferred annuity often provides a death benefit in excess of the contract’s cash value, compared to the death benefit of a fixed deferred annuity is limited to the cash value; an advantage is significant for an individual who cannot obtain insurance or for whom the premiums would be unacceptably high; the death benefit is taxable however there is no insurance underwriting process
    - Some advisors recommend variable annuities with strong enhanced death benefit guarantees; further a single annuity could be split into more than one annuity contract
  + Using the guarantees in a deferred annuity to provide portfolio insurance
    - A fixed deferred annuity provides three guarantees to its owner
      * A guarantee of principal
      * A guaranteed minimum rate of return
      * Guaranteed annuity factors
        + A variable deferred annuity does not offer the first two guarantees to the living policy owner
  + Using the guaranteed income of an immediate annuity to help reduce retirement portfolio failure (investing a portion of a retirement plan balance)
  + Using annuities beyond the grave: tax deferral planning
    - As discussed, the income tax on annual gains in an annuity is generally deferred until distributed
    - Further, if a deferred annuity is structured so to ensure that beneficiaries and receive proceeds in the form of an annuity the benefits of tax deferral could survive the annuity owner
      * A “Stretch Annuity” – amortization or annuity or life expectancy factor methods – See IRC Sec 72(b) – the life expectancy factor could offer the most tax deferral
      * See IRS Notice 89-25
    - Family funding: step children and others
    - To restrict/plan how beneficiaries will receive annuity funds, a trust as owner could be beneficial
      * The five year rule
  + Business owners: Using a SPIA to fund a long term compensation plan
    - * + For the business owner
        + For key employees
        + Deferred compensation arrangements
        + IRC Sec 754 basis step ups, taxable sales, and deferred gain recognition with IRC Sec 72 annuity payments
  + Charitable planning
    - SPIA payments to a (fund) bequest
    - Variable annuity to fund a CRUT
      * Charitable remainder beneficiary and non-charitable annual income beneficiary
        + Non-charitable beneficiary receives a unitrust payment each year (a percentage of trust value); lesser of trust net income or the cited percentage; shortfalls are credited to a make-up account (NIMCRUT)
        + Independent trustee elects to make payments, or not; thus impacting trust income and deductions (note the difference between trust accounting income and taxable income)
        + A NIMCRUT instrument can be drafted so as to define distributable income as any distribution from the annuity provided state law permits such language. And note -
        + State Principal and income Acts
  + Deferred annuities and QTIPs

1. **Cases and client stories on annuities**