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After all this snow, we hope you are well as Spring approaches. We appreciate having worked with you and hope you find our office a responsive source of information for Estate and Estate Tax Planning, Long Term Care and Special Needs Planning issues. This letter is to update you on some "Hot Topics" in the areas of Elder Law, Special Needs, Estate Planning and Tax:

(1) **Health Care Patient Advocate Designation**. Michigan law has changed to allow a Patient Advocate to make decisions about mental health treatment. Prior lack of protections forced families into a guardianship when a family member was hospitalized due to mental illness even when there was a valid Patient Advocate. This change is important given the significant difficulties we have had with psychiatric hospitals refusing to communicate and share treatment decisions with the Patient Advocate short of obtaining a guardianship. The downside to a guardianship is the formal declaration or public "branding" of a person as incompetent. This can be extremely hard on the self-esteem of the individual. In addition, a guardianship is difficult to undo upon recovery.

The new law allows a designated Patient Advocate to have the authority to make mental health treatment decisions for a period of 30 days even if the patient communicates his or her intent to revoke the Patient Advocate Designation. We are now including specific references to this new law in the Patient Advocate Designations for our clients who feel this new authority is appropriate for their situation.

(2) **Medicaid.** Medicaid continues to be a subject of serious debate in government. There is much discussion about the program's future, its impact on budgets and proposed changes in regulations. As of November 1, 2004 Michigan adopted a "screening tool" for determining medical eligibility for nursing home and home care Medicaid. This will be used in lieu of the family doctor, who has traditionally controlled such determinations. As a result, spousal protections of assets and income may be lost under certain circumstances for failure to qualify under medical eligibility for Medicaid. Effective advocacy for good care is increasingly important.

Michigan is still the last state not to have estate recovery. We discussed this fact in a mailing last summer covering the subject of estate recovery.[1] To date there is still no legislator willing to sponsor the legislation for estate recovery in Michigan. It is, however, a priority item in the reworking of the Medicaid system in Michigan, which takes a significant toll on our state budget.

The following statistics reveal the urgency of this matter:

"Today, the [Medicaid] program covers 53 million people [in the United States] – nearly one in every six Americans – and costs $300 billion a year in federal and state funds, recently surpassing spending on the federal Medicare program. In some states, Medicaid accounts for one-third of the budget." See *Wall Street Journal,* "Surging Costs for Medicaid Ravage State, Federal Budgets," February 8, 2005.

On February 10, 2005 the Governor released her budget proposal for Fiscal Year 2006 and it includes the following per the Elderlaw Taskforce:

"The state will pursue various measures to 'increase personal responsibility' for recipients of Medicaid funded long term care including beginning an estate recovery program and closing certain 'loopholes' regarding annuities and other issues for a projected savings of $12 million."

(3) **Michigan Estate Tax.** Michigan no longer receives a "piece" of the federal estate tax pie because the state credit for federal estate taxes no longer exists. Michigan has not enacted any legislation to begin its own separate inheritance tax regime. Consequently, it is projected that there will be a potential loss of revenue in excess of $100 million annually. It is not clear Michigan will enact a separate inheritance tax as an effort to do so was defeated late last year per House Bill 5708 by a vote of 33 to 70. Whether Michigan will follow 17 other states and the District of Columbia with separate legislation still remains to be seen, especially with the current state budget crisis. It has been proposed that Michigan will enact a $1 million exemption. Regardless, the state death tax credit is scheduled to return in the Year 2011, with the return of the $1 million federal estate tax exemption unless the federal government takes steps to change the law.

(4) **Life Care Plans and Investment Policy Statements.** We have had the privilege of working with families and fiduciaries in developing an estate and financial plan for the life care of persons with disabilities. Key issues have involved home safety, housing arrangements, caregiver payments and coordination of medical care. These are best addressed through a detailed outline of the available resources and designing an Investment Policy Statement. An Investment Policy Statement ensures estate and financial planning arrangements are in tune with care objectives. This transcends a mere risk/return interview in the financial plan

[1] If you wish for a copy of this three-page detailed summary of Medicaid estate recovery and protective strategies, please contact us.

to providing concrete steps to protect the lifetime safety and security of the person with the disability.

(5) **Retirement Plans and "Exit Strategies."** Since 2001, the IRS has allowed more flexibility in handling IRAs after the death of the participant. Last year, two key Private Letter Rulings indicated greater ability of trusts and estates to separate IRAs among beneficiaries and achieve a "stretch-out" over each of the individual beneficiaries. Under proper circumstances trust and estate beneficiaries do not need to be forced to realize taxes all at once, nor even realize taxes according to the shorter lifespan of the oldest beneficiary. To enable this, trusts and beneficiary designations should be drafted to qualify with the strict regulations and registration requirements of the IRS. In addition, the custodian must be convinced to allow this separation of the IRA and the individual stretch-outs. Expert IRA commentator Natalie Choate, Esq. has requested the IRS to issue formal regulations recognizing this ability of the Trustee to separate and stretch the IRA over the lives of each of the individual beneficiaries.

For parents of a child with a disability where the majority of their assets are in a retirement plan, the importance of separating the IRA and achieving the "stretch-out" remains particularly important. This past year, a number of clients have decided to separate their IRA into separate accounts, one for each of their children, especially for the child with the disability. The IRA account for the child with disability can then be converted to a Roth IRA. Conversion to a Roth enables income tax free growth without the complications of the compressed income taxes within a Special Needs Trust.

(6) **IRS Challenges Values of Family Businesses Post-Death**. A recent decision by the IRS indicates its willingness to re-value stock or real estate well after a person's death. Last month, in Tax Court Memorandum 2005-2, *Estate of Noble vs. Commissioner,* the IRS revalued a closely-held company's stock 14 months after the date of death. This revaluation was based on a sale of that stock which was considerably higher than sales prior to the date of death. This raises questions for clients with business stock or real estate, especially in family limited partnerships arrangements or closely-held companies.

The IRS should be aware, though, that the argument for a higher valuation due to post-mortem sale is a "double-edged sword." For estates not owing federal estate tax, the logic of the decision could be used to adjust the basis of property to a higher value after the date of death upon a subsequent sale of the property.

Frequently, we advise clients that most disputes with the IRS occur over valuations and transactions with business interests and real estate. The IRS has assigned a number of new attorneys in the Detroit Estate and Gift Tax Group to evaluate such circumstances. Closely-held business owners should have increased vigilance in maintaining corporate record books, capital accounts and distributions to prevent challenges by the IRS. If corporate record books,

management and distributions have not been properly handled, we strongly advise clients to take care of those details.

We have enclosed with this letter a copy of our resource booklet, ***"Looking Ahead: Estate and Long-Term Care Planning for You and Your Family."*** We hope that it is helpful to you and your clients as you consider the estate planning and long term care planning processes. *If your clients are interested in a copy of this booklet for themselves, please give our office a call and we will be glad to send you more copies*.

We have had exciting news within our firm. Effective January 1, 2005, Norman "Gene" Richards was promoted to partner of the firm and our new firm name became Lampertius, Richards & Associates, PLC. Also, we have a new Paralegal/Geriatric Care Coordinator, Janine Mauck, who joined our firm in September with extensive experience in elder and special needs care, as well as a Graduate Certificate in Gerontology.

All three attorneys of the firm have been working through the new Probate and Estate Planning Program sponsored by Institute of Continuing Education ("ICLE"). Jim Lampertius and Gene Richards have served as commentators for the courses of this program. Jeff Ryan has just received his Certificate of Completion for the program. Jim will be presenting on "Incapacity and Powers of Attorney" for the ICLE certification course entitled, "Legal and Financial Planning for the Elderly and Disabled" on June 30, 2005 at the MSU Management Center in Troy.

We sincerely appreciate our work together. We look forward to continuing this relationship and again, hope you are doing well.

Very truly yours,

James P. Lampertius Norman E. Richards Jeffrey D. Ryan

Enclosure