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"Responsive Today, Prepared for Tomorrow"

Retirement Account Beneficiaries & Trusts

By: James P. Lampertius, Esq.

Retirement accounts represent a significant portion of the estates of many of our clients. Recent changes through the Pension Protection Act of 2006 and final tax regulations issued by the IRS make it easier to "stretch out" IRA taxes over the life of the beneficiary after the death of the participant.

Many articles now advocate naming a youngster so that Required Minimum Distributions ("RMDs") may be stretched out over a long life expectancy.

For example: A ten year old beneficiary would be able to extend RMDs over 72.8 years. There are serious problems, however, with a minor receiving title directly in their name as a beneficiary. They are as follows:

1. A custodian is necessary for the minor under state law until the child turns age 18 or 21, and depending on the financial institution and state law, a minor's conservatorship through the probate court may be necessary. The child then receives the full rights to the IRA proceeds at age 18 or 21.
2. ***There is no protection from loss due to creditors, predators or mistakes of the beneficiaries for funds left directly to a young person.*** The same loss can happen for an adult beneficiary who is disabled, facing a divorce, suffering from an addiction or undergoing any negative influence.

Solution: Name a Trust as the IRA beneficiary. A Trust serves to protect a beneficiary from these problems. It can provide a method to stagger distributions over the life of the beneficiary.

Until recently, Trusts would accelerate taxes on an IRA. IRS regulations and guidance have now clarified methods to use a Trust as an IRA beneficiary without accelerating taxes. ***Most Trusts we have encountered have not complied with these detailed requirements. Our Trusts have met these requirements since August 2005. If we drafted your Trust and your Trust has not been updated since August 2005, we strongly recommend that you have the Trust and Financial Durable Power of Attorney restated to comply with these requirements.*** There are four provisions a Trust must now have to ensure the "stretch out" of the IRA payable to a Trust:

1. The Trust and Will must require that expenses and taxes are not paid from retirement account assets as IRAs or the income tax deferral is unraveled by these expenses.

[Continued on Page 2]

Seminar News

Norman E. Richards, Esq. again this year will be presenting on February 8, 2008 for Lorman Education Services Seminar on the topic of "Trust Administration" in Detroit, MI.
James P. Lampertius, Esq. again this year will be speaking on June 13-14, 2008 for the Michigan Bar and The Institute of Continuing Legal Education (ICLE) on the topic of "Medicaid Planning: Latest Developments" at the Grand Hotel, Mackinaw Island. Please visit our website www.jpllaw.com if you would like a copy of any of these presentation materials.

[Continued from Page 1]

2. The Trust must comply with IRS requirements and deadlines for the Trustee to designate the lives of trust beneficiaries. This generally means either the Trust expressly requires distributions of the IRA Required Minimum Distributions (RMDs) according to the life tables of the IRS <u>or</u> the Trust ensures that there is no way to change the identity of the beneficiaries to a non-person (as a charity). Only persons (not charities) have measuring lives for RMDs.
3. The Trust must opt out of a new Michigan act called the New Uniform Principal and Income Act. This act sets presumptions on distributions which are different than the schedule provided by the IRS.
4. The Trust and Financial Durable Power of Attorney should give special powers to split the IRA, change financial custodians, if necessary, and conduct decisions about necessary distributions of the IRA.

In addition, this past year the IRS issued new guidance on beneficiary designations for an inherited IRA. ***We recommend we review that your beneficiary designation to confirm they conform with these new rules. It is now best to name each beneficiary's share of the trust rather than just the trust itself as the beneficiary***. This ensures each beneficiary can use their own life expectancy and not be stuck with the accelerated distribution schedule of the oldest beneficiary.

Because of these recent changes, certain financial institutions offer a "Trusteed IRA," in which their institutional trustee serves to manage the IRA. Although the law in this area continues to evolve, such annual costs of a "Trusteed IRA" generally are not necessary with a properly updated estate plan and beneficiary designation.

Rollovers from Qualified Retirement Plans

By: Jeffrey D. Ryan, Esq.

Before the 2006 Pension Protection Act, a child beneficiary or any beneficiary who is not a spouse could not rollover any qualified retirement plan benefits into his or her own IRA. They were left with a lump sum distribution generally within sixty days, accelerating all taxes and causing taxation at higher brackets.

With enactment of the Pension Protection Act by Congress, company planes were allowed to be changed so that non-spouse beneficiaries could rollover company plans as 401(k)s and 403(b)s tax free to a traditional IRA if the company plan allowed such a transfer. The IRA would then be treated as an inherited IRA. As a result, the income tax on distributions would be deferred over the lifetime of the beneficiary. The tax deferral over a lifetime can provide a greater amount of wealth build up, even on smaller accounts.

Many large companies balked at allowing non-spouse beneficiaries to rollover the qualified plan to an inherited IRA. In January 2007 the IRS released a notice that the option was up to the company to decide whether they would implement this rollover properly. Congress has been upset with the failure of companies and the IRS to implement this law. A bill in Congress is currently pending which mandates that all company plans implement the rollover to an inherited IRA. Anticipating this pressure by Congress, the IRS recently reversed its position. ***The IRS now mandates that companies allow for the rollover to an inherited IRA as part of their company plan as of January 1, 2008***. Beneficiaries should be aware of these rules and take action before the end of the year following the year of the death of the plan owner or they will potentially lose the ability to stretch payments over their lifetime.

Permanent Extension of IRA "Catch Up"

Much of the year 2001 tax relief on retirement accounts which was set to expire in 2010 has been extended permanently by the Pension Protection Act of 2006. Increased contribution limits and "catch up" contributions for persons age 50 or older are now:

		2007	2008
IRA	<age 50	$4,000	$5,000
	≥age 50	$5,000	**$6,000**
SIMPLE	<age 50	$10,500	$10,500
	≥ age 50	$13,000	**$13,000**
401(k)	<age 50	$15,500	$15,500
	≥age 50	$20,500	**$20,500**

Individuals who are not covered by an employer plan such as a 401(k) or 403(b) can make deductible contributions to a traditional IRA regardless of their income level. For individuals covered by an employer plan, deductible IRA contributions are phased out with higher levels income in 2008. For married filers and company plans, it starts at $85,000.00 of AGI and ends at $105,000.00. If only one spouse is in a plan, the phase out for the spouse not in a plan starts at $159,000.00 of AGI and ends at $169,000.00. For single persons, the phase out is between $53,000.00 and $63,000.00. As to the ability to do a Roth IRA in 2008, the phase out for couples is $159,000.00 to $169,000.00 of AGI. For singles, $101,000.00 to $116,000.00.

2008 Change in Trust Income Taxes

Income tax brackets for trusts and estates are dramatically compressed compared to the individual tax rates for single or married couples. ***As individual must make over $349,700 to hit the 35% income tax bracket, a non-Grantor Trust need only retain income over $10,700.00.*** A non-Grantor trust is generally a trust after the death of the Grantor or entirely separate from a Grantor and taxed as an individual entity. ***To avoid this compressed tax, we work with trustees on timing of distributions to beneficiaries (which generally moves the income out to a lower bracket) and special elections with the tax year and expenses.***

The Alternative Minimum Tax & Charitable Gifts and Estate Planning

By: James P. Lampertius, Esq.

The Alternative Minimum Tax ("AMT") generally hits clients with incomes between $100,000 to $500,000. The AMT especially affects clients who claim several exemptions on family members or otherwise have certain miscellaneous itemized deductions or tax credits. This complex income tax causes a loss of deductions for estate income taxes, personal exemptions, most miscellaneous itemized deductions and tax credits for these clients. The AMT system replaces those tax deductions, exemptions and credits with an overall tax system at a flat rate of 26% (or 28% if income exceeds $175,000). Those tax rates are lower than the top income tax rate of 35%, but the AMT usually results in higher taxable income than the regular system.

Here are some income tax and estate planning strategies to deal with AMT. You may want to delay making large charitable gifts to a year in which income will not trigger AMT. In addition, we encourage clients to contribute all they possibly can to their 401(k) and IRAs because this is another way to reduce income beyond the reach of the AMT. The timing of sale of appreciated stock or real estate also affects the trigger of AMT.

There has been considerable pressure on Congress to pass much needed tax relief involving the Alternative Minimum Tax. Last December the Tax Increase Prevention Act of 2007 increased the exemption amount for tax filers across the board. ***The latest "AMT patch" approved by Congress is only good for the 2007 tax year.***

The new law raises the exemption amounts for 2007 tax returns as follows:

- Joint filers-exemption amount is $66,250 (up from $62,550) and
- Single filers-exemption amount is $44,350 (up from $42,500).

The IRS has scrambled to implement the new law. As of this writing, the IRS has delayed the starting date for taxpayers who are affected by AMT to begin submitting income tax returns until February 11. This may also delay the processing of refunds. In any estate plan strategy, especially involving deductions of expenses, charitable gifts or realization of income, we analyze the impact of AMT with your CPA. We hope this information is helpful to you, your financial planner and accountant with your Year 2007 returns and the choices you make in the Year 2008.

Unlimited Roth Conversions in 2010 & Roth Rollovers

By: Jeffrey D. Ryan, Esq. & James P. Lampertius, Esq.

Other recently enacted legislation will allow for unlimited conversions of traditional IRAs and Roth IRAs regardless of income level in 2010. Currently, the adjusted gross income of the participant must be $100,000.00 or less to do a Roth conversion. In addition, last year the IRS opened up direct rollovers from a company plan to a Roth IRA.

The advantages of a Roth IRA are the tax free growth and no requirement for minimum distributions over the lifetime of the participant. In addition, this tax free growth can extend over the lifetime of the beneficiaries. At the death of the participant, the beneficiaries have to take minimum required distributions, but there is no income tax, only the requirement to move from Roth into regular taxable account status increments over the life of the beneficiary.

The key advantage of the Roth conversion is to allow for the movement of otherwise taxable assets into a non-tax format in addition to those assets already sheltered in the retirement plan. ***If there is "excess capital" in the IRA, meaning the IRA is unlikely to be spent down fully within the lifetime of the participant, two recent studies have shown the Roth IRA is the clear winner compared to the traditional IRA. Persons unable to invest in a Roth IRA now may want to maximize contributions to a traditional IRA, SEP IRA or SIMPLE IRA, even make a non-deductible contribution, then convert these contributions to Roth status in the Year 2010.*** Please contact us if you would like a copy of the studies comparing the Roth conversion to the Traditional IRA.

Retirement Planning and Children with Special Needs

By: Jeffrey D. Ryan, Esq.

Of practical concern for those families dealing with children with special needs is assuring long term care services for the child in the event of the early death of the parents. Traditional IRAs force distributions of income out annually which are taxable to the child beneficiary or to a trust for the child resulting in tax complications. By converting a traditional IRA to a Roth IRA, the parent would allow for the child, or the child's trust, to receive annual distributions after the death of the parent without any income tax complications. Also, Roth IRAs are not subject to minimum distributions during the life of the original owner, so they are ideal for creating a long term investment account for a child with special needs.

Per *The ElderLaw Report*, a ***recent Internal Revenue Services Private Letter Ruling demonstrates why attorneys who practice in special needs trust area must know both public benefit and tax rules. In the Ruling, the IRS made two important conclusions regarding the interaction between Individual Retirement Accounts (IRAs) and special needs trust.*** First, the IRS found that the portion of a deceased taxpayer's IRA transferred to his child's Special Needs Trust was not a recognized transfer when calculating gift and estate taxation. Second, required minimum distributions from the IRA to the child's SNT could be calculated based on the life expectancy of the child with a disability.

Guidelines for Selling a Family Business

By: Norman E. Richards, Esq.

A family business often represents a lifetime of investment and accomplishment. The decision to sell a business is often triggered by life events such as a desire for retirement, to free up time for other life activities, to pursue other interests, or to allow children or other key employees to carry on the business. Selling a business is very emotional for the business owner and the transaction itself can be very complex and difficult to understand. Navigating the sale of the business becomes easier when the business owner understands the big picture. Attorneys can help unlock the mysteries of a sale transaction by providing overall guidance.

It is best to engage the attorney as early possible before announcing that the business is for sale. There are many actions that the attorney and other professionals can take to make the business attractive to a buyer and streamline the process of the sale transaction. Below is an overview of the typical sale transaction:

1. **Advisory Team.** As soon as possible the owner should surround himself/herself with an Advisory Team. This team will usually include an attorney, an accountant and, if necessary, a business valuation expert, insurance advisor and banker. The attorney and the business owner's accountant should meet early in the process in order to review the business's financial statements. It is crucial for the accountant and the attorney to have a good working relationship because they both play critical and interrelated roles.
2. **Clean Up.** As part of the sale of a business, it is important for the attorney to review the financial and corporate structure of the business. ***It may be necessary to recommend changes that will clean up business matters before putting the business on the market. It is not uncommon to have to update the company's record book to bring the annual minutes up-to-date***. While this is a seemingly trivial matter, it is crucial to have these loose ends tied up when the potential buyer reviews the business's corporate record books.
3. **Consider Bankers.** The business owner should evaluate whether to retain the services of an investment banker. Bankers may provide services to particular types of businesses, while others may handle sales for all businesses in general. ***A decision should be made as to whether the services of an investment banker will increase the sale value and assist in the negotiation process to a degree that will justify the additional cost of the investment banker***. The attorney can assist the business owner in evaluating the options and provide connections to qualified local or national investment banking firms.
4. **Confidentiality Agreements.** Before providing sensitive information to potential buyers, the business owner needs the assurance that sensitive information will be held in strict confidence. This is usually accomplished by entering into confidentiality agreements to protect information disclosed during the negotiation process and to also protect the fact that the company is up for sale. ***Often, a business owner will not want employees and customers to be aware that the company is for sale until the owner is prepared to make that information public***.
5. **Letter of Intent.** A letter of intent is a document that outlines the terms of sale and should be drafted by an attorney. Typically this letter should be non-binding, because it leaves open more specific aspects of the sale agreement, which have yet to be negotiated. ***While the Letter of Intent may not be binding, it does play an important role of allowing the parties to agree on the big picture without binding themselves to close the transaction before they have complete information***. A business owner should carefully consider with the attorney whether and for how long to take a business off of the market in the interest of pursing negotiations with a potential buyer.
6. **Closing the Deal.** There are several important steps needed to bring the sale transaction to a close. These include negotiating and drafting a definitive agreement, allowing the buyer to carry out ***due diligence investigation*** of various aspects of the business and bringing the transaction to a closing. Sometimes a definitive agreement will not be signed until the day of closing, while at other times a definitive agreement will be signed long before the closing. Usually, this gap of time is used to resolve contingencies such as financing, remaining due diligence investigations, compliance with regulations and similar matters.

By using an effective advisory team, a business owner will have the peace of mind that all issues have been resolved by the time of the closing. This allows the actual closing transaction to be a formality of signing documents. The goal is to do the hard work before the closing and not to be negotiating at the last moment.

2008 Social Security and Medicaid Numbers

For adults with disability who participate in ***Social Security Disability***, the threshold for monthly income has increased from $900 per month to $940 per month. For individuals participating in ***Supplemental Security Income (SSI)***, the maximum monthly benefit has increased from $623 to $637. Whereas there is no asset limitation to participate in Social Security Disability, the maximum allowable assets for SSI continues to be $2,000 for an individual and $3,000 for a couple.

As to ***Medicaid***, the amount of minimum liquid assets the spouse at home can keep now is $20,880. The maximum liquid assets the spouse at home now can keep in her name upon application of Medicaid is $104,400. The minimum amount of income the spouse at home can keep is $1,711. The maximum amount of income the spouse can keep is $2,610.

Caregiving Contracts: Providing Guidance for Clients and Caregivers

By: Christina L. Borowicz, Esq.

Everyone needs help during one point or another during their lifetime. Many of our clients rely on the assistance of a caregiver to assist them with their daily needs. For clients who wish to remain in their home, family members are often called upon to take on the role of caregiver. The question is how to define the relationship of a family member caregiver. The answer may be through the establishment of a contract, specifically a Caregiving Contract.

There are several different types of Caregiving Contracts. The one that is suitable for you will depend upon your unique situation. A caregiver may have many responsibilities or very few responsibilities mostly dependent upon the living arrangement of the client. When a client resides in an assisted living facility, a caregiver may have the limited role of the client's "care coordination." This type of arrangement may include setting up doctor's appointments, arranging transportation to appointments, corresponding with medical/legal professionals, and purchasing necessary items for the client. A caregiving contract can define these duties and also provide terms for compensation of the caregiver and reimbursement for various expenses.

Many of our clients employ the assistance of a familial caregiver in order to allow them to stay in their home. For this type of residential model, a caregiver may have more expansive responsibilities including meal preparation, administration of medications, assistance with bathing, grooming, dressing, undressing and feeding. Due to the intensity of this type of agreement, a Caregiving Contract will include not only terms for compensation and reimbursement of the caregiver, but also provisions for respite for the caregiver.

In a situation where a client can no longer reside in their own home but does not yet require a nursing home, a family member may decide to take the client into their home in order to provide supervision and care at a lower cost than a community residential placement. This type of arrangement often is in the form of a Caregiving Lease. It may call for certain modifications to the family member's home to accommodate the client's needs (ex: wheelchair ramps, handicap accessible doorways, rails in bathrooms, etc.). If this is necessary, it is helpful to include the expense of these modifications in the Caregiving Contract. It may even be helpful to make the parent and child caregiver co-owners of the improved residence.

There are many advantages of having a Caregiving Contract in place. A Caregiving Contract helps define the relationship of the client and the caregiver. It also allows the client to stay in their home and provides a caregiving family member with compensation for the services they provide to the client. Also, if a contract for caregiving services exists with a family member at the time services are provided to the client, Medicaid will not consider the payments to the caregiver to be divestments. In addition, Medicaid will allow the transfer of the client's home to a caregiver child who resides in the home after two years of caregiving by the child. This transfer of the house to a caregiver child is free of the Medicaid lien against the house under the Estate Recovery Program.

Medicaid is now considering new regulations which require special attention to the detail of these caregiving arrangements for them <u>not</u> to be considered divestment. These regulations require clients to have caregiving arrangements in writing with a Physician's Letter regarding the need for care. Restrictions also exist on the ability of an Agent under Durable Power of Attorney to engage himself or herself as the caregiver.

If you are currently in a caregiving arrangement, we recommend we speak with you about these proposed changes.

VA Benefits May Lighten Medical Expense Burdens

By: Christina L. Borowicz, Esq.

With it becoming more and more difficult for client's to obtain Medicaid eligibility, we try to pursue different options for our clients in need of financial assistance with long-term health care. A special benefit may be available to you if you are a veteran, the surviving spouse of a veteran or a dependent of a veteran.

There are three (3) different levels of benefits which may be available to you as a veteran, a spouse of a veteran or a qualifying dependent of a veteran. At each level, the same method is utilized for determining the monthly benefit. The VA will add up all sources of monthly income and subtract from that amount the monthly out-of-pocket medical expenses of the applicant. Medical expenses may include medications, assistive devices, caregiver expenses or the cost of living in an assisted living facility or nursing home.

The first level of benefits is available to veterans, their spouses or their dependents that are either over age 65 or under age 65 but permanently and totally disabled. The second level is available to those who are considered "housebound," meaning they are unable to leave their residence without the assistance of another. The third and highest level of benefits is available to those who are in need of the permanent aid and attendance of another.

To be eligible for these benefits, the applicant must meet several requirements. First the veteran must have served at least ninety days in active military duty. Second, the veteran must have been honorably discharged with proof of DD-214 papers. Third, the applicant must be below the asset limitation set by the VA (approximately $80,000 per household not including the primary residence). The applicant must also submit proof of out-of-pocket medical expenses which may include a letter from the facility in which the applicant resides.

While we are unable to fill out the application for you, we can certainly assist you by providing guidance during the application process, giving you sample letters, and putting you in contact with VA representatives. ***If you are a veteran, the surviving spouse of a veteran or a dependent of a veteran, and in need of aid and assistance, you need to consider whether you or your family members qualify for this valuable benefit.***

Estate Recovery and Life Estate Deeds

By: James P. Lampertius, Esq.

For those encountering long term care and concerned about losing the residence to the new Medicaid Lien Program the "Life Estate Deed" or "Lady Bird Deed" now may be something to consider. The property title remains in the name of the parent, but the child's name is placed on the deed for the child to receive the property after the parent's death. The parent retains full control of the property for life. The child's interest is known as the "remainder interest"; the parent's interest is known as a "life estate". ***The Life Estate Deed avoids probate and does not uncap property taxes until the death of the parent and involves a complete forgiveness of capital gains taxes upon the death of the parent. In addition, because the lien under the new Medicaid Estate Recovery Program is limited to <u>probate</u> assets, this format has the best chance of avoiding the Medicaid lien.***

Clients who face long term care costs and are concerned about the preservation of the residence or family cottage should now seriously consider this title format. The downside to the Life Estate Deed is lack of protections for the premature death of a child who holds a remainder interest. In addition, a Life Estate Deed is less protected against creditors than ownership in the names of the husband and wife, known as "tenancy by the entireties." It also offers less protection against problems and creditors of a child beneficiary than a trust.

New Property Tax Exemptions

By: James P. Lampertius, Esq.

Concerns exist for our clients regarding higher property taxes upon the death of a family member when they want to retain the home or real estate in the family. These higher property taxes occur because the valuation is "uncapped." ***In the past few years our clients with family farms have taken advantage of an exemption from uncapping of property taxes through the filing of an Agricultural Affidavit with the Assessor's Office and Register of Deeds.*** This Affidavit swears that property shall remain agricultural and requires that they will notify the Assessor's Office when it ceases to be agricultural. Only at that time will the value of the property uncap.

A new provision in Michigan Law extends this protection against higher property taxes to qualified forest property. The same procedure is followed by filing an Affidavit to the Assessor's Office and Register of Deeds swearing that the property will remain as qualified forest property. Again there is a provision uncapping the value for property taxes if the property ceases to be qualified forest property anytime after it is transferred.

A recent Michigan Property Tax Act also extends the homestead or agricultural property exemptions to a Special Needs Trust. The Act provides that the owner will have the reduced format of a homestead or farm's property taxes (which is less than the commercial rate) if the owner is a Special Needs Trust. The sole beneficiary of that trust must be a person who is totally or permanently disabled.

Michigan Medicaid Changes

By: Jeffrey D. Ryan, Esq.

The Year 2007 continued a dramatic pattern of change for Medicaid in Michigan. We knew big changes would be coming with the enactment of the Deficit Reduction Act (DRA) by the Federal government on February 8, 2006. In 2007 Michigan took its queue to implement many additional Medicaid changes.

- ***<u>April 1, Rental Property Exclusion Largely Removed</u>*** – Once a way to exclude otherwise countable real estate for Medicaid purposes, Michigan has limited the rental property exclusion to property with $6,000 or less of equity.
- ***<u>April 1, Retroactive Eligibility with Funeral Contracts Denied</u>*** – An applicant can no longer retroactively qualify for Medicaid benefits by using excess assets to purchase a pre-paid funeral contract.
- ***<u>July - October, New Gifting Rules Implemented</u>*** – An extremely broad and far reaching law change, the Deficit Reduction Act of 2005 was implemented by Michigan in July and October of 2007. By far the greatest effects are the rule changes on divestment penalties and calculations. A divestment penalty is now imposed at the time of applying for Medicaid benefits rather than beginning the penalty from the date of the divestment. In addition, the look-back period has been increased from three to five years and the divestment penalty will be imposed on a daily basis instead of monthly. The State of Michigan must be listed as the remainder beneficiary of all annuities or secondary remainder beneficiary if a spouse or minor or disabled child is primary. The equity value for an excluded residence is now capped at $500,000 (previously unlimited) except for a residence in which a spouse, minor or disabled child is residing.
- ***<u>September, Estate Recovery</u>*** – The Michigan legislature enacted an estate recovery law mandated by the federal regulations since 1993. Limited to Probate assets of a deceased person who has received Medicaid, the State may lien property, typically real property, to recover costs of services received by the deceased. There are numerous exceptions to the rule including family farms; a residence which is being resided in by a surviving spouse, a child under 21 or a child with a disability; a residence jointly owned by a sibling; and a family member residing in the home who has also cared for the Medicaid recipient in-home for 2 years delaying the need for Medicaid.
- ***<u>Proposed Vehicle Restrictions and Caregiving Contract Restrictions</u>*** – Payments to family for care coordination for individuals already in a nursing home or assisted living care will be disallowed. The vehicle exclusion equity value will be capped at $25,000 and there will be no exclusion for a vehicle purchased after entry into a long-term care facility. These restrictions are merely proposed and not yet the law.

Estate & Gift Tax Updates

By: James P. Lampertius, Esq.

The Kiplinger Tax Letter recently wrote:

"Estate tax planning is a nightmare. Why? The tax will act like a yo-yo in the coming years. In 2009 the exemption jumps from $2 million to $3.5 million. In 2010 the estate tax is eliminated, though the heirs of large estates face higher future tax bills because they'll have to use carryover basis on inherited assets [meaning higher capital gains taxes]. In 2011 the tax returns with a 55% top rate and a $1 million exemption.

Politics is to blame. Momentum toward a solution has stalled. Last year, when Republicans were in control of the House and Senate, there was a push to raise the exemption to $5 million and cut the rate to 15% for estates of $30 million or less and to 30% for larger estates. Senate Democrats scratched that plan. Now that Democrats control Congress, they are in no hurry to cut taxes for high-incomers. Compromise in 2008 is a slim bet as well. It's unlikely to be popular in an election year.

That'll change in 2009 as the prospect of a one-year repeal nears. The best bet is a permanent continuation of 2009 rules… the $3.5 million exemption and a 45% top rate. If the GOP regains control of Congress and the White House…a long shot, we think…the exemption will be higher (around $5 million) and the top rate a bit lower (30%-35%)."

We at Lampertius, Richards & Associates, PLC recommend:

1. For married couples, ***do not abandon your Married Separate Trust format if your gross estate is over $1 million***, including life insurance and retirement plans. The Married Separate Trust format provides a flexible, strong foundation to avoid unnecessary estate taxes. It ensures use of both spouse's estate tax exemption and estate tax free growth of the assets sheltered at the death of the first spouse.
2. ***Take full advantage of annual exclusions gifts ($12,000.00) with a direct payment of education, tuition and qualified medical expenses***. In the past year the IRS has expanded what it considers to be qualified medical expenses. In a number of cases, the IRS concluded that some diagnostic procedures and treatments are deductible medical expenses even though the individuals exhibited no symptoms of illness (ie; pregnancy test or body scan).
3. Payment of premiums on health insurance and qualified long term care insurance policies continues to be excluded from gift taxes. ***Some older clients have elected to pay premiums of long term care insurance for children as lump sums over ten years, which is excluded from gift taxes. The same clients often want to ensure the estate plan "equalizes" such lifetime gifts and catches up disparities among their children's families after death, allowing more savings, yet keeping things equal.***
4. Consider "freezing" growth in family stock, real estate and business investments. ***Interest rates in 2008 are returning to historical lows for most estate plan strategies (4.4% is the January applicable interest rate). It's a great environment for a trust called a Grantor Retained Annuity Trust ("GRAT")***. Growth in a GRAT beyond this interest rate can pass free of estate, gift and generation skipping taxes if the client survives the term of the Trust. This trust strategy was used by the Walton family with their Wal-Mart stock and is often called a "Walton GRAT". ***Other strategies use time and the life expectancy tables to protect against estate taxes***.
5. ***Consider removing life insurance from the taxable estate through assigning it to a life insurance trust***. Although there are administrative details, such as annual notices which need to be conducted, this strategy can save as much as 45% of the value of the life insurance from estate taxes.
6. ***Note the increased exemption from estate taxes for qualified business and farms***. If a family business makes up more than 35% of an estate, as much as $576,000.00 of estate tax can be deferred with a low 2% interest rate. In addition, up to $960,000.00 of farm and business real estate can receive a discounted valuation for estate taxes.
7. ***Family-owned businesses, however, to continue to be under attack by the IRS where there has been gifting of interests***. In four decisions handed down in 2007, the tax courts found Family Limited Partnership assets where subject to estate tax because of the retained management and voting control of the parent of otherwise gifted stock.
8. A number of our business clients have taken constructive steps to ***protect the family business by transferring shares to the next generation*** and registering such transfers with the IRS through an independent appraiser. By doing so, they trigger "substantive disclosure" to the IRS and thus restrict the IRS by law to a three-year period to challenge their gift and their valuation of the business. Although appraisals are costly, we have managed to workout relationships for clients to engage such independent valuations at a lower cost. By conducting gifts at the end of one year and the beginning of the next, we are able to use the same appraisal for two years worth of gifting.
9. ***We've emphasized with clients the importance that they keep good corporate records on their ownership and major decisions***. This helps prevent the IRS or any litigator from piercing the protections of the corporation or the limited liability company and imposing unnecessary taxes or liabilities on the owner.

Strike Social Security Number From Durable Power of Attorney

A new Michigan law now requires the Register of Deeds to strike or obscure the first five (5) digits of any Social Security number appearing in a recording that affects title of real estate. Before 2006 it was the practice to include the Social Security number of the client in the signature line of the Durable Power of Attorney to comply with IRS filing requirements. That practice no longer is required, nor is it recommended.

If your Durable Power of Attorney has not been updated since August 2005, you should white out the first five digits of your Social Security number.

New Rules With Charitable Planning

By: James P. Lampertius, Esq

The world of charitable giving has broadened considerably on the various tax benefits and rules. Our firm has been blessed with the opportunity to assist a number of families and businesses in their charitable endeavors. In the past year we assisted a major Detroit company in establishing a scholarship foundation for employees and their families. We also assisted a family in the early termination of two charitable remainder trusts allowing them to receive the full value of their income interests which otherwise would have been spread over approximately 40 years. In doing so, the charities received the full amount of their pro rata distribution immediately which otherwise would have been delayed many years. The Michigan Attorney General and Probate Court approved the transaction as required by state law.

This past year we also worked with families in establishing Private Foundations and creating Donor Advised Funds. Both vehicles allow for present income and gift tax deductions up front, yet also allow the family to control the donation of the money over time to charities selected by the family. While appreciated stock is normally donated to these vehicles, families can also donate business interests or real estate interests. The ability of a charity to hold a business or engage in business activity is strictly regulated. The rules governing such business activities have evolved with potential traps and opportunities.

It is essential, however, that clients and professionals keep in mind the very strict rules applying to payment of compensation or receipt of benefits from Charitable Trusts, Donor Advised Funds, Private Foundations and Public Charities. With the Pension Protection Act, Congress tightened rules of charitable giving for receipt of any compensation or benefit from a Donor Advised Fund or Private Foundation.

Before giving cash or appreciated property to a charity, it is important to consider the best vehicle for such a gift. A Donor Advised Fund is simple and generally can be created with a donation over $5,000; a private foundation offers more control by the family, yet necessitates assets above $500,000 to be cost effective. Quite often clients choose to split the property with a charity with the client retaining either the income interest or remainder interest in a charitable trust such as a Charitable Reminder Trust or Charitable Lead Trust.

In this time of historically low interest rates, when a client simply wants to give a set amount to a charity for a limited time, a Charitable Lead Trust can be an effective solution. Last June the IRS published sample Charitable Lead Annuity Trust templates, which can be established either during lifetime or at death. These helpful provisions guide practitioners like us in drafting Charitable Lead Trusts on behalf of clients. They ensure compliance with the necessary IRS requirements and make such planning more cost effective.

About The Firm

Gene was appointed to a three-year term as a Commissioner of the Farmington/Farmington Hills Commission on Aging. He is also completing a three-year term as Clerk (President) of Ward EPC Church.

Gene and his son, Wesley, are traveling to Mali, West Africa with a team of doctors and nurses from February 9, 2008 to February 23, 2008. They will provide basic medical care to impoverished Africans by serving as translators and assisting with routine tasks.

Jeff and his wife, Julie, last year celebrated the birth of their second child, Sean Patrick Ryan.

Christina was recently selected as the new President of the Corporate Edge BNI, located in Birmingham, which will take effect April 2008. Christina also is a member of the Greater Michigan Alzheimer's Association Public Policy Committee.

Warm Regards,

James P. Lampertius Norman E. Richards Jeffrey D. Ryan Christina L. Borowicz

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