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~ Estate Planning Newsletter ~

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Federal Estate and Gift Tax for 2015

The *federal estate tax exemption* was \$5,000,000 when enacted into law in 2011. It is adjusted annually for inflation, and the IRS recently announced the exemption amount to be \$5,430,000 for 2015. With "portability" of the exemption, a married couple has a combined exemption of \$10,860,000.

The *annual gift exclusion* remains at \$14,000 per donee per calendar year. The annual exclusion is the amount that can be gifted each year without any tax consequences.

For anyone whose total assets are valued at less than the federal estate tax exemption, the \$14,000 exclusion is a moot point, and it should be ignored if you want to make gifts. Any gift in excess of \$14,000 merely uses part of the federal estate tax exemption, reducing the amount available at death. For example, let's say you are a single person and you make a gift of \$50,000 to one child. Because the annual gift exclusion is only \$14,000, the adjusted gift amount is \$36,000. This is the amount of your federal estate tax exemption that you would use now for the gift; or, in other words, when you die your exemption would be only \$5,394,000.

No Gift Tax in New Jersey

The New Jersey estate tax exemption is effectively \$675,000 with estate tax rates ranging from 4.8% to as high as 16%.

New Jersey does not have a gift tax. So, any gifts you make

will result in a reduction of your taxable estate (without any reduction in the exemption), and reduce the New Jersey estate tax.

Establishing a Trust for Beneficiaries

Your beneficiaries (your spouse, your children, or any other beneficiary) can obtain a number of benefits by receiving an inheritance in trust rather than outright. Trusts can be very flexible. For example, the beneficiary can be the trustee of the trust, decide how the trust assets are invested, and have the powers to direct how the trust assets are distributed during the beneficiary's lifetime and upon his or her death. Alternatively, a trust can have various restrictions and a third party trustee can be appointed to manage the assets for the beneficiary.

A properly drafted trust can provide the following benefits:

- The assets of a trust can be excluded from the taxable estate of the beneficiary at his or her death, thereby reducing estate and inheritance taxes in the future.
- A trust can hold assets for minor children until they are old enough (an age you choose) to manage the assets on their own, avoiding the expense and delays of a guardianship.
- A trust can hold assets for a beneficiary who does not have the ability to manage his or her own assets in order to protect the assets from waste.
- If a beneficiary has special needs, a Trust can provide for distributions to the special needs beneficiary in a manner that supplements but does not supplant

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public benefits, in order to allow the beneficiary to remain eligible for public benefits, such as SSI and Medicaid, without having to use up all of the assets first.

- The assets of a trust can be outside the reach of the beneficiary's creditors (including a spouse in the event of divorce) which can be very helpful if the beneficiary is in a high risk profession.
- The use of a trust will allow you to decide who will manage the assets for a beneficiary if that beneficiary is otherwise unable to manage those assets.
- The use of a trust will allow you to provide benefits to an individual during that person's lifetime and also allow you to decide who will receive the assets after the initial beneficiary is no longer living. This can be very helpful in the case of a second marriage where there are children from the first marriage. You would not have this control if assets are distributed outright to a beneficiary.

Many people have concerns about the ease of administering a trust. However, the administration of a trust does not have to be complicated.

Please note that trusts cannot be created by a beneficiary using his or her own assets without losing many of these benefits. For those of you who may be receiving inheritances in the future, we recommend considering the benefits of receiving the inheritance in a trust, instead of outright, and discuss this with the person from whom you may someday receive an inheritance.

By-Pass Trusts

An important estate planning technique for married couples is the by-pass trust. A by-pass trust allows the surviving spouse to retain the use of assets, but the assets will not be taxed as part of the surviving spouse's taxable estate. The New Jersey estate tax exemption is not "portable" like the federal estate tax exemption. If the New Jersey exemption is not used at the first death, then it would be wasted, possibly resulting in an unnecessarily high estate tax at the second estate.

When assets pass to a by-pass trust, they receive a step-up in cost basis at the first death, but do not receive another step-up in basis at the second death. If the assets have the potential to appreciate significantly, it may be more beneficial to include the assets in the estate of the surviving spouse in order to avoid the capital gains tax rather than the estate tax.

It is often difficult to determine which tax issue will be more significant until sometime after the first death

actually occurs. One option to retain flexibility is a QTIP (Qualified Terminable Interest Property) trust. This type of trust allows the surviving spouse to decide how much of the predeceasing spouse's estate to include in a by-pass trust and how much to have includible in the surviving spouse's taxable estate in the future.

Any married couple in New Jersey with assets exceeding \$675,000, including life insurance, should consider the use of by-pass trust planning.

Titling of assets

It is important to review how your assets are titled. A well drafted estate plan could be of little benefit if the assets are not properly titled.

Usually, having all the assets in joint names or having a "pay on death" designation on an account is not best. Also, it is important to make sure that the beneficiary designations for life insurance and retirement plans are properly coordinated with the overall estate plan.

Retirement Plans: Designating a Beneficiary

The following applies to all retirement plans, but we will just use the term IRA for ease of explanation. Should your IRA be left outright to your surviving spouse, or should it be left to a trust for your surviving spouse? The answer is: it depends. If the IRA is left to your surviving spouse, he or she can roll it into a spousal IRA and obtain the maximum deferral of income tax on the IRA; but to do so may have negative estate tax consequences. If the IRA is left to a trust for your surviving spouse, then the IRA can be protected from creditors while still allowing an extended deferral of income taxes on the IRA (depending on the terms of the trust). Including provisions for your spouse to make a "disclaimer" of the IRA into a by-pass trust is sometimes the best plan.

The administration of a trust does not have to be complicated.

Real Estate Tax Appeals

In New Jersey, real estate taxes are a substantial, if not the highest, single expense of ownership. The tax you pay is based on the assessed value as determined by the municipality's tax assessor. In the recent economic downturn, many properties, whether residential, commercial or industrial, have current values that are below the assessed value. Our firm has experience working with real estate professionals and appraisers to evaluate the potential for an appeal of your property's assessment thereby reducing your tax burden.

Medicaid: Expanding Options and Planning Ahead

Major Change to Medicaid

There is no place like home, and now a Medicaid beneficiary with income over the income cap will be able to receive benefits and remain in his or her home.

Medicaid is a program that helps pay for long-term care. Prior to a recent change, Medicaid was divided into two programs. The Medicaid Only program could pay for care at a nursing home, an assisted living facility, or in the applicant's home. In order to be eligible for Medicaid Only, the applicant must have monthly income of \$2,163 or less and assets of \$2,000 or less.

A second program, Medically Needy, permits an applicant to have unlimited income and assets of \$4,000. Previously, this program was not to be used for assisted living or home care. As a result, a senior with a modest income of \$1 over the income limit was precluded from in-home care.

The recent change in the law merges Medicaid Only and Medically Needy into one program that allows income over the income cap to be held in a Qualified Income Trust (QIT). The QIT must be used for specific items for the Medicaid beneficiary and his or her spouse, and the excess needs would be paid by Medicaid. The new Medicaid program

with the QIT opens many options for the Medicaid beneficiary, the most important of which is care in an assisted living facility or at home.

Will All My Money Go to the Nursing Home?

A major fear of many seniors is that all of their assets will be paid to a nursing home for long-term care. This fear is shared by people with \$100,000 or \$1,000,000. Unfortunately, Medicaid is only available if the beneficiary has \$2,000 or less in assets. In order to be eligible for Medicaid without a penalty period, no gifts may be made in the five years prior to applying for Medicaid.

It is possible to make gifts now, and wait five years to apply for Medicaid. However, for this approach to be successful, the gifts must be limited to the excess over the expected spending needs for the next five years. This analysis considers many factors including the projected income, health, and spending habits of the potential Medicaid applicant. This type of planning would not save all of the hard earned money, but the planning would place a "stop loss" on the amount that is paid for long-term care.

Considerations for Estate Administration

Should I Avoid Probate?

Much has been written about the need to avoid the expense of probate. In New Jersey, the probate process is not overly difficult. Typically, a will can be admitted to probate and an executor appointed in one meeting of less than an hour at the county Surrogate's Office. As a result, avoiding probate in New Jersey is usually not a major concern in the planning process.

However, if you own property in a state other than New Jersey, avoiding probate becomes a major consideration. For example, many people own property in Florida. Probate in Florida is very complicated because the probate process is supervised by the court and requires the assistance of a lawyer and the filing of a Petition to admit a Will to probate. A common planning practice is to retitle Florida property into a Revocable Living Trust during life. The terms of the trust will pass the property to family members or other heirs without the need for probate.

Estate and Trust Litigation – Will Contests

Our recent client experiences indicate that challenges to Will and Trust documentation and proper estate, trust and guardianship administration require court action to resolve beneficiary rights to inherit or receive benefits.

Our firm offers the experience to consult with clients and evaluate the legal basis for such claims as undue influence, lack of capacity and breach of fiduciary duty, and to pursue cost-effective remedies.

Can Your Executor Locate Your Digital Assets?

With increasing frequency, executors are finding themselves in the difficult position of having the duty to marshal the assets of an estate, but not having legal access to the deceased person's email or other virtual accounts.

Many of us opt out of receiving statements and account information via hard copy. Other types of assets, such as airline miles, credit card points, and PayPal account balances may only be accessed through logging into an account. Watching a deceased person's mailbox is quickly becoming less helpful when it comes to locating assets.

Until the law is clearer on the authority and responsibility of executors in this position, we recommend keeping a list of your assets, accounts, and passwords in a secure place that will be accessible to your executor so he or she can contact each company directly to close your account and retrieve any account balances.

New Jersey Estate Tax	
Estate Size	Tax Amount
\$0-\$675,000	0
\$675,000-\$727,175	\$0 plus 37.0% of the amount over \$675,000
\$727,175-\$900,000	\$19,304 plus 4.8% of the amount over \$727,174
\$900,000-\$1,100,000	\$27,600 plus 5.6% of the amount over \$900,000
\$1,100,000-\$1,600,000	\$38,800 plus 6.4% of the amount over \$1,100,000
\$1,600,000-\$2,100,000	\$70,800 plus 7.2% of the amount over \$1,600,000
\$2,100,000-\$2,600,000	\$106,800 plus 8.0% of the amount over \$2,100,000
\$2,600,000-\$3,100,000	\$146,800 plus 8.8% of the amount over \$2,600,000
\$3,100,000-\$3,600,000	\$190,800 plus 9.6% of the amount over \$3,100,000
\$3,600,000-\$4,100,000	\$238,800 plus 10.4% of the amount over \$3,600,000
\$4,100,000-\$5,100,000	\$290,800 plus 11.2% of the amount over \$4,100,000
\$5,100,000-\$6,100,000	\$402,800 plus 12.0% of the amount over \$5,100,000
\$6,100,000-\$7,100,000	\$522,800 plus 12.8% of the amount over \$6,100,000
\$7,100,000-\$8,100,000	\$650,800 plus 13.6% of the amount over \$7,100,000
\$8,100,000-\$9,100,000	\$786,800 plus 14.4% of the amount over \$8,100,000
\$9,100,000-\$10,100,000	\$930,800 plus 15.2% of the amount over \$9,100,000
\$10,100,000 and above	\$1,082,800 plus 16.0% of the amount over \$10,100,000

New Jersey Inheritance Tax	
Class of Beneficiary	Tax Rate
Class "A": spouse, domestic partner, descendant, parent, step-child, mutually-acknowledged child	Fully exempt
Class "C": sibling, son/daughter-in-law	First \$25,000 - fully exempt Next \$1,075,000 - 11% Next \$300,000 - 13% Next \$300,000 - 14% Over \$1,700,000 - 16%
Class "D": any beneficiary who does not qualify as Class "A", "C", or "E"	If under \$500 - fully exempt If over \$500, first \$700,000 - 15% Over \$700,000 - 16%
Class "E": Charities and other exempt entities.	Fully exempt

Pennsylvania Inheritance Tax	
Class of Beneficiary	Tax Rate
Spouse	Exempt
Descendants & Lineal Heirs	4.5%
Siblings	12.0%
Other heirs, except charities and governmental entities which are exempt	15.0%

Single Life Table Exerpt (for RMD for Inherited IRA)					
Age	Life Expectancy	Age	Life Expectancy	Age	Life Expectancy
37	46.5	55	29.6	73	14.8
38	45.6	56	28.7	74	14.1
39	44.6	57	27.9	75	13.4
40	43.6	58	27.0	76	12.7
41	42.7	59	26.1	77	12.1
42	41.7	60	25.2	78	11.4
43	40.7	61	24.4	79	10.8
44	39.8	62	23.5	80	10.2
45	38.8	63	22.7	81	9.7
46	37.9	64	21.8	82	9.1
47	37.0	65	21.0	83	8.6
48	36.0	66	20.2	84	8.1
49	35.1	67	19.4	85	7.6
50	34.2	68	18.6	86	7.1
51	33.3	69	17.8	87	6.7
52	32.3	70	17.0	88	6.3
53	31.4	71	16.3	89	5.9
54	30.5	72	15.5	90	5.5

Uniform Lifetime Table (for RMD for IRA Owners)					
Age	Distribution Period	Age	Distribution Period	Age	Distribution Period
70	27.4	80	18.7	90	11.4
71	26.5	81	17.9	91	10.8
72	25.6	82	17.1	92	10.2
73	24.7	83	16.3	93	9.6
74	23.8	84	15.5	94	9.1
75	22.9	85	14.8	95	8.6
76	22.0	86	14.1	96	8.1
77	21.2	87	13.4	97	7.6
78	20.3	88	12.7	98	7.1
79	19.5	89	12.0	99	6.7

Federal Estate Tax Exemption Rates		
Year	Exemption	Max. Tax Rate
2014	\$5,340,000	40%
2015	\$5,430,000	40%

Federal Income Tax Rates							
	Single		Married, Filing Jointly		Estates and Trusts		
Income Tax Rate	2014 Taxable Income	2015 Taxable Income	2014 Taxable Income	2015 Taxable Income	2014 Taxable Income	2015 Taxable Income	LT Cap. Gains Tax Rate
10%	\$0-9,075	\$0-9,225	\$0-18,150	\$0-18,450	---	---	0%
15%	\$9,076-36,900	\$9,226-37,450	\$18,151-73,800	\$18,451-74,900	\$0-2,500	\$0-2,500	0%
25%	\$36,901-89,350	\$37,451-90,750	\$73,801-148,850	\$74,901-151,200	\$2,501-5,800	\$2,501-5,900	15%
28%	\$89,351-186,350	\$90,751-189,300	\$148,851-226,850	\$151,201-230,450	\$5,801-8,900	\$5,901-9,050	15%
33%	\$186,351-405,100	\$189,301-411,500	\$226,851-405,100	\$230,451-411,500	\$8,901-12,150	\$9,051-12,300	15%
35%	\$405,101-406,750	\$411,501-413,200	\$405,101-457,600	\$411,501-464,850	---	---	15%
39.6%	Above \$406,750	Above \$413,200	Above \$457,600	Above \$464,850	Above \$12,150	Above \$12,300	20%
Individuals will owe an additional 3.8% on net investment income if their modified adjusted gross income is over the following thresholds							
	\$200,000	\$200,000	\$250,000	\$250,000	\$12,150	\$12,300	