

BHP

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ESTATE PLANNING NEWSLETTER

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Founder Jack Bernetich Retires; Estate and Trust Planning Legacy Continues

Jack Bernetich has retired, effective in February 2021, from the law practice, after a distinguished career spanning 46 years. Jack initially worked as an Estate Tax Attorney for the IRS, which led to his specializing in estate-related matters. He became a partner at a larger law firm, and then in 1992 he opened his own law firm. Jack's firm was the genesis of Bernetich, Hatzell and Pascu, LLC, which formed in 2008. During his 43 years in private practice, Jack counseled thousands of clients, with a blend of technical expertise and compassion and detailed attention to their needs. Jack expresses his thanks to his clients for the opportunity to have been of service. We at BHP commend Jack on his successful career and we thank him for his contributions to our law practice. We wish Jack the very best in his future ventures with his family.

Our team of five attorneys and three paralegals at BHP continues Jack's legacy to serve each of our clients with analytical expertise to fulfill their estate planning needs.

At BHP we believe that estate planning documents must be meticulously drafted considering the unique situation of each client to ensure that assets pass to the intended beneficiaries in the intended manner. For estate administrations, our role as

attorney for an executor is to settle an estate while minimizing tax and expenses and maximizing the inheritance passing to beneficiaries.

Jim Hatzell is a former CPA with an LLM in Taxation and has been practicing as a trust and estate attorney for 28 years. Paul Pascu studied accounting in college and also earned an LLM in Taxation and has been practicing as a trust and estate attorney for 23 years. John Master also has an LLM in Taxation and has served clients as an attorney for 47 years, primarily in real estate and business transactions. Elizabeth Patterson has been an attorney for 29 years, the last four of which she has applied her experience to serve clients with guardianship, special needs trusts and elder law issues. Kevin Dochney has been an attorney for 37 years, most of it as a trial attorney; he assists our clients with estate administration and litigation matters.

Liz Stokes is a paralegal with nearly 20 years of experience focused primarily on estate administration, accountings and tax returns. Tiffany Urso has been a paralegal for 11 years and assists with estate planning and estate administration. Cathy Francis has 30+ years in the legal industry and also assists with estate planning and estate administration matters.

BHP Implements Safety Precautions in Response to Covid-19

We hope you and your families are staying safe in this unprecedented time. The Covid-19 pandemic causes many of us to reflect on the preciousness and fragility of our health and our life. The pandemic may also trigger a reflection about whether or not our estate plans are in order. Our firm is able to safely assist you and your family with any updates to your estate plan.

Our firm has adapted our operations so that we can serve our clients in the safest manner with proper social distancing. First, we are equipped to "meet" with our clients via Zoom, Facetime or conference call. After an outline of an estate plan is determined during the virtual meeting, drafts of the documents with a letter of explanation will be mailed or emailed to you.

Once drafts of the estate planning documents or other documents have been reviewed and approved, we have implemented a method to complete the signing of your documents which incorporates social distancing. We have set up a table in our vestibule where signing can take place. A notary will watch the signatures through a glass door from inside our office. Two other members of our firm will witness the signatures from outside the office by watching through the

windows. You will be able to enter the vestibule and sign the documents without any contact with the witnesses and notary. After you are finished signing, we will pick up the documents from the vestibule and the witnesses will sign, and then the notary will seal the documents. We will then mail your booklet to you with the completed documents.

We will follow similar procedures for estate administration, real estate and tax matters, Medicaid planning, and estate litigation. Of course, when restrictions are lifted, we can meet in person in our conference room which has an eight-foot table which allows for proper spacing. Until restrictions have changed, we will continue to use facemasks and require our clients to do so as well for any in-person meetings. Even when facemasks are not "required" we welcome a client's request for us to use facemasks. We also regularly disinfect surfaces and pens and have hand sanitizer present in all of our common areas.

Please do not hesitate to make any other suggestions or specific requests to facilitate safety in our representation of you and your family.

SECURE Act Changes Estate Planning for Retirement Accounts

In December, 2019, the Setting Every Community Up for Retirement Enhancement (SECURE) Act became law which impacted retirement savings. For many clients, retirement accounts comprise a significant portion of total assets. When we design an estate plan, great care is taken to make sure that the retirement accounts pass to the correct person, either outright or in trust, in the most tax advantageous manner. The significant tax law changes of the SECURE Act may require changes to your plan. In most cases, required minimum distributions from your retirement account for non-spouse beneficiaries will be accelerated. However, the SECURE Act actually simplifies naming a trust as the beneficiary of a retirement account.

The highlights of the SECURE Act are:

- Required Minimum Distributions (RMD) must be started at age 72. Prior law required RMD to begin at 70½.
- Individuals who are working may make contributions to an IRA at any age. Prior law prevented contributions to IRAs after age 70½.
- Long-term, part-time employees who work either 1,000 hours in a year or 500 or more hours per year for three consecutive years are eligible for a company's 401(k) plan.

- The most impactful provision of the SECURE Act is that Inherited IRAs must be withdrawn over ten years after the account owner's death in most cases. Under prior law, withdrawals from IRAs were required to be made over the beneficiary's life expectancy. Prior law was very attractive because a child or grandchild could make withdrawals over many decades. This was known as a stretch IRA. The SECURE Act eliminates most stretch IRAs. The retirement accounts of decedents who die in 2020 or after must be withdrawn entirely by the beneficiaries over ten years.
- There are exceptions to the ten-year rule: (1) A surviving spouse may "roll over" the IRA and take distributions based on his or her life expectancy with RMD beginning at age 72; (2) A minor child may take distributions over his or her life expectancy. However, once the child attains legal majority, the beneficiary will then be required to withdraw the balance over ten years. This exception does not apply to grandchildren or stepchildren or other minor-aged relatives; (3) Beneficiaries who are less than ten years younger than the original IRA owner or 401(k) participant may take distributions over the beneficiary's life expectancy; (4) Beneficiaries who are disabled or chronically ill may take distributions over the beneficiary's life expectancy.

The SECURE Act Rules Require a Review of Trust Conduit Provisions

The SECURE Act significantly changes the withdrawal rules for inherited IRAs, whether outright or in trust. Except in limited circumstances, all retirement accounts must be withdrawn by a non-spouse beneficiary within ten years of the date of death of the account owner.

Prior to the SECURE Act, when a trust was named as the beneficiary of an IRA, language was included in the trust to look through the trust to the trust beneficiary so that required minimum distributions could be made over the beneficiary's lifetime. The typical terms included in trusts are known as conduit provisions. Conduit provisions require that the trustee distribute the annual required minimum distributions (and any additional distributions) from the IRA to the beneficiary immediately. Generally, a relatively small amount of the IRA would have been distributed annually over the lifetime of the beneficiary.

The new rules under the SECURE Act are incompatible with the conduit provisions. Under the new rules, the entire IRA must be withdrawn and distributed to the beneficiary by the tenth year after death. Depending on the size of the IRA, this could mean that an excessive amount of distributions must be made during the ten-year period. This result is contrary to the intended purposes of the trust.

Accordingly, we recommend a review of all estate plans that include a trust which is the named beneficiary of a retirement account. If the trust includes the old conduit provisions, the trust should be amended to include provisions that are compatible with the new rules under the SECURE Act.

Benefits of Tax Deferral

A common tenet of tax law is that deferral of tax is always beneficial. The SECURE Act's elimination of the stretch IRA will accelerate tax payable to the IRS at the expense of the taxpayer. However, while this new law is detrimental, its impact is not overly significant.

The benefits of deferral are illustrated by the following example. Assume a taxpayer had \$100,000 in an IRA and the tax rate is 30%. If the taxpayer withdrew all the money, \$30,000 of tax would be paid, and the taxpayer would have \$70,000 left to invest. If the investment were to double over ten years, the taxpayer would have \$140,000.

If, instead, the taxpayer let the money grow tax-free for ten years, the taxpayer would have \$200,000. However, upon withdrawal, the entire amount would be subject to tax at 30%. The tax would be \$60,000 and the taxpayer would have \$140,000 remaining.

The amount remaining in each case is \$140,000! There is one benefit, however, to waiting ten years to make the withdrawal. In the first example, the \$70,000 of growth during the ten years will be subject to income tax which would result in less than \$140,000. In the second example, all of the tax is paid, and there is no additional tax due on the \$140,000.

We often assist beneficiaries who inherit retirement accounts. We can assist with strategies to plan withdrawals from the account in the most tax advantageous manner. In addition to the benefits of deferral, other considerations include projected income and the marginal income tax rates over the next ten years.

Current Trends in Our Trust and Estate Practice

Our practice is constantly evolving to provide legal advice based on our client's changing needs. The following is a compilation of planning techniques regularly seen in our practice.

- **Gifts to Exploit the Federal Estate Tax Exemption.** The Federal Estate Tax Exemption for decedents passing in 2021 is \$11,700,000 for each person, or \$23,400,000 for a married couple. The exemption will continue to increase each year based on the inflation index. However, under current law, in 2026, the exemption amount will drop to 50% of what it is at that time. It is also possible that a decrease in the exemption could come sooner under the Biden administration. For clients who will be subject to the estate tax, it is prudent to consider making gifts now before the exemption decreases. As background, the Federal Estate Tax is unified with the Federal Gift Tax. If lifetime gifts are made, the available Federal Estate Tax Exemption will decrease by the amount of the gifts. Since the Gift Tax Exemption is also currently \$11.7 million, gifts up to this amount can be made without the imposition of Gift Tax. The IRS has announced that individuals taking advantage of the increased gift and estate tax exclusion amounts during lifetime in effect from 2018 to 2025 will not be adversely impacted after 2025 when the exclusion amount is scheduled to be reduced.
- **Trusts for Beneficiaries.** Estate plans will divide the assets among one or more beneficiaries. The most straightforward plan is to pass those assets outright to the beneficiaries. An alternative plan is to pass the assets to trusts for the beneficiaries. A trust can provide significant protection against claims of a beneficiary's creditors, including a spouse in the event of a divorce. This type of protection can be especially advantageous if your beneficiary is in a high-risk profession. Additionally, if your beneficiary is at risk of bankruptcy, a trust can provide important protections while still allowing the trust assets to be used for the benefit of your beneficiary. In many situations, the beneficiary can, but does not have to, be the trustee of the trust and will be able to determine the amount of distributions to make to him or herself as beneficiary.
- **Trusts for Special Needs Beneficiaries.** If a beneficiary of an estate receives governmental assistance because of special needs, any assets passing to the beneficiary should not pass outright, but rather should pass into a Special Needs Trust (SNT). The terms of the SNT would provide that distributions can be made to the beneficiary with special needs in a manner that will supplement, but not supplant, benefits that the person is receiving, such as SSI and Medicaid. These distributions are made completely in the discretion of the Trustee. Thus, it is important to carefully choose the trustees and successor trustees who will best carry out the terms and purposes of the trust.
- **Guardianships.** For disabled children entering adulthood and for adults who do not have a Power of Attorney, a time may come when a friend or family member will have to seek guardianship if that adult is unable to make safe decisions for him/herself. You can seek a guardianship of the person, of the estate, or both. To seek guardianship, pleadings must be filed with the Surrogate's Court. As guardianship strips a person of the right to make his or her own decisions, the Court is very protective of that person. We can assist clients with navigating the guardianship processes.
- **Medicaid Planning.** In order to be eligible for Medicaid, the assets of a single person cannot exceed \$2,000. Additionally, Medicaid will evaluate all financial transactions which took place during the five years prior to the filing of an application for Medicaid. This period is called the "five-year look-back." In order to qualify for Medicaid, there must be no gifts made during this look-back period or Medicaid will require a "penalty period," during which the applicant will otherwise be eligible but will receive no benefits. There are additional rules for married couples which must be considered. The most effective planning technique to pay for long-term care is to make an "optimal" gift and then wait five years. The optimal gift is determined by preparing a projection of income and expenses for five years. The goal is to retain a sufficient amount of assets so that the assets become exhausted exactly at the expiration of five years from the date of the gift. This projection requires several assumptions regarding both income and expenses. We can assist our clients with designing an overall plan to optimally pay for long-term care.
- **Estate Planning for Young Families.** An estate plan for parents with young children includes several components. First, the Last Will and Testament will name a guardian to care for the children until they reach majority. Next, a trust must be established for the children to invest and safeguard the assets and to make distributions to the children as appropriate. Care must be taken to choose a trustee. Next, all life insurance and retirement accounts should name the trust as beneficiary.
- **Estate Planning for Young Adults.** Once a child attains the age of majority, no one else, including a parent, has the right to deal with the child's financial matters. This could make it very difficult to help your child if a need arises. In order to avoid problems, your adult child should have a Power of Attorney in place. In addition, for health care matters, your child should have an Advanced Directive for Health Care. A simple Will should also be in place if your child has assets in his or her own name.
- **Real Estate Tax Appeals.** The real estate tax you pay is based on the assessed value as determined by the municipality's tax assessor. 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.
- **Business Operations and Transactional Planning.** For business owners, a comprehensive estate plan necessarily includes the manner of ownership and disposition of business interests. BHP provides guidance to business owners and their entities with respect to the formation, purchase, sale and succession planning to implement ownership continuity.

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 - exempt Next \$1,075,000 - 11% Next \$300,000 - 13% Next \$300,000 - 14% Over \$1,700,000 - 16%
Class "D": people who do not qualify as Class "A", "C", or "E" including step-grandchildren	If under \$500 - exempt If over \$500, first \$700,000 - 15% Over \$700,000 - 16%
Class "E": Charities and other exempt entities.	Fully exempt

Federal Estate Tax Exemption		
Year	Exemption	Tax Rate
2019	\$11,400,000	40%
2020	\$11,580,000	40%
2021	\$11,700,000	40%

Pennsylvania Inheritance Tax	
Class of Beneficiary	Tax Rate
Spouse	Exempt
Descendants & Lineal Heirs	4.5%
Siblings	12%
Other heirs, except charities and governmental entities which are exempt	15%

Federal Gift Tax Annual Exclusion	
Year	Exemption Amount
2019	\$15,000
2020	\$15,000
2021	\$15,000

Net Investment Income Tax	
3.8% add'l tax on Investment Inc	
Single	inc over \$200,000
Married, Jointly	inc over \$250,000
Married, Separately	inc over \$125,000
Estates & Trusts	inc over \$13,050

New Jersey Retirement Income Exclusion*			
Year	Single	Married, Jointly	Married, Separately
2019	60,000	80,000	40,000
2020+	75,000	100,000	50,000

*Applies if 62 or older or disabled AND total income is \$100,000 or less.

Single Life Table Excerpt (for RMD for Inherited IRA)					
Age	Dist. %	Age	Dist. %	Age	Dist. %
31	1.91%	52	3.10%	73	6.76%
32	1.95%	53	3.18%	74	7.09%
33	1.98%	54	3.28%	75	7.46%
34	2.02%	55	3.38%	76	7.87%
35	2.06%	56	3.48%	77	8.26%
36	2.11%	57	3.58%	78	8.77%
37	2.15%	58	3.70%	79	9.26%
38	2.19%	59	3.83%	80	9.80%
39	2.24%	60	3.97%	81	10.31%
40	2.29%	61	4.10%	82	10.99%
41	2.34%	62	4.26%	83	11.63%
42	2.40%	63	4.41%	84	12.35%
43	2.46%	64	4.59%	85	13.16%
44	2.51%	65	4.76%	86	14.08%
45	2.58%	66	4.95%	87	14.93%
46	2.64%	67	5.15%	88	15.87%
47	2.70%	68	5.38%	89	16.95%
48	2.78%	69	5.62%	90	18.18%
49	2.85%	70	5.88%	91	19.23%
50	2.92%	71	6.13%	92	20.41%

Long-Term Capital Gains Rates			
Tax Rate	Single Income	Married, Filing Jtly	Estates & Trusts
0%	Up to \$40,400	Up to \$80,800	Up to \$2,700
15%	\$40,401-\$445,850	\$80,801 to \$501,600	\$2,701 to \$13,250
20%	Over \$445,850	Over \$501,600	Over \$13,250

Uniform Lifetime Table (for RMD for IRA Owners)					
Age	Dist. %	Age	Dist. %	Age	Dist. %
72	3.91%	82	5.85%	92	9.80%
73	4.05%	83	6.13%	93	10.42%
74	4.20%	84	6.45%	94	10.99%
75	4.37%	85	6.76%	95	11.63%
76	4.55%	86	7.09%	96	12.35%
77	4.72%	87	7.46%	97	13.16%
78	4.93%	88	7.87%	98	14.08%
79	5.13%	89	8.33%	99	14.93%
80	5.35%	90	8.77%	100	15.87%
81	5.59%	91	9.26%	101	16.95%

Federal Income Tax Rates						
Income Tax Rate	Single		Married, Filing Jointly		Estates and Trusts	
	2020 Taxable Income	2021 Taxable Income	2020 Taxable Income	2021 Taxable Income	2020 Taxable Income	2021 Taxable Income
10%	\$0-9,875	\$0-9,950	\$0-19,750	\$0-19,900	\$0-2,600	\$0-2,650
12%	\$9,876-40,125	\$9,951-40,525	\$19,751-80,250	\$19,901-81,050	---	---
22%	\$40,126-85,525	\$40,526-86,375	\$80,251-171,050	\$81,051-172,750	---	---
24%	\$85,526-163,300	\$86,376-164,925	\$171,051-326,600	\$172,751-329,850	\$2,601-9,450	\$2,651-9,550
32%	\$163,301-207,350	\$164,926-209,425	\$326,601-414,700	\$329,851-418,850	---	---
35%	\$207,351-518,400	\$209,426-523,600	\$414,701-622,050	\$418,851-628,300	\$9,451-12,950	\$9,551-13,050
37%	Over \$518,400	Over \$523,600	Over \$622,050	Over \$628,300	Above \$12,950	Above \$13,050

*Visit us on Facebook at "Bernetich Hatzell & Pascu LLC"! We appreciate your business and would love to hear your feedback.