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ATRA — American Taxpayer Relief Act of 2012

For estate planning practitioners and their clients, the past decade has been a period of unpredictability and uncertainty. Over this period we experienced drastic increases in the federal estate tax exemption, “sunset” provisions, the lure of the portability of the exemption as between spouses, concern over the “fiscal cliff” and the threat of the federal exemption returning to \$1 million from \$5 million. On New Year’s Day 2013, with the American Taxpayer Relief Act of 2012 (ATRA), Congress approved the first *permanent* estate, gift and generation-skipping transfer (GST) tax provisions in 12 years.

By making permanent the \$5 million exemption and the concept of “portability,” which allows one spouse to utilize the unused exemption of the other even after death, ATRA has been touted as having made estate tax planning irrelevant. **Do not be fooled.** Anyone with assets exceeding \$1 million

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Managed Long Term Care — New Horizon for Medicaid Home Care

The Medicaid Redesign Team was established by Governor Cuomo to work cooperatively and reform the Medicaid system in New York to improve health outcomes and control costs. The recommendations of the Redesign Team that were approved by the Legislature, as part of the enacted budget, are now being implemented. One of the most important initiatives is the transition of Medicaid home care consumers to care management or “Managed Long Term Care (MLTC) Medicaid.” Managed Long Term Care Plans (MLTCPs) must ensure that consumers transitioning from tradi-

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The Benefits of 529 College Savings Plans in Estate and Tax Planning

The price of higher education, college and graduate school, is astronomical. Many families try to start saving when the child is young. 529 College Savings Plans provide an effective strategy to save for future costs during the child’s formative years while affording tax and other benefits.

Here’s How It Works: A 529 plan can be set up by anyone, a parent, grandparent, aunt, uncle, even a friend, to benefit any beneficiary. You can even establish one for yourself. Once established, the account

can be used to pay for education expenses at eligible 2 or 4 year colleges, vocational and technical

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schools, or graduate schools. Any qualified higher education expense: tuition, mandatory fees, books, supplies, and equipment required for enrollment or attendance, can be paid from a beneficiary's account. Certain expenses for room-and-board if the beneficiary is enrolled for at least half of the academic period and certain expenses for special needs students can be paid from a 529 plan. The Contributor of the plan maintains control over the account, makes decisions regarding withdrawal of funds, and can even change the designated beneficiary. Under most plans, the Contributor can revoke the account at any time, however, all non-qualified withdrawals would be subject to income tax and a penalty. Management fees for the accounts are very low.

The Advantages: There are many federal and state tax benefits of implementing a 529 plan. Earnings grow federally tax deferred and, as long as distributions are made for qualified education expenses, there is no federal tax on the distributions. Contributions to a 529 plan qualify for the federal annual gift tax exclusion, currently \$14,000.00 for a single individual and \$28,000.00 for a married couple filing jointly. Contributors have the option of depositing five years worth of gifts for a single beneficiary at once, meaning single individuals can contribute up to \$70,000.00 per beneficiary and married



couples filing jointly can contribute \$140,000.00 per beneficiary without incurring any federal gift tax, as long as the contributor does not make any additional gifts to that beneficiary for the next five years. In New York, when filing a state income tax return, a single individual can deduct up to \$5,000.00 from taxable income, and married couples filing jointly can deduct up to \$10,000.00, for contributions to a 529 plan account!

Estate Planning Considerations: On the positive side, since contributions to a 529 plan are considered completed gifts, assets put into a 529 plan are not considered part of

the Contributor's estate for estate tax purposes. On the other hand, since a Contributor maintains control of the account at all times and can revoke it at any time, a 529 account is considered an available resource for purposes of determining the Contributor's Medicaid eligibility. Furthermore, because a 529 Plan is an available resource, in the event that a Contributor changes ownership of a 529 account, the state would consider this a transfer resulting in an ineligibility period for Medicaid purposes. For this reason, a grandparent might choose to implement an irrevocable trust for the beneficiary and make the contribution to the trust. The Trustee would then establish and fund the 529 account and designate the Trust beneficiary as the beneficiary of the 529 account.

A 529 plan is a great way to save for a loved one's educational expenses. The implementation of such a plan may have an unintended impact on one's estate and tax planning. Thus, for example, if a Contributor has made a five-year contribution but does not survive the period, a percentage of the gift will be included in his taxable estate. We would be more than happy to talk with you about whether the implementation of a 529 Plan would be an appropriate fit for your estate and tax planning needs.

Managed Long Term Care — New Horizon for Medicaid Home Care

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tional Medicaid fee-for-service to MLTC have continuity of the care services they are currently receiving.

Mandatory enrollment began in the five boroughs of New York City late in 2012. We anticipate that Nassau and Suffolk Counties will start to implement the program this spring. Initially, persons who are age 65 or older, who need personal care services and are

already receiving Medicaid benefits, can expect to receive correspondence from the Department of Social Services or the Human Resources Administration advising them of the need to enroll in a MLTC program. The notice suggests that the consumer select a MLTCP but indicates that, if the consumer fails to do so within a 60 day time period, one will be selected for them. The MLTCP selected will make an initial assessment of the consumer's needs and will then establish a care plan. The plan should identify the amount, duration and scope of the services and should not arbitrarily reduce those services.

While we will continue to monitor and report on the new program, we strongly recommend that you contact our offices if you receive notice and would like assistance in the selection of a MLTC provider. Additionally, if you or a loved one has been assessed and the plan that is proposed does not meet your needs, or places inappropriate limits on service, it is important to note that new internal grievance procedures will apply and you must strictly adhere to the time constraints for seeking redress. Berwitz & DiTata LLP can assist you in this process.

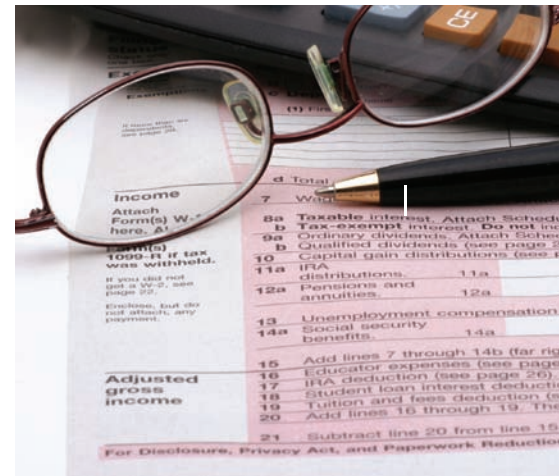
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will still have a tax liability to New York State that must be addressed, and federal estate tax planning that was undertaken in 2012, in contemplation of the expiration of the existing rules, should now be reviewed in light of ATRA's enactment and because there may be additional filing requirements.

For those who made gifts at the end of 2012 in an attempt to take "last minute" advantage of the \$5 million federal exemption before it expired, a federal gift tax return (form 709) must be filed by April 15, 2013. This date can be extended, until October 15, by utilizing form 4868. It is important to realize that even if no gift tax will be due, because the gift was less than the \$5 million exemption amount, a return must still be filed if the gift was more than \$13,000. If a gift was made to one of several children, the donor may now want to revise the estate plan to account for this "advance" inheritance and equalize the pro-

visions for the other children. Moreover, those who engaged in expedited, last-minute planning might not have had ample opportunity to consider the provisions of their instruments. Certain strategies called for the naming of a "placeholder" trustee, others may have granted or withheld powers to a trustee that should now be reconsidered. Under New York's liberal decanting statute, even assets in irrevocable trusts can be transferred to a new trust with more favorable provisions under the right circumstances. We recommend that anyone who engaged in this type of planning review their trust documents and wills to ensure that they comply with their wishes and that the gifts made at the end of 2012 do not affect the overall plan of distribution. We are happy to review these issues with prospective clients who would like to ensure that their plans will accomplish their goals.



Additionally, there is no better time than the present to become educated about the effect of New York State estate taxes on your estate plan. New York's independent estate tax regime will continue to play a significant role in estate planning. New York continues to impose its own transfer tax on estates in excess of \$1 million. Additionally, the concept of "portability" made permanent by ATRA does not apply to the New York estate tax. Therefore, proper planning is still necessary to reduce or eliminate New York estate taxes.

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B & D Welcomes Rosemary

Berwitz & DiTata LLP welcomes associate attorney **Rosemary Harnisher** to the firm. After earning a bachelor's degree magna cum laude in History from Drew University, Rosemary obtained her law degree from St. John's University School of Law. During law school, Rosemary participated in the St. John's Elder Law Clinic where she assisted senior citizens with various legal issues. An article based on Rosemary's research has been published in the New York Law Journal and has been selected for republication in the New York State Bar Association

Trusts and Estates Newsletter. Rosemary is a member of the Bar Associations of New York State, Nassau, Queens and Westchester Counties and is admitted to practice law in New York and New Jersey. In her spare time, Rosemary enjoys reading history books and painting, as well as spending time with her family. Rosemary looks forward to meeting and speaking with you.



Rosemary Harnisher

Have You Relocated?

Do You Want to Keep Receiving This Newsletter?

If you have moved to a new home, either permanently or temporarily, please contact our office with your most up-to-date address, telephone numbers, and e-mail addresses. We want to be sure that you will continue to receive communication from us.

This newsletter does not constitute the provision of legal or tax advice. It is to provide general information only and should not be acted upon without legal and/or professional assistance.

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