A STEP AHEAD

ESTATE TAX UNCERTAINTY

Over the last nine years, we have written numerous articles about the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). Among other things, we have addressed the fact that, over time, it incrementally increased the federal estate tax exemption, to $3.5 million in 2009, and reduced the maximum tax rate from 55% to 45%. Moreover, while EGTRRA eliminated federal estate taxes entirely for one year, 2010, beginning in 2011, the tax will be reinstated for all estates in excess of $1 million at a rate of 55%!

After passage of EGTRRA, it was generally believed that Congress would not permit the repeal of the estate tax for even one year, or its reintroduction the following year on estates valued in excess of $1 million, and that Congress would effectuate a more permanent change before the end of 2009. However, much to the surprise of the pundits, that never happened. While there have been reports that Congress expects to address these issues during 2010, there are no guarantees -- either that Congress will act or that it will make the changes retroactive to January 1. This has created a "perfect storm" in estate planning for people who have used the federal tax exemption amount as a measuring stick for the share or shares of their estates which have been earmarked for particular beneficiaries.

Examples will better illustrate the potential problems. Take, for instance, a married couple with an estate in excess of $3.5 million dollars. Their existing estate plan probably incorporates a tax-savings strategy. What if their goal was to leave an amount equal to the federal tax exemption to the children and the balance to the spouse. Last year, if one of them passed away, the children would have inherited $3.5 million and the spouse the rest. This year the kids get it all!

That scenario is even more devastating for a couple in a second marriage where each spouse has children from their first marriage. Their plan may have been that an amount equal to the federal exemption would be distributed to the children of the first to die and the remainder would be held in trust for the survivor and, at the survivor's death, this too would be distributed to the children. Because under EGTRRA, in 2010 everything passes free of federal estate tax, under this plan, all of the asserts of the first spouse to die will go to his or her own children and nothing will remain to fund the trust for the benefit of the survivor.

See **UNCERTAINTY**, Page 2

In This Issue:

- Esate Tax Uncertainty
- Protecting Your Pet's Future
- Mistakes & Misconceptions

Berwitz & DiTata LLP

First Quarter 2010 Volume 7, Issue 1

UNCERTAINTY, from Page 1

A third example concerns the reverse, a couple with a significant estate who want to give as much as possible to the children without incurring estate tax. Their plan may have capped the gift to children at $3.5 million because of the 2009 limitation. Now, during 2010, they could conceivably pass an unlimited sum to their children free from tax. Again, and unless they make a change in the plan that takes into account the current status of the law, if either of them dies during 2010, the plan will not accomplish their goal.

Finally, those who have designated charities to receive a portion of their estates may have done so exclusively to minimize the federal estate tax bite. People in this situation may want to evaluate whether the planned charitable gifts make sense under the current tax laws.

There are difficulties relating to the temporary repeal of the federal estate tax and, of course, the federal tax exemption. But that is only half the battle. There is also a state estate tax. In New York, the amount that can pass free from New York State estate tax, the exemption amount, remains at $1 million notwithstanding the federal tax repeal. Thus, even in 2010, property in excess of $1 million that is given to a non-spouse beneficiary upon the death of the owner, will incur a state estate tax.

We, at Berwitz & DiTata LLP, recognize that our clients' plans are affected by changes in the law. Other factors that affect estate planning over time include personal circumstances, marriages, divorces, births, deaths, a move to a new home, inheritances, increases or decreases in the size of the estate and general economics. For this reason, we feel strongly that an estate plan should be regularly reviewed. We offer our clients a complimentary estate plan review every three to five years.

If you feel that the changes in the law may provide planning opportunities for you, or if you feel that your plan may no longer reflect your goals, it's time to make an appointment. If you are a client whose circumstances have changed warranting an earlier review, or if you are not already a client of ours, there is a nominal fee to review your estate plan. But this is the best way to be ensure peace of mind. Whether three (3) years have passed since your last review or your plan no longer meets your needs because of changes in the law, your family, your wealth or your goals, you owe it to yourself to call us today. ♦

WOULD YOU LIKE TO READ ABOUT IT HERE?

We at Berwitz & DiTata LLP are proud of our newsletter and hope that each issue brings our clients and friends insightful and timely information. We endeavor to write articles geared to your interests and concerns. We would be happy to receive your feedback. More importantly, if you have a question or would like us to address a particular topic, please call and let us know. We will try to include it in one of our next issues. Just call or drop us a line.

PROTECTING YOUR PET'S FUTURE

Pets are frequently overlooked in the aftermath of an accident or death. Sometimes pets are only discovered days after a tragedy. Several issues ago, as an introduction to this important topic, we wrote an article about Pet Trusts, a legally enforceable method to provide for the care and maintenance of pets in the event of the owner's disability and/or death. The response to our article was overwhelming! We discovered that many of our clients and friends had never considered what would happen to their pets if something unexpected happened to them.

What can you do to protect your pet's future? While pet owners should certainly consider the care and maintenance of their pets when preparing their estate planning documents, certain important and simple steps can be taken right away.

First, identify emergency caregivers. A responsible friend or relative who has the key to your home should be given important information about your pets. Include feeding instructions and the name and contact information of your veterinarian. Neighbors should know how many pets you have and how to contact your emergency caregivers. Some pet owners carry cards in their wallets that identify their pets and list the emergency caregivers and their contact information.

Post a sign on all entrances to your home to alert emergency personnel, in case of fire or other home emergency, that pets are inside. Indicate the number and types of pets. On the inside of the doors, post a large, clear listing of the contact information for your emergency caregivers.

While these steps will help protect your pets *temporarily*, it is very important to include formal, written arrangements, that cover care and even ownership of your pets, as an integral part of your estate plan. To do this, you must select a permanent caregiver and, perhaps, an alternate. From time to time, reach out to those whom you have designated as caregivers to ensure that they remain ready and able to care for your pets. If circumstances change, your formal documents should provide for a contingency plan. With proper advance planning, "no-kill" shelters, pet sanctuaries and pet retirement homes can be given authority for perpetual care or the right to find a family to adopt your pets. Some programs require contributions. Almost all require advance enrollment.

The most reliable mechanism for providing for your pets is to create an enforceable trust in favor of a human beneficiary or caregiver and then require distributions from the trust to the caregiver to cover your pets' expenses and, possibly, compensation to the caregiver. Provisions for pets should also be incorporated in your Power of Attorney and Last Will and Testament. The Power of Attorney can include specific instructions with respect to your pets in the event of your incapacity. It can also authorize the expenditure of your money, during your lifetime, for the care of your pets. While the instructions which you may have incorporated in your Last Will and Testament may be informative, remember that it is often weeks, months or longer before your Executor is empowered to act in accordance with those instructions.

If you want to ensure that your pets will be continually cared for, please call us or make an appointment to talk about this important addition to your estate plan. ♦

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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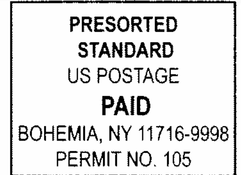
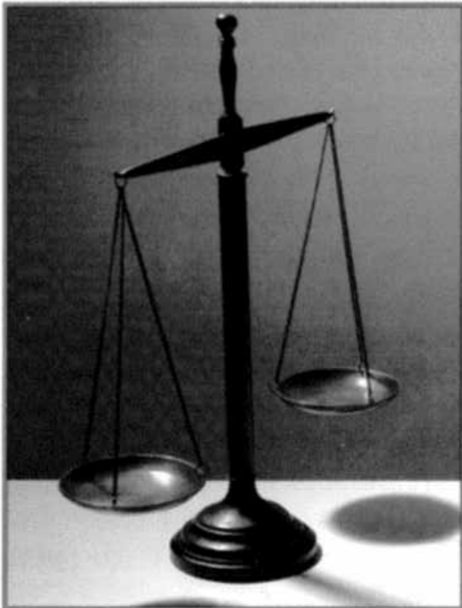


MISTAKES AND MISCONCEPTIONS

Estate planning, whether simple or complex, requires careful attention to details which, if overlooked or misunderstood, can undermine the plan's effectiveness. We will devote space in each issue to highlight common estate planning mistakes and misconceptions.



How powerful is a power of attorney, and for how long? Most people know that a power of attorney is invaluable if they become ill or incapacitated and are unable to handle their own affairs. Through the power of attorney they can legally authorize an "agent" of their choosing to manage their property and make financial and business decisions. But a power of attorney is not of infinite duration. It is valid only as long as the creator, or "principal," is alive. For this reason, a power of attorney does not permit an agent to close an account after the principal's death. The agent cannot cash or deposit checks made payable to the principal, empty or even open the principal's safe deposit box, sell the principal's real property, or cash-in life insurance policies after the principal's death. ♦

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