CURRENT ISSUES IN THE AREAS OF ESTATE, TAX AND PERSONAL AND BUSINESS PLANNING

The information that follows summarizes some of the current issues in the areas of estate, tax and personal and business planning which may be of interest to you. Although this information is accurate and authoritative, it is general in nature and not intended to constitute specific professional advice. For professional advice or more specific information, please contact my office.

Visit Our New Website. Our website was recently updated and modernized. Many of our prior newsletters are available for review, as well as numerous articles and presentation outlines that I prepared and presented over the last several years. Please take time to visit our website and provide us with your comments!

IRA Charitable Distributions Made Permanent. One of the provisions of the Consolidated Appropriations Act of 2016 reinstates and makes permanent the rule that an IRA distribution which would otherwise be taxable can be excluded from gross income if it was made directly to a qualified charity. The exclusion is limited to $100,000 per year for each individual taxpayer. A qualified charity is a public charity and not a supporting organization or a donor-advised fund. To be eligible for the exclusion, it must be made on or after the IRA participant attains 70½ years of age. The principal advantage of the direct charitable distribution is that it avoids the augmentation of the IRA participant's income as would occur if the IRA participant first received a distribution and then made the charitable contribution after receiving it. This can give rise to negative tax effects even though the participant would still be allowed an itemized tax deduction for the charitable contribution.

9th Annual Mid-America Institute On Aging. This event is scheduled to take place on August 11 and 12, 2016, with a pre-conference on August 10, 2016. It is sponsored by the University of Southern Indiana and the Southwestern Indiana Regional Council on Aging, Inc. (SWIRCA & More) and will be held at the University of Southern Indiana. It is designed not only for health professionals, but also for caregivers and the general community. I am presently scheduled to speak on the proposed changes in the Veterans Administration's pension rules pertaining to Aid and Attendance care which are contemplated to become effective this year. I also intend to address certain distinctions between the VA pension rules pertaining to trusts and the Medicaid trust rules.

Asset Preservation - Transferring The Home. There are many different approaches to protecting the home in the context of asset protection planning. It is very common for people to be concerned about protecting their home if long term care might be required in the future. Planning with the residence can be very effective, and the rights and interests of all parties beneficially protected, but it must be undertaken with caution. Some people will simply transfer their home to their children, which creates a number of risks. A parent could be forced out of the home, and of course the death of a child would involve other family members as owners. Also, the child could be the subject of a lawsuit or a tax lien, and the divorce of a child could have a negative impact on the parents' occupancy of the

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residence. The mere continued occupancy by the parent when ownership does not exist can create a Medicaid qualification problem later, as can the simple transfer of property because of the applicable five year “look-back” period, the result of which is that an application for Medicaid can be denied and a Medicaid penalty incurred because of a transfer within five years of the date of the application. As a means of addressing some of these risks, some people will transfer the property but reserve a life estate. There will still be an adverse tax impact to the child when the property is sold, if sold during the parent’s lifetime, and further, if the parent is admitted to a long term care facility, the parent still has an interest in the property, which can create Medicaid complications. If the property is sold while the parent who holds a life estate is still living, the parent will receive the value of the life estate, which is frequently as much as one-third or more of the total value of the property. Consequently, life estate planning is not a desirable strategy in most circumstances. The best plan will generally be to transfer the residence to a particular kind of an asset protection trust. Doing so will avoid the implications of changes at the children’s level due to death, divorce, bankruptcy, lawsuits, tax liens, etc., and neither the death of the child nor the death of a parent will create any negative ownership or tax implications. The property can be sold either before or after the parent’s death without capital gain consequences. The transfer will be subject to the five year “look-back” period, but with proper planning, those issues can easily be dealt with and numerous other complications avoided. I have engaged in asset protection planning transactions involving the residence and other real property utilizing asset protection trusts in hundreds, if not thousands, of cases, and favorable results have always been achieved with no or minimal negative consequences.

Drafting Beneficiary Designation Forms. It is generally best and usually advisable for the client’s attorney to prepare the beneficiary designation form for any significant retirement plan, or even in the case of life insurance when the beneficiary arrangement is complex. For example, if the arrangement involves a trust, legal counsel should almost always be involved in the beneficiary designation form preparation process. Even common developments, such as the death of the beneficiary, must be anticipated. It should also be contemplated that a younger beneficiary might exist, in which event it might be appropriate for the beneficiary designation to specifically refer to a trust, or perhaps to a custodial arrangement under a Uniform Transfers or Gifts to Minors Act, which will prevent the beneficiary from receiving the retirement plan or insurance distribution before the age of 21 or the age specified in the trust document. Clients frequently fail to complete the process, even when they are given specific instructions, and often other financial professionals involved in the process are not aware of the contemplated planning arrangements or they may not be as informed and up-to-date as the client might expect in the particular planning or taxation area. I have also found that it is desirable for legal counsel to retain a copy of the confirmed beneficiary designation arrangements. I have had several situations over the course of my more than 40 years of legal practice when the financial institution or insurance company was unable to locate the client’s last beneficiary designation, and the result would have been that the funds would be paid to different beneficiaries, or paid in a different manner, than contemplated by the latest beneficiary designation. In the case of a pay-on-death (POD) or transfer-on-death (TOD) designation, the result might be that probate may be required when the POD/TOD designation would have avoided probate entirely, and in addition, the funds controlled by the POD/TOD designation might pass to unintended beneficiaries. I cannot overstate the importance of giving proper attention to the issue of beneficiary designations.

Additional Information. Future issues of this Newsletter will address other issues of current interest. Please contact my office with any questions that you might have.