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The Law Office of Bruce Kiselstein, Ltd.

NEWSLETTER

Trusts, Estates, Taxes & Asset Protection - A Problem Solving Law Firm

INSIDE THIS ISSUE...

What's Going On With The Federal Estate and Gift Tax?

In the Spring of 2001, a comprehensive Federal tax bill was passed and signed by President Bush which affected the Estate Tax and Gift Tax. Under that law, the Estate Tax credit gradually increased from $675,000 to its current level of $3.5 million. That bill increased the lifetime Gift Tax exclusion to its current $1 million per person. This tax bill also included a provision, which repealed the Federal Estate Tax ***entirely***, on January 1, 2010. Strangely, the bill expires or "sunsets" on December 31, 2010, at which time the Estate Tax returns to what it was under the previous Estate Tax law which was $1 million per person. Does this mean that there will be ***no Federal Estate Tax*** in 2010 and that the tax credit will magically reappear in the amount of $1 million on New Year's Day, 2011? No!

In late spring, 2009, the U.S. House of Representatives overwhelmingly passed HR 436, which maintains the Federal Estate Tax credit at $3.5 million per person, keeps the current estate tax rate of 45% on any amount which exceeds the $3.5 million, ***stamps out the repeal of the estate tax*** (which is scheduled to happen on 1-1-10) and maintains the 50% rate on estates exceeding $10 million. It does ***not*** increase the lifetime Gift Tax exclusion, which remains at $1million.

Unfortunately, when HR 436 was sent to the U.S. Senate, it was placed on the "back burner" because something else had to be resolved first . . . health care reform. The Senate will not continue to ignore the Estate and Gift Tax bill and allow the repeal of the current Estate Tax on January 1, 2010! We delayed this issue of our newsletter hoping that we could provide you with information on the "new tax legislation." Well, that hasn't happened and we didn't want to delay this newsletter any further.

Instead, we will provide you with what we ***predict*** will happen before the end of the year. Since the President's Budget included Estate Tax provisions which were nearly identical to those in HR 436 and further, since the initial indications which came out of the U.S. Senate prior to the health care reform debate, favored keeping the credit at a minimum of $3.5 million per person, we ***predict*** that before year's end, legislation will be passed that: 1) maintains the credit at $3.5 million; 2) maintains the tax rate above $3.5 million at 45%; and 3) the lifetime Gift Tax exclusion will be increased somewhat.

Big Discounts on Fees For Family

We want your children and your brothers and sisters to join our "family" of clients. Certainly, if they have children, they should have a Will and if they own their own home they should have a Trust. They need to protect their families from Probate and create a protective distribution plan for their children in the event something happens to them. They should also have Powers of Attorney for Health and Property. They need to protect themselves from the Guardianship Court in the event of a disability. We have always provided a 10% discount to family members, however, ***if you refer a family member to our office for any estate planning services before November 30, 2009, we will provide them with a 15% discount off our flat fee schedule of services.*** Better yet, if they attend one of our dinner seminars in October or November they get a great ***free dinner***, 2.5 hours of legal education and a $500 coupon on our PAT trust or $200 coupon on our standard Trust (we'll give them the greater of the coupon or the 15% discount, but not both). ***Call today*** for the date and location of our next dinner seminar.

We Want Your E-Mail Address!

We can send our clients tax updates, rate changes, new law information, etc., faster and easier, if we have your e-mail address. Please call us at 847-670-8200 (24 hours) and give us your e-mail address or e-mail your name and e-mail address to our secretary at kzkoenig@sbcglobal.net. Over the next two years, we will be phasing out newsletters by U. S. Mail. All newsletters will eventually be e-mailed unless you advise us that you do not have a home computer and you still want to receive the newsletter by standard mail.

OUR TRIVIA CHALLENGE IS ON VACATION, BUT WILL RETURN IN OUR NEXT NEWSLETTER.

2009 Tax and Other Rates			
Annual Gift Exclusion	$13,000/person	IRA Over Age 50 “Catch-Up” Extra Contribution Limit	$1,000
Federal Estate Tax Credit Amount	$3,500,000/person	401(k), 403(b), and 457 Plan Extra Over 50 “Catch-Up” Limit	$5,500 (up $500 from 2008)
Illinois Estate Tax Credit	$2,000,000/person	FDIC Insurance	$250,000 per depositor until 12/31/2013
Estate Tax Rate on Assets Above $2 Million	45% Fed 8% to 16% IL	Medicare Part B Premium (may be more if over income limits)	$96.40
Roth IRA/IRA Annual Contribution Limit	$5,000	Medicare Part B Deductible (plus 20% co-insurance)	$135
401(k), 403(b), and 457 Plan Annual Contribution Limit	$16,500 (up $1,000 from 2008)	Medicare Part A Deductible	$1,068

Does Your Trust Comply With HIPAA and IRA Regulations?

In ***many*** of our past newsletters, we have advised you of the dangers of failing to update your pre-2004 documents to include HIPAA and IRA regulatory language. Just to review, HIPAA is the medical privacy law that became effective in 2003. It prohibits any person, medical service provider or company from sharing your medical records or information ***with any other party.*** Violations of this law result in stiff fines up to $10,000. You’ve probably run into HIPAA when your doctor puts a clipboard in front of you each time you go into his or her office, asking you to sign a form to permit them to share your medical information with your insurer or Medicare. Powers of Attorney that we prepared for you, require your doctor to issue a written statement stating you are incapacitated, before the document becomes effective. If prepared before 2004, those older documents do not contain the required HIPAA authorization to allow your doctor to issue this statement, making it difficult or impossible to obtain. Similarly, your Trust contains a provision allowing your Successor Trustee to assume power over your Trust if you are incapacitated, ***when a doctor says so in writing***. The Trust also says that you are allowed to resume operation of your Trust if you are well again, indicated in writing from your doctor. The same problem occurs here, making it very difficult for your Successor Trustee to take control of your Trust.

The other “update” problem relates to your IRA accounts. We have advised you to name your Trust as ***primary*** beneficiary of your IRA’s if you are single and name the Trust as the ***contingent*** (secondary) beneficiary, if you are married. In 2003, the Internal Revenue Code was changed to provide a ***great new benefit for*** your trust beneficiaries. If your Trust contains these new (2003) IRS regulations, your IRA’s can be paid out over the life expectancy of your oldest trust beneficiary, ***rather than your remaining life expectancy. This means many years of tax deferred growth for your children and much lower income taxes.*** The 2003 regulations also provide a ***penalty*** if your Trust does ***not*** include the new provisions. The penalty is that ***your Trust does not qualify for these stretched-out payments***, rather, your Trust beneficiaries must withdraw the ***entire*** IRA account ***within 5 years of your death*** (a “blowout” instead of a “stretch-out”). They lose years of tax-deferred growth and greatly increase their income tax liability.

These 2 major problems can be resolved with some reasonably priced amendments to your Trusts and Powers of Attorney. ***In some cases these amendments can even be written based upon a phone interview, without an office visit, and can be mailed to you.*** Only 50% of our clients with pre-2004 documents have heeded our warnings and “updated.” If you have not done so, you should contact us immediately at 847-670-8200.

Danger, Danger, Warning---
Watch Out For the Illinois Estate Tax

The Illinois Estate Tax Credit was increased to $2 million per person on January 1, 2006. It did ***not*** increase to $3.5 million with the Federal credit on January 1, 2009, and presently is not scheduled to do so. A $2 million estate, will generate zero Illinois death tax, however, a $2.6 million estate creates an Illinois death tax of $136,000 and a $3.5 million estate creates a $209,000 death tax. What can you do to avoid or reduce this tax?

If you are single, you can make use of the following techniques: 1) ***reduce*** estate value with non-taxable gifts to loved ones, not exceeding $13,000 yearly per person, using your ***annual*** gift tax exclusion; 2) create an Irrevocable Life Insurance Trust; 3) create a Qualified Personal Residence Trust, 4) create a Charitable Remainder Trust; 5) create a "discounting" Limited Liability Company; or 6) become a permanent resident of Florida, Wisconsin, or 26 other states that have no death tax. Many of the above "advanced planning" tools are explained on our website, www.trustmelaw.com.

If you are married, you can use any of the tools above. In addition, if both spouses' total estate exceeds $4 million and you have separate trusts for husband and wife (AB Trusts), ***there is new legislation just passed by the Illinois House and Senate (SB 2115) that affects AB Trusts***. This is how it works: Let's say that John and Mary have AB Trusts and John dies first with $2.6 million in his trust. The Federal credit is $3.5 million. All AB Trusts must contain a "funding formula" to split funds between the A Trust and the B Trust. The B Trust (the shelter trust) is intended to hold the maximum amount under ***federal*** law ($3.5 million). The formula requires any amount ***above the $3.5 million***, go into John's A Trust (the Marital Trust) for Mary's benefit. John's A Trust allows Mary to use that money during her life. If funds remain in John's A Trust when Mary dies, they will be added to Mary's "taxable estate." The funding formula requires that ***all of John's $2.6 million*** go into his B Trust. The funding formula ***ignores*** the Illinois death tax limit of $2 million. ***John's B trust can only exempt $2 million from Illinois death tax.*** John's B trust pays zero ***Federal*** estate tax, however, Mary has to pay a death tax of $136,000 on the extra $600,000 to Illinois. It must be paid within nine months of John's death.

Federal law stops us from placing $2 million in John's B Trust and the extra $600,000 in his A Trust. It ***requires*** that the maximum amount under federal law (the full $2.6 million) be placed in John's B trust. We could just change the funding formula to say that "not more than $2 million" can be placed in John's B Trust. It is an ***option*** that some clients have selected. It requires John and Mary to amend their funding formulas. If we use this option, however, it may present a tax problem for John and Mary's kids after Mary's death. Under the new formula, an extra $600,000 goes into Mary's "taxable estate" when she dies. We avoided a $136,000 Illinois tax when John died but may cause a $270,000 Federal tax ($600,000 X 45%) when Mary dies. Are you confused? ***The new Illinois SB 2115 solves the problem***. When Mary files John's estate tax return, it permits her to place $2.6 million in John's B Trust so that amount is ***exempt from any federal tax when she dies*** and at the same time, for Illinois, it allows her to ***act*** as if the extra $600,000 went into John's A Trust (even though it didn't) so that she can claim the "Marital Deduction" on that money and pay zero Illinois tax at John's death. The technical name for this is a QTIP election. Mary can only use this QTIP election if: 1) the funding formula is correct; and 2) John's B Trust is amended to include QTIP qualifying payments to Mary.

In summary, if you are married and have AB Trusts and believe it's possible that the first spouse to die will have more than $2 million in his/her trust, you ***must*** amend your trusts to include the Illinois QTIP provisions. If this is not done, the surviving spouse *will write a tax check to the State of Illinois within nine months of first spouse's death*. PLEASE NOTE**:** **SB 2115 was signed into law on September 8, 2009.**

Are Your Major Assets Owned By Your Trust?

We remind you again, to ***be sure that your significant assets*** (real estate, brokerage accounts, stocks, bonds, mutual funds, CD's, money market accounts and large bank accounts) ***are owned by your Trust.*** Also please be sure that your life insurance, IRA's and corporate retirement plans, name your Trust as either primary or contingent beneficiary. Our clients who have prepared a Personal Asset Trust℠ (PAT), which provides asset and divorce protection for their beneficiaries ("bulletproofing" the inheritance for the next generation) are provided with ***free*** tri-annual office reviews to allow us to check the titles and beneficiaries of all of their assets to be sure they are all tied to their Trusts. Many have taken advantage of this ***free*** service. We can tell you that we ***always*** find at least one asset that is not owned by the Trust or does not name the proper beneficiary. The biggest culprits are IRA accounts and insurance policies. If you have a PAT Trust and have not taken advantage of your tri-annual review, you should. ***It's free!!*** If you do ***not*** have a PAT Trust and we haven't had a "check-up" with you in ***more than 3 years***, you should schedule one. There will be a charge for the office visit, however, it's well worth the modest charge for that visit when you compare it to the possible cost of Probating that asset at death, if it's still in your name or has no beneficiary. It also assures you that the asset in question will never end up in the Guardianship Court, trigger an estate tax, or fail to be distributed according to the terms of your Trust.

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"Trusts, Estates, Taxes and Asset Protection….
A Problem Solving Law Firm"

Annual Newsletter
Important Estate Planning Information Enclosed

33% of U.S. Seniors Can Receive Up To $1950/month For Elder Care Costs

One-third of senior households (that's the number of war veterans or their spouses living in the U.S.) can receive additional income to pay long term care costs. The Department of Veterans Affairs (VA) will pay you to hire family, friends, or anyone else (except spouse) to take care of you. The program is called "Veterans Pension" (Pension). It covers the costs of assisted living and in rare cases, nursing home costs. Estimates indicate that 70%-80% of long-term care is being provided in the home. This Pension can be used to pay for home care. Even though it is designed for low-income families, the VA in calculating the Pension benefit, allows a deduction for the cost of paying any family member or person for the care, thus reducing household income to a lower "countable income." This allows households earning $3000 to $6000 per month or more, to qualify for the Pension. ***Under the right conditions***, this means additional household income up to $1056/month for a single surviving spouse of a vet, up to $1644/month for a single vet and up to $1949/month for a couple, one of whom is a vet. The recipient must be rated "housebound" or in need of "aid and attendance" by the VA and then all fees paid to the caregiver will be allowed as long as some "medical or nursing" services are provided to the disabled recipient. The caregiver does NOT have to be a licensed health professional. Detailed documents must be provided and the VA may question and review the services provided by the family member to assure they are legitimate. All care arrangements and payment for home care must be made prior to application for the Pension and there must be evidence that this care is needed on an "ongoing and regular basis." Written formal care contracts are strongly suggested. Federal law requires that employment taxes be withheld and there must be evidence of the withholding. The costs for the caregiver cannot be reimbursed by any insurance. Due to the complex application process and the need for documentation, ***you should not try this on your own***. Our office does **not** handle these applications, however, an expert in this area should be used to avoid lengthy delays or a possible denial of the Pension. For a list of qualified persons in this area, go to ***www.longtermcarelink.net*** or ***www.usawarvet.org.***