

# **HOW TO ANALYZE A TAX RETURN FOR ELDER LAW ISSUES**

By

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## TAX RETURN ANALYSIS FOR ELDER LAW ISSUES CHECKLIST

I put this checklist together to assist estate planning professionals (i.e. accountants, financial advisors and planners, insurance agents, non-elder law attorneys, etc.) along with my clients and their families to spot potential issues and opportunities that should and could be addressed by attorneys specializing in elder law. Obviously, there is too much information to properly cover in this document, so the goal is to alert professionals and their clients that a discussion needs to be started. What are covered here are highlights of issues that can be found, but it is certainly not exhaustive of the matter.

Many times clients come to elder law attorneys when it is too late for them to explore the entire range of planning options. Hopefully, with this checklist, the planning process will begin earlier for clients and their families, so that clients and their advisors can utilize all of the planning and benefits that are available.

As an Elder Law attorney, I am particularly interested in the following issues: proper drafting of Wills, proper drafting and execution of Trusts, proper titling and transfers of assets, Estate & Gift taxation, Medicaid planning, Social Security benefits, Medicare and Veterans benefits. I firmly believe that all of these areas can either 1) be found directly from an analysis of a client's Form 1040 tax return or 2) have discussions begun based upon other information presented on that tax return.

I have decided to take this approach to raise these concerns for one simple reason: all of your clients should have a tax return to review. It is a common document that everyone is familiar with and allows a great opportunity to initiate discussions with clients of any age and income level. The earlier that a client and his or her family meets with an elder law attorney, the sooner that planning to address these issues can begin.

I hope you find this checklist helpful in your own professional practice...and maybe even in your own personal lives.

Sincerely,

Keith R. Miles, Esq.

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## TAX RETURN ANALYSIS FOR ELDER LAW ISSUES CHECKLIST

### ADDRESS INFORMATION

#### State

- Has the client ever lived in a Community Property State? (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, Wisconsin)

### FILING STATUS

#### Line 1 - Single

- Does the client have a will in effect?
- Does the client have a pending marriage?
- Is the client divorced? If so, review any beneficiary designations.
- Has the guardian for any Minor Children been designated in a Will?

#### Line 2 - Married Filing Jointly

- Does the client have a will in effect?
- Does the couple have any Trusts?
- Opportunity for Marital Deduction Planning (if estate could be more than \$5MM in 2011 or 2012 OR \$1MM in 2013)/QTIP trust/Bypass Trusts?
- Has the guardian for any Minor Children been designated in a Will?
- Non-resident or dual status alien?

#### Line 3 - Married Filing Separately

- Does the client have a will in effect?
- Does the couple have any Trusts?
- Has the guardian for any Minor Children been designated in a Will?

## TAX RETURN ANALYSIS FOR ELDER LAW ISSUES CHECKLIST

- Is there a pending divorce? Is there a separation agreement?
- If there is a pending divorce, check Beneficiary Designation on Insurance Policies
- If there is a pending divorce, check Beneficiary Designation on Retirement Benefits
- If there is a pending divorce, check Beneficiary Designation on Investment Accounts
- If there is a pending divorce, check ownership of Banking Accounts

### Line 4 - Head of Household (with Qualifying Person)

- Does the client have a will in effect?
- Has the guardian for any Minor Children been designated in a Will?
- Does the client have a pending marriage?
- Is the client married but lives apart from Spouse?

### Line 5 - Qualifying Widow(er) with Dependent Child

- Does the client have a will in effect?
- Has the guardian for any Minor Children been designated in a Will?
- Check Beneficiary Designation on Insurance Policies
- Check Beneficiary Designation on Retirement Benefits
- Check Beneficiary Designation on Investment Accounts
- Check ownership of Banking Accounts
- Is there an Insurance Policy for Children?
- Did the client inherit any property from the deceased spouse?

## TAX RETURN ANALYSIS FOR ELDER LAW ISSUES CHECKLIST

### EXEMPTIONS

#### Line 6C - Dependents

- Has the guardian for any Minor Children been designated in a Will?
- Is there a need for Guardianship for any Elder Parent, Sibling or Special Needs child?
- Is there a need for Conservatorship for any Elder Parent, Sibling or Special Needs child?
- Is there a need for Power of Attorney for any Elder Parent, Sibling or Special Needs child?
- Are any adopted children provided for in the client's Will?
- Does the client have any stepchildren? How are they treated in the Will?
- Who would the client's Personal Representative for his or her Estate or the Agent for Healthcare Directive be?
- Would the client be the Personal Representative for any dependent's Estate or the Agent on any Dependent's Healthcare Directive?

### INCOME

#### Line 7 – Wages, Salaries, Etc.

- Does the client have Life Insurance for Income Replacement purposes?
- Does the client have Disability Insurance?
- Did Wages decrease due to Retirement?
- Did Wages decrease due to Self-Employment?
- Should client's income be reviewed for Medicaid planning purposes?

## TAX RETURN ANALYSIS FOR ELDER LAW ISSUES CHECKLIST

### Line 8 – Interest

- Check Assets that are generating interest for possible Medicaid Planning?
- Review income for Medicaid Planning?
- Examine Ownership of Bank Accounts for Medicaid Planning (i.e., is this a bank account owned with a non-spouse?)
- Has this increased due to inheritance and/or gifts?
- Need to examine Titling of Investment Assets?
- Need to examine Beneficiary Designations?

### Line 9 – Dividends

- Check Assets that are generating interest for possible Medicaid Planning?
- Review income for Medicaid Planning?
- Has this increased due to inheritance and/or gifts? (EP/ELD)
- Need to examine Titling of Assets?
- Need to examine Beneficiary Designations?

### Line 11- Alimony Received

- Check Beneficiary Designation on Insurance Policies
- Check Beneficiary Designation on Retirement Benefits
- Check Beneficiary Designation on Investment Accounts
- Check ownership of Banking Accounts
- Review income for Medicaid Planning?

## TAX RETURN ANALYSIS FOR ELDER LAW ISSUES CHECKLIST

### Line 12 – Business Income or Loss

- Does the client have Corporate Owned Life Insurance, Key Man Insurance, or a Buy/ Sell Agreement in effect?
- Has the client explored setting up a Family Limited Partnership or LLC?
- Has the client dealt with the issue of Succession Planning?
- Is the client considering the Sale of a Business? Has it been appraised and compared against the value of the total estate?
- Review income for Medicaid Planning?
- Need to examine Titling of Assets?
- Need to examine Beneficiary Designations?

### Line 13 - Capital Gain or Loss

- Check remaining Assets for possible Medicaid Planning?
- Was a sale of a Home?
- Examine Titling of Remaining Assets?

### Line 14 - Other Gains or Losses

- Sold or exchange assets used in a trade or business?

### Line 15 – Taxable IRA Distributions and Line 16 – Pensions and Annuities

- Check Assets for possible Medicaid Planning?
- Review income for Medicaid Planning?
- Has this increased due to inheritance and/or gifts?
- Retirement Accounts belong to which spouse?

## TAX RETURN ANALYSIS FOR ELDER LAW ISSUES CHECKLIST

- Does the client have an Annuity must have State as remainder beneficiary, if Medicaid Planning?
- Need to examine Titling of Assets?
- Need to examine Beneficiary Designations?

### Line 17 - Rental real estate, royalties, partnerships, S corporations, trusts, etc.

- Need for a Partnership/LLC Operating Agreement review?
- Need for an S Corporation Articles review?
- Review of Trust Agreements for proper administration?
- What type of Trust? Bypass Trust? Marital Trust? QTIP Trust?
- General or Limited Powers of Appointment in Trust?
- Generation Skipping Transfer Taxation issues?
- Qualified Domestic Trust if non-US citizen?
- Deceased Spouse or other loved one's Estate Administration issues?
- Has any amount increased due to inheritance and/or gifts?
- Check Assets for possible Medicaid Planning?
- Review income for Medicaid Planning?
- Does the client have Income Producing Real Estate?
- Did the client do any asset transfer to fund Trusts?
- Consider any possible Elder Abuse issues with Partnership/Stock transfers.

### Line 18 – Farm Income or Loss

- Has the client dealt with the issue of Succession Planning?
- Has it been appraised and compared against the value of the total estate?
- Review income for Medicaid Planning?

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## TAX RETURN ANALYSIS FOR ELDER LAW ISSUES CHECKLIST

- Need to examine Titling of Assets?
- Need their Deeds examined?

### Line 20 – Social Security Benefits

- What is the reason for receiving benefits? Age? Disability? Blind?
- Has client purchased Long Term Care Insurance?
- Has the client applied for Medicare?
- Has the client applied for Medigap Insurance?
- Review income for Medicaid Planning?
- Bring up any possible Veterans Benefits discussion as a possible alternative to Medicaid?

### Line 21 – Other Income

- Check nontaxable income NOT reported on this line but could affect estate and Medicaid planning (Child Support, Gifts, Bequests, and Insurance Proceeds)?
- Check Assets for possible Medicaid Planning?
- Review income for Medicaid Planning?

### Line 25 – Health Savings Account Deduction

- What expenses? Hospital? Nursing Home? Medicare Parts A and B?

### Line 26 – Moving Expenses

- Does client still own property in another state and could have Ancillary Probate issues?
- Does the client have a Revocable Trust to avoid Ancillary Probate?

## TAX RETURN ANALYSIS FOR ELDER LAW ISSUES CHECKLIST

- Has the client ever lived in a Community Property State? (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, Wisconsin)
- Need a review of a Long Term Care Insurance policy for portability?

### Line 28 – Self-Employed SEP, Simple and Qualified Plans

- Retirement Accounts belong to which spouse?
- Need to examine Beneficiary Designations?

### Line 30 – Penalty for Early Withdrawal of Savings

- A penalty for the early withdrawal of funds from a time savings account or certificate of deposit could be a sign of (1) financial difficulties and/or (2) elder abuse. Possible concern for guardianship or conservatorship.

### Line 32 – IRA deduction

- Retirement Accounts belong to which spouse?
- Need to examine Beneficiary Designations?

### Line 34 – Tuition and Fees

- Reviewed whether client is paying Qualified Expenses as gift for dependent for Medicaid Planning?

### Line 39a – Aged 65 or older on last day of the tax year or Blind

- If so, has client applied for Medicare?
- If so, has client applied for Social Security Benefits?

## TAX RETURN ANALYSIS FOR ELDER LAW ISSUES CHECKLIST

### Line 48 – Credit for Child and Dependent Care Expenses

- Does client have a disabled spouse, disabled person or special needs child they are caring for?
- If so, does the client need a special needs trust?

### Line 49 – Educational Credits

- Reviewed whether client is paying Qualified Expenses as gift for dependent for Medicaid Planning?

### Line 50 – Retirement Savings Contributions Credit

- Retirement Accounts belong to which spouse?
- Need to examine Beneficiary Designations?

### Line 58 – Additional Tax on IRA's, other qualified retirement plans, etc.

- A penalty for the early withdrawal of funds from IRA's or Qualified Retirement Plans could be a sign of (1) financial difficulties and/or (2) elder abuse. Possible concern for guardianship or conservatorship.
- Check Assets for possible Medicaid Planning?
- Review income for Medicaid Planning?

### Line 64 – Earned Income Tax Credit

- Medicaid Planning alert: Not Income for Medicaid purposes

### Line 67 – First Time Home Buyer Credit

- Need to Review Ownership on Deed?

## TAX RETURN ANALYSIS FOR ELDER LAW ISSUES CHECKLIST

### Line 73 – Amount Refunded to you

- Medicaid Planning alert: Not Income for Medicaid purposes

### Line 74 – Direct Deposit Account information

- Is this checking account jointly owned? If so, with spouse or non-spouse?
- Does client keep inheritance proceeds and Social Security payments separate from other account funds?
- Might client want refund deposited directly to Traditional IRA, Roth IRA or SEP IRA?
- Medicaid Planning Alert: No direct deposits to any “Miller Trusts”!
- Medicaid Planning Alert: No direct deposits to non-spouse joint accounts- Medicaid planning and Elder Abuse concerns

## TAX RETURN ANALYSIS FOR ELDER LAW ISSUES CHECKLIST

### SCHEDULE A – ITEMIZED DEDUCTIONS

#### Line 1. Medical and Dental Expenses

- Has client enrolled in Medicare Parts A and B or Part C (premiums)?
- Has client enrolled in Part D for Prescriptions?
- Has client purchased Medigap Insurance?
- Has client purchased Long-Term Care Insurance?
- Does client need to begin Medicaid Planning?
- Does client have or need home health care and/or nursing help?
- Is there an opportunity for a Personal Services Support Contract with a Family Member?

#### Line 5a – State and Local Income Taxes and Line 6 – Real Estate Taxes

- Does client still own property in another state and could have Ancillary Probate issues?
- Does the client have a Revocable Trust to avoid Ancillary Probate?
- Currently live or ever lived in a Community Property State? (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, Wisconsin)
- Need a review of a Long Term Care Insurance policy for portability?

#### Line 7 – New Motor Vehicle Taxes

- Medicaid allows 1 car. Opportunity to purchase new car?

#### Line 8 – Other Taxes

- Medicaid allows 1 car. Is there more than one vehicle for ad valorem taxes?

## TAX RETURN ANALYSIS FOR ELDER LAW ISSUES CHECKLIST

### Line 10 and 11- Home Mortgage Interest and Points

- If there are no amounts given, is the home owned free and clear? What is equity value?
- Need to examine client's deed on home?
- Has this amount increased from prior year?
- Any suspicion of Elder Abuse with increased mortgages?

### Line 16 – Gifts by Cash or Check and Line 17 – Gifts by Other Than Cash or Check

- Medicaid Planning Alert: Could this create a penalty period? 5 year “look back period” under The Deficit Reduction Act of 2005.
- Medicaid Planning Alert: Has there been a Gift of a House? Was the House gifted to a spouse? To a sibling with an equity interest? To a Son or Daughter?
- Does the client need a deed review for any real estate gifting?
- Does the client need a Gift Tax Return Form 709 to be filed (i.e. transfer of a remainder interest not satisfying the “present interest” test)? If so, spouse needs to file own Form 709.
- Does client have any Generation Skipping Transfer (GST) Tax issues?

### Line 20 – Casualty or Theft Loss

- Does this indicated client might have the need for a Guardianship or Conservatorship?
- Is any theft as potential sign of Elder Abuse?

## **TAX RETURN ANALYSIS FOR ELDER LAW ISSUES CHECKLIST**

### **SCHEDULE B – INTEREST AND ORDINARY DIVIDENDS**

- Check Assets that are generating interest for possible Medicaid Planning?
- Review income for Medicaid Planning?
- Examine Ownership of Bank Accounts for Medicaid Planning (i.e., is this a bank account owned with a non-spouse?)
- Has this increased due to inheritance and/or gifts?
- Need to examine Titling of Investment Assets?
- Need to examine Beneficiary Designations?

### **SCHEDULE C – PROFIT OR LOSS FROM BUSINESS AND**

### **SCHEDULE F- PROFIT OR LOSS FROM FARMING**

- Does the client have Corporate Owned Life Insurance, Key Man Insurance, or a Buy/ Sell Agreement in effect?
- Has the client explored setting up a Family Limited Partnership or LLC?
- Has the client dealt with the issue of Succession Planning?
- Is the client considering the Sale of a Business? Has it been appraised and compared against the value of the total estate?
- Review income for Medicaid Planning?
- Need to examine Titling of Assets?
- Need to examine Beneficiary Designations?

### **SCHEDULE D – CAPITAL GAINS AND LOSSES**

- Check remaining Assets for possible Medicaid Planning?
- Was a sale of a Home?
- Examine Titling of Remaining Assets?

## TAX RETURN ANALYSIS FOR ELDER LAW ISSUES CHECKLIST

### SCHEDULE E – SUPPLEMENTAL INCOME AND LOSS

- Need for a Partnership/LLC Operating Agreement review?
- Need for an S Corporation Articles review?
- Review of Trust Agreements for proper administration?
- What type of Trust? Bypass Trust? Marital Trust? QTIP Trust?
- General or Limited Powers of Appointment in Trust?
- Generation Skipping Transfer Taxation issues?
- Qualified Domestic Trust if non-US citizen?
- Deceased Spouse or other loved one's Estate Administration issues?
- Has any amount increased due to inheritance and/or gifts?
- Check Assets for possible Medicaid Planning?
- Review income for Medicaid Planning?
- Does the client have Income Producing Real Estate?
- Did the client do any asset transfer to fund Trusts?
- Consider any possible Elder Abuse issues with Partnership/Stock transfers.