Estate Planning Trends & Update

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Estate Tax

- How Did We Get Here? EGTRRA
  - 2002: $1M (41%-50%)
  - 2003: $1M (41%-49%)
  - 2004: $1M (45%-48%)
  - 2005: $1.5M (45%-47%)
  - 2006: $2.5M (45%-46%)
  - 2007 and 2008: $2.5M (45%)
  - 2009: $3.5M (45%)

Estate Tax

- 2010: No Estate Tax (“Law & Order”)
- 2011: $1M with 55%

- $1M can be given as lifetime gifts

The Flip Side of the Estate Tax

CARRY OVER BASIS

Carry Over Basis (Estate Tax Repeal)

- Heirs do not get a step up in basis for income tax purposes.
- Heirs take the cost basis of the decedent with exemption of:
  - $1.3M for residents plus
  - $3.0M for spouse
    - Measured in amount of <u>gain</u> not amount of property

What Will Congress Do?

- Nothing.
- Estate Tax Retroactive to 1/1/2010. (Constitutionality).
- How much exemption?
- What tax rate?
- What's the latest?
  - Dan Duncan
  - Steny Hoyer
  - Max Baucus
- PAYGO Rules: Two Year Exemption

Only A Few Will Be Affected By the Estate Tax

- Maybe. Should Be.
- What Motivates Clients to Plan?
  - Ensure estate goes to desired heirs
  - Avoid family squabbles
  - Asset protection
  - Protection of estate from nursing home and other elder care costs

Is Estate Planning a “Dying” Practice?

- By no means.
- Families still need to plan.
- But, procrastination is still rampant.
- There is a tremendous opportunity to do clients a great service.

Prof. Jeff Pennell:

- The estate tax has been enacted & repealed many times.
- Three legs of estate planning:
  - Federal tax law
  - State fiduciary law
  - Family needs

SOME CURRENT TOOLS AND TECHNIQUES

What Most People Believe....

- Estate Planning is “Set It and Forget It”
- It’s Not.
- Family Circumstances Change.
- Tax Laws Change.
- Wills and Trusts need to be reviewed <u>on a regular basis.</u>

Does Your Estate Plan Fit You?

- Many have formula clauses that are based on the estate tax law.
- These need to be reviewed and perhaps modified and/or simplified.
- Particularly in view of the volatile tax environment today.

Revocable Trust

- Currently <u>the</u> primary device for transfer of wealth for
  - Flexibility
  - Probate Avoidance
  - Can be “shell” (life insurance trust) or fully funded (investment assets, real estate & life insurance).
  - Effects disability provisions without implementing durable power for property

RLT: Benefits checklist

- Definition of disability – who determines?
- Disability provisions
- Marital-nonmarital disposition of assets for spouse ("wait and see" estate tax planning)
- Remarriage
- Common trust for descendants
- Long term separate trusts for descendants
- Flexible trustee structure – appt. of trust protector
- Can be designed as a "see through" trust for IRA and retirement plan benefits.

Estate Plan in a Picture

- Client Understanding is the key to client satisfaction
- An example is attached as Appendix “A”.

HB5282 – Entireties Property in Revocable Trusts

- Amends Joint Tenancy Act & Civil Practice Act.
- Revocable Trusts may hold entireties property.
- Passed by both houses. Soon to be sent to governor.

Power of Attorney – Health Care

- Is the statutory form sufficient?
  - Use the statutory form because it is recognized.
- HIPPA issues are not addressed in the statutory form. We normally add provisions for HIPPA.

Elder Law – Home Care & Nursing Home Care

- Average Cost of Nursing Home Care is in the range of $6,500 to $8,000 per month. Can be higher on the north shore.
- In-home caregivers can be more expensive.
- How can this be funded for the average family?

Long Term Care

- Private Funding (Family money)
- Government Funding
  - Medicare (100 days only)
  - Medicaid (Payer of last resort)
    - Income and Asset limits

Medicaid
Asset Protection Trust

- Not an "emergency" planning tool.
- Requires advance planning.
- Gifts to an irrevocable trust have a five year "look back" period.
- Dad contributes assets to trust. Receives income only. (No discretionary payments).

MAPT (continued)

- At the end of five years, the assets are not countable for Medicaid.
- Dad will qualify for Medicaid if he otherwise meets the qualifications, not counting these assets.

Other Issues That Estate Planners Must Consider

- Asset Protection
  - Tenancy by the Entirety?
  - Personal Umbrella coverage
  - Retirement plan assets basically protected from creditors (IRAs, retirement plans)
  - Illinois is not otherwise a debtor friendly state

Beneficiary Designations

- All IRA and qualified plan accounts
  - Consider tax consequences
- All life insurance policies
- Properly coordinated with the estate plan dispositive provisions

Choice of Title to Residential Real Property

- Individual Name
- Joint Tenancy
- Tenancy by the Entirety
- Land Trust
- Land Trust Tenancy by the Entirety
- Revocable Trust
- RLT Tenancy in Common
- RLT Tenancy by the Entirety*