

2009

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### Tax Law Changes in 2009

In 2009, we will see tax law changes for the estate tax and the gift tax. The new amount that an individual can pass at death under the estate tax increases to \$3.5 million per person. The gift tax, which has been at \$12,000 for the last few years, will increase to \$13,000 per person in 2009. You can give \$13,000 to as many individuals as you would like and both the giver and the receiver DO NOT have to report the gift to the IRS. For any other questions regarding estate tax laws, please do not hesitate to contact our office.

### IRA Issues

The IRS has reinstated the tax law that allows you to transfer up to \$100,000 from your IRA directly to a charity without having to report income on the withdrawal. With something this generous, there are some restrictions. The first restriction is that the individual donor must be at least 70 ½ years old and the 2<sup>nd</sup> restriction provides that the gift must be to a charitable organization. Unfortunately, your family is not a charity. For more information, please feel free to contact the Kalamazoo Community Foundation.

### Designating the Beneficiary of Your IRA

There are many options to designating the beneficiary of your IRA. Depending on the age of your beneficiaries, here are some recommendations. If you are married, you should first consider designating your spouse as your primary beneficiary. For some, this may not be in line with your established estate plan or prenuptial agreement. For most married couples, if your spouse is the primary beneficiary the spouse gets the benefit of rolling over your IRA and extending the distributions or withdrawal over your spouse's lifetime.

The second option is to name your adult beneficiaries that are named in your Will or Trust as a primary or contingent beneficiary. If your beneficiaries are old

enough and you would be comfortable giving them access to your retirement benefits right now, then these beneficiaries should be designated as either a primary or contingent beneficiary. When your estate plan was set up, many of you may have designated your Trust as the contingent beneficiary of your IRA due to the age of your beneficiaries. If your beneficiaries are now older or mature enough to inherit your retirement benefits, now is a good time to update your beneficiary designation.

If your beneficiaries are minors, have special needs issues, have spendthrift issues or are not mature enough to manage the assets in your retirement plan, designating your Trust as the contingent beneficiary is still the best option. Your Trust will allow your successor Trustee to manage the inherited IRA benefits per the terms of the Trust. The Trust will allow the Trustee to control these funds and distribute funds from the retirement benefits to or for the benefit of your beneficiaries based on the language in your Trust.

If your estate plan consists of a simple Will and not a Trust, many of the above mentioned rules still apply. However, many individuals who have minor beneficiaries have been advised to name the guardian of the minor beneficiaries as the contingent beneficiary of the IRA and not the minor beneficiaries themselves. This is not a good idea. If you designate a guardian as the beneficiary of your IRA, with the intent that the guardian will use the funds for your minor children, the IRS will treat the guardian as the true beneficiary and owner and the tax consequences will be severe. The retirement benefits will have to be withdrawn over the life expectancy of your guardian and not the life expectancy of your minor beneficiaries. If you have not set up a Living Trust and are using a simple Will to pass assets to your minor children, it is important that you discuss the beneficiary designations of your retirement assets with either your financial advisor or with our office.

## **When Are You Old Enough to Have Your Own Estate Plan?**

Many individuals believe that you do not need to complete estate planning documents until you are older, married, closer to retirement, have grandchildren or are facing a serious medical condition. Although these are all valid reasons to get your estate plan complete, it is important to keep in mind that even young people who are not facing these issues still need an estate plan. If you have children that are over the age of 18, they may need a simple Power of Attorney for Health Care, a Financial Power of Attorney or a Will. If your child was injured or in an accident or was admitted to the hospital, you may be denied the right to make medical decisions for them, including decisions regarding life support. Once your child turns 18, he or she is considered an adult and planning for an unknown medical crisis is important.

Many young people do not believe they have sufficient assets to even set up a Will. However, several years ago I encountered a situation whereby a 23 year old child was killed and the settlement became part of that child's Probate estate. Since the child did not have a Will, the Probate laws of intestate succession controlled. Per those Probate laws the estate was divided equally between the surviving mother and father. What is important to note in these facts is that one of the parents had little to no contact with this child, yet the parent was still entitled to inherit from the child's estate because the child did not have a Will. Basically, the State of Michigan decided how the money would be divided. Remember, when you fail to make decisions with regard to your estate plan, you in essence are leaving the decisions up to the State of Michigan.

## **Estate Recovery Act - On Hold**

Over 15 years ago the federal government mandated that all states implement an estate recovery law. For the last 14 years Michigan has chosen to ignore this instruction. A little over a year ago, Michigan finally adopted an estate recovery law, but the proposed law required federal approval before implementation. That federal approval was denied. Michigan's Estate recovery law is scheduled for a federal review in 2009 and to date no decision or instruction has been given. With Michigan facing major economic issues and with the new administration taking over, there is a good

chance that this issue may be buried for some time. If significant changes occur or if a law is passed the changes will be addressed on our website.

## **Funeral/Burial Wishes**

Michigan has adopted new laws to help clarify who has authority to control funeral/cremation arrangements for a deceased individual. The new legislation created a priority designation of who is authorized to make funeral arrangements and dispose of the body, which also includes cremation. Priority starts with the surviving spouse and if there is no surviving spouse then the new legislation looks to the probate intestacy chart. If there is no surviving spouse, it then falls to the individual's children who are 18 years or older. If there are several children, than a majority decision by these children will control. If children cannot be located or if they fail to act (as further defined by the statute, but not discussed here) these individuals can be bypassed and a majority of the remaining children will decide.

If the individual is not survived by a spouse or any descendants, then the decision falls to the decedent's parents equally if they are both surviving or to the surviving parent. If there is no surviving spouse, no descendants and no parents, then the decision falls to the decedents adult siblings. Again, if there are multiple siblings then a majority of those siblings have control. If an individual is not survived by a spouse, descendants, parents or siblings then we move on to the grandparents or descendants of the grandparents.

Many individuals that come into my office believe that if they have arranged and/or prepaid for their funeral/burial or cremation, that these plans will control. Unfortunately, if those individual with decision making authority do not agree with the arrangements, the can modify or change your arrangements. Therefore, it is important that you speak with your family and discuss your funeral/burial or cremation wishes so that there are no surprises. Never assume that your family will agree on what is best for the simple fact that this is a very emotional time for everyone. Prepaying for your funeral/burial or cremation may be just enough to encourage your family to follow your wishes, but your prepayment does not bind them in any way.

## **Document Updates**

In case many of you did not review last year's newsletter, I informed all of you that my office has gone paperless. Any documents, notes or correspondence that were originally retained in a paper format has now been scanned in and saved as a PDF file. Please keep in mind that when you signed your estate planning documents you were provided with a full set of the original documents. Those should be kept in a safe, yet accessible location. Additionally, if you have not provided the individuals that have been designated in those documents with a copy, you should consider doing so now. For example, your successor power of attorney and/or trustee should be given copies in case they need to step in immediately. Additionally, by providing them copies of these documents it will give you an opportunity to discuss your wishes with them now.

It is always important to remember that if there are any updates or changes that have been made since your estate planning documents were signed, please contact our office in writing, via email or by phone so we can update our file. For example, if any of the designated individuals in your documents have moved, please provide us with their new address. If you have opened new accounts, closed accounts or changed financial advisors, please provide us with that updated information. Remember, the more up to date you keep our office, the more assistance we can provide to your medical advocates, your power of attorney and/or your Trustee when the time comes for them to step in.

## **Email Addresses**

If you are receiving a hard copy of this newsletter, it means that we do not have an email address for you. Many of you have indicated that you do not use a computer or do not use email and we have made a record of this in our file. However, despite our efforts to contact each one of you to obtain an email address, we did not hear back from everyone. If you would give our office a call upon receipt of this newsletter and provide us with an email address or alternatively notify us that you do not use email, we would appreciate it.

Our office continues to offer the following legal services:

- ▲ Chapter 7 & 13 Bankruptcy
- ▲ Criminal Law ▲ Drunk Driving
- ▲ Misdemeanors ▲ Juvenile Law
- ▲ Social Security Disability
- ▲ Workers Compensation