

ESTATE PLANNING QUARTERLY

THE NEW YORK ESTATE TAX: SAVING YOUR CLIENTS THOUSANDS

Effective 2002, New York de-coupled its estate tax from the federal estate tax, leaving a gap between the protection from taxes in New York and federally. New York currently sits at a comfortable \$1 million. While the tax is not burdensome, approximately 16% of the gross estate, it is usually worth avoiding. By way of example, a single person with a \$1.3 million estate will face a \$49,000 tax. I firmly believe most clients would want to avoid the tax if they had the information to do so. I can tell you that this area of estate planning is far too often overlooked. It is either ignored or simply not understood by many practitioners and yet should be addressed regularly. You must ask yourself, "how many clients do I have who have more than \$1 million in assets?" If you have any, it is worth reviewing.

While we recognize that many of our wealthier clients face tax issues, the reality is that younger clients who carry large life insurance policies face some of the same issues. Life insurance proceeds are considered part of a decedent's gross taxable estate. If a young business person dies with \$1 million policy and leaves it to the spouse, and then the spouse dies leaving an additional \$1 million to the kids, the result is a taxable estate.

A better way would be to leave the life insurance to a testamentary trust, which would allow for the proceeds to be sheltered from taxes, and from creditors of the decedent and spouse. This also ensures that if the surviving

spouse remarries then dies, the children get the money.

IRAS

The baby boomers have left us with the need to create better, more flexible ways around estate taxes. The new retirees are not leaving with defined benefit pensions, but rather, with larger IRAs. The problem with IRAs is that they are not easy to deal with, and certainly not appropriate to pass through a will. In instances when the IRA exceeds \$1 million, it is important to consider funding a credit shelter trust with all or a part of the IRA. This should be done in a well-drafted instrument.

GIFTING

The New York State gift tax was repealed in January, 2000. This provides an opportunity to transfer assets to family members or an irrevocable gifting trust, and remove them from a person's estate for New York Estate tax purposes. This is an easy way to quickly save estate taxes.

NEWS ON THE FEDERAL ESTATE TAX

On December 3rd, the House of Representatives voted 225 to 200 to continue the current exemption of \$3.5 million per person (\$7 million per couple) and keep the current tax rate of 45%. On December 17th, the Senate shot down any changes to the current law from occurring in 2009. We will have to wait until well into this year to see what happens. For now, be cautious about the carry-over basis rules for 2010.



KOWALCZYK, TOLLES, DEERY & HILTON, LLP

PLANNING WITH A LIFE-ENDING ILLNESS

In our business, dealing with life-ending illness is a frequent occurrence. When we have clients who are going to die soon, we must give them our best advice and do so quickly.

It is a touchy subject to deal with terminal clients. The discussion is difficult, but I always begin by asking permission to be blunt – not unfeeling, but blunt about the facts. I will also be blunt here. The truth is that we can use the knowledge that someone is dying to our advantage in planning.

The Medicaid Law provides certain exceptions and protections for Trusts created in Wills. These exceptions allow for us to do immediate Medicaid planning without a look back or a penalty.

What we do is create a new Will for the terminal spouse. This Will contains both a testamentary asset protection trust and a standby/trigger supplemental needs trust. We then transfer the bulk of the assets to the terminal spouse.

Upon the spouse's death, the assets are immediately protected without a look-back period to worry about.


The look back is avoided because death is not considered a transfer. The result is asset protection for the surviving spouse that allows access to all of the income and principal of the trust.

If the spouse enters a nursing home, the trust triggers a supplemental needs trust, which provides further protection for the disabled beneficiary.

This technique must be done properly and carefully and must have all of the necessary elements to make it work. It requires certain language and careful drafting to avoid losing the asset protection. The result, however, is a much faster way to asset protection for the surviving spouse.

When you encounter a situation where a client has been diagnosed terminal, consider the planning options for protection of the spouse. You will provide a great service to a client at a time of need.

KOWALCZYK, TOLLES, DEERY & HILTON, LLP
Robert K. Hilton, III
185 Genesee Street, 12th Floor
Utica, New York 13501
(315) 724-3164
(315) 724-3212 fax
rkh@ktdlaw.com



I am happy to write about or investigate issues that concern you, so please let me know what those are.

Also let me know if you hear anything about the estate tax change.



UPCOMING TOPICS:

- ❖ Planning for Baby Boomers.
- ❖ Does your business have value?