CLIENT UPDATE *and wealth advisor*

SPRING 2020

KEMPE

Law | Estates | Tax | Wealth

Offices in Jupiter, Stuart & Vero Beach

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The hiring of a lawyer is an important decision that should not be based solely upon advertisements. Before you select an attorney, ask them to send you free written information about their qualifications and experience.

WHAT HAS SECURE DONE TO YOUR IRA OR RETIREMENT PLAN?

- THE STRETCH HAS SHRUNK BUT IT REMAINS ELASTIC -

What the government giveth, the government can taketh….. For years, advisors have advocated the "stretch IRA"- naming beneficiaries with the longest life expectancy, so that income tax deferral can enhance investment performance over longer periods of time. For example, the tax on an IRA or other retirement funds could be deferred (stretched) over in excess of 34 years if a 50 year old child were a beneficiary, or 80 years if a grandchild were a beneficiary.

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CONFRONTING ESTATE TAX CHANGES ON THE HORIZON

- A RETROSPECTIVE OF PRIOR FISCAL CLIFF PLANNING -

We are approaching potential tax reform and change with the 2020 elections. Whether or not the elections cause change, there is a current statutory fiscal cliff in 2026 and potentially more on the horizon. How should we position ourselves to confront these potential changes? A perfect way to learn how is to review what clients did during the last decade (2010 to 2020) and how that planning was undertaken and has evolved. Fiscal cliff planning occurred in 2012, 2013, and 2016 in advance of the sunsetting of prior tax relief (Bush reform, for example) and before the implementation of

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UPDATE: MIGRATION TO FLORIDA AND PRE-MIGRATION PLANNING

- YOUNGER AND AFFLUENT LOOKING EARLIER AND NOT JUST FOR TAX SAVINGS -

A recent Bloomberg article crossed my Jupiter, Florida office computer screen, and there was a picture of the Jupiter inlet and lighthouse I see every day looking out our office windows on A1A/Ocean Drive- the heading, ***Florida, Trump's New Home, Leads U.S. in the Migration of Money.*** According to IRS data, Florida has lead the country in migration for the sixth straight year, with New York and California suffering the greatest loss. Jupiter and the Treasure Coast of Florida are seeing a large portion of this increase in migration. Though absence of income and estate tax are often

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SHIRT SLEEVE TO SHIRT SLEEVE

- IS IT THE THIRD OR SECOND GENERATION? -

Recent studies suggest that 70% of wealth transfers fail by the end of the second generation. In excess of 97% fail by the third generation. Family wealth therefore appears to be dissipating faster than the shirt sleeve proverb suggests. One recent study showed that close to 80% of family wealth is gone within 50 years of the wealth creator's death. Simultaneously, families are recognizing the need for legacy planning- 86% of families in one survey rated leaving values and life lessons as an important form of wealth passage. So, what is causing the disconnect and problem?

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941 NORTH HIGHWAY A1A, JUPITER, FLORIDA 33477 | 561-747-7300 (MAIN OFFICE)
1101 E. OCEAN BOULEVARD, STUART, FLORIDA 34994 | 772-223-0700
764 SATURN STREET, JUPITER, FLORIDA 33477 (ADMINISTRATIVE OFFICES)
VERO BEACH, FLORIDA 772-562-4022

TOLL FREE: 1-800-747-3113

WEBSITE: www.jckempe.com

Joseph C. Kempe, Esq.

Chair, Florida Bar Tax Section,
Estate and Gift Tax Committee (1993-1997)
•
Member, Florida Bar,
Tax Law Certification Committee
(1993-1999)
•
ABA Probate and Trust Section
Vice Chair, Family Businesses
(1995-2000)
•
Practicing Law Institute
Faculty Member (1993-1997)
•
Board Certified, Tax Law
Board Certified, Wills, Trusts, Estates
(1988-Present)
•
Martindale-Hubbell
Judicial Register of AV Preeminent Lawyers
in both Tax Law and Estate Planning
Highest Peer Rating
(1989-Present)
•
Post Doctorate Degree in Tax Law,
University of Miami (1983)
•
St. Thomas University School of Law
Postdoctorate Studies in International
and Offshore Tax Planning
Summa Cum Laude
(2001-2002)
•
AV Rated
(1989-Present)
•
National Author & Lecturer
Tax Planning
Estate Freezes
Family Partnerships
Estate and Trust Administration
Estate Tax Reduction
Estates and Trusts
Business Planning
Securities Laws
•
B.S. in Real Estate Finance and Appraisal
(1979)

Joseph C. Kempe
Professional Association
Attorneys and Counselors at Law

2020 Will Be An Interesting Year
- Growth, Volatility, and Elections -

The Firm is now over 30 years old and has seen spurts of growth over the years. Unfortunately, many long time clients have died, but fortunately they have left wealth to serve the financial security, education, and prosperity of their families. We have settled their estates, satisfied their debt to society with receipt of IRS closing letters, and are now finding ourselves representing their families. What was once a single client or couple, has now grown to representation of their children and their families and even grandchildren and theirs. Simultaneously, new generations of Kempes are entering the Firm. The Firm has thus committed to expand to serve the client demands it perceives and is undertaking the largest expansion in its history: two departments are doubling in size and a new, Multigenerational Fiduciary Service Department, has been created. We are building the Firm with qualified professionals who are positioned to serve our clients for many years to come.

This year seems to offer excitement and hopes for further prosperity. The 2019 equity market growth exceeded 30% and recent gauges of consumer and business confidence are quite high. A first phase agreement with China brought optimism, as did a new economic and business treaty with Canada and Mexico. A second phase agreement with China should further propel optimism and growth. Political turmoil over impeachments and other investigations seem to be distractions, but perhaps that is good because otherwise the optimism and risk may be quite a bit higher. The old saying that “markets climb a wall of worry,” has been the case over the last several years.

This Client Update focuses on an approach to estate planning and the November elections, by reference to the planning that was undertaken during the last decade when approaching fiscal cliffs- certain tax reform. Many believe taxes will need to be raised to confront our National debt because economic expansion will not be able to do it on its own. If the elections result in a more liberal leaning government, a host of proposals have been made by members of the Democratic Party to raise taxes. The likelihood is that clients will act to use their elevated exemptions, and accelerate use should the elections produce a Democratic controlled government.

Simultaneously, the elevated estate tax exemption offers clients a reason for causing wealth previously shifted out of their taxable estates to be included within their estates, provided it does not cause an estate tax. The reason to do this is so that the senior family member estate tax exemption is not wasted, when it can be used to receive a basis “step-up” and avoid capital gains taxes passing to children. Similarly, wealthy junior family members might find it advantageous to consider use of senior family member exemptions.

We are also finding exponential growth in helping the families of clients who reside in high tax states plan to reduce their state level taxation. Our clients are mostly Florida residents. When they shift wealth to junior family members, they are commonly doing so as the “settlor” of trusts, that offer protections and benefits to their children and grandchildren. As a result of several recent Supreme Court cases, that is important and the simple location of their children in other states as beneficiary does not permit their resident state to tax the trust.

We hope you find this Client Update interesting and we are pleased to introduce you to new professionals within the Firm and the new services we offer.

Joseph C. Kempe

Professional Association

Attorneys and Counselors at Law

ATTORNEYS

JOHN L. AVERY, P.A.
JACQUELINE DELGADO, ESQ.[5]
LISE L. HUDSON, PLLC[6]
CONNER R. KEMPE, ESQ.[1]
JOSEPH C. KEMPE, ESQ.[1,2,3]
MELISSA D. LAZARCHICK, ESQ
MARNIE RITCHIE PONCY, P.A.[4]
JESSIE PULITZER, ESQ.
DAVID C. TASSELL, P.A.

[1]LL.M. in tax law
[2]Board certified in tax law
[3]Board certified in wills, trusts, and estates
[4]Registered Nurse
[5]Of Counsel Immigration Law
[6]Of Counsel Family Law

ANALYSTS AND TAX ACCOUNTANTS

DENISE ALPERT, CPA
CHRIS G. BOURDEAU, CPA
OWEN BRADLEY, CPA
PETER CRANE, CPA
BENJAMIN M. DEVLEN, CPA
AARON M. FLOOD
MAUREEN L. RIGAUDON
MIKE POSTEN II, CPA

LEGAL ASSISTANTS

DONNA BAUMMIER, LA
DAWN CHADWICK, LA
TEAGAN CHANDLER
CAROLYN ENGVALSON, LA
DIANA GONZALEZ
KRISTEN JANICKI, LA
ALLISON JUDKINS
GRACE LEGNER
SONYA MOCHEGOVA, J.D.
ALISON OVERTON, LA
TERRI RODGERS, LA
LISA SARVEY, J.D.
KIMBERLY V. TASSELL
JODI-ANN WALLACE

ADMINISTRATION

ESTHER GARNER
TAMI G. KEMPE
SANDRA PARRISH

Stuart Office

Your Window of Opportunity is Unknown

- The Election is Upon Us and 2026 is Out There -

When will the estate and gift tax exemptions be lowered and estate tax reduction planning tools curtailed? That may depend on the elections this November. What is certain, unless otherwise changed, is the estate, gift, and generation skipping tax exemptions are currently set to fall back to $5 million (indexed) on January 1, 2026. On Dec. 20, 2017, Congress passed far-reaching changes to the Internal Revenue Code that were signed into law by the president on Dec. 22, 2017, under the Tax Cuts and Jobs Act. The tax law provides significant estate planning opportunities for high–net worth individuals to take advantage of a temporary doubling—from $5 million to $10 million (subject to indexing)—of the federal estate, gift, and generation-skipping transfer (GST) tax exemptions. This temporary doubling (as indexed) of the exemptions from $5.49 million in 2017 to $11.58 million per person (and to $23.16 million for a married couple) as of January 1, 2020, creates both—

- a window of opportunity for gifting, due to the significant expansion of federal gift and GST tax exemptions, and
- a need to review existing Wills and other estate planning documents to ensure that they continue to carry out planning objectives.

The options available will be similar and more expansive than were presented to confront the "fiscal cliffs" of 2012 and 2013 and the 2016 election. Methods of using existing strategies and exemptions are numerous, and some of them are discussed in our previous research papers. See the following papers at News & Resources, Newsletters, www.jckempe.com (or Google Kempe Law): *Tax Reform White Paper; Trump Era Estate Planning; The Tax Drummers are Pounding; and Special Edition Client Update, Chess Moves.*

Can The Government Reclaim Your Exemption Once Used?

- Can Use of Your Gift Exemptions Now, Before Change, Be Clawed-Back -

Given the window of opportunity discussed in the article above, some worry that if they use their 2020 gift and estate tax exemption of $11.58 million now, whether it will be reclaimed when the law sunsets in 2026 and the exemption is reduced to $5 million (indexed) or is earlier changed by a more tax-favoring government. For example, in contemplation of a change in government and tax reform as a result of the 2020 elections, individuals will be motivated to use their exemptions now. A husband can during the interim period, for example, create a trust for his wife with $11.58 million without a gift tax and without use of the marital deduction. If the husband survived the wife and later died with an estate of $10 million, would his taxable estate be $21.58 million and only a $5 million (indexed) exemption apply leaving a taxable estate of $16.58 million and ostensible a $6.6 million tax? Or, would the taxable estate benefit from the use of the $11.58 million exemption during the interim period, reducing the tax to $4 million (40% on $10 million) or something else? (Taxable gifts are added back into the estate before the gift tax exemption previously used is applied - unless reduced by claw-back.) Furthermore, if a spouse dies during the interim period, does any unused exemption that can be ported to the surviving spouse under the portability rule become reduced if the surviving spouse dies in 2026. For example, if one spouse dies with a $5 million estate in 2020, properly filing an estate tax return, Form 706, permits the unused balance of his $11.58 million exemption ($6.58 million) to transfer to the surviving spouse. If she dies in 2026 with an estate of $17 million, will the "DSUE" ("deceased spouse's unused exemption" of $6.58) that ported from her husband's estate be useable by her executors to reduce her potential $4.8 million tax? If so, that tax is reduced to just over $1 million.

The Internal Revenue Service issued final regulations addressing the above examples. They addressed them in a favorable way. Once used during the interim period, they will not be clawed-back. Furthermore, the DSUE of the first deceased spouse will not be reduced, even if the surviving spouse dies after the sunset of the current $11.58 exemption, when it is reduced to $5 million (indexed). The regulations under Section 2010 of the Internal Revenue Code became final in 2019. See Reg. § 20.2010-1.

Note: A question that was also raised with sunsetting, is the extent to which the current generation skipping tax ("GST") exemption of $11.58 million can be applied to old trusts through late allocations to current value. The Joint Committee on Taxation's Blue Book addressed this favorably, and confirmed that a late allocation can be made using the current exemption.

You Are In Control

Thoughtful drafting of advance health care directives, maintaining their relevance as your health status changes, and communication of your desires to loved ones and physicians has proven to be the most secure method for achieving a "good life" as time fades away!

Marnie Ritchie Poncy, Esq.
REGISTERED NURSE AND LAWYER

Chair, Health Council of Southeast FL
Supervisor, PBC Bioethics Law Project
Task Force on Crimes Against Elderly
Multiple Hospice Ethics Committees
Hero in Medicine Award
F. D. Roosevelt Humanitarian Award

Health Care Advocacy
Bioethics Law
Death With Dignity
Guardianship Proceedings

Joseph C. Kempe
Professional Association
Attorneys and Counselors at Law

Reconsideration and Research in Electroshock Therapy

- Cuckoo's Nest Redux -

As estate planners we commonly serve as multigenerational counsel in helping families address problems. Often medical or health problems have a direct impact on families and also, God forbid, "money!" Yes, chaos can cost a lot. We most commonly find problems on the death of the patriarch, but that is not always the case. In our capacity as the family's legal counsel, we are commonly confronted with the intersection of law and medicine, and our goal is to resolve the chaos early and hopefully permanently.

Everyone remembers with a shudder the scene in One Flew Over the Cuckoo's Nest where McMurphy is subjected to a lobotomy and ends-up in a zombie state. The movie also employed use of electroshock therapy which in memory we often confuse and combine. Clearly, they are and always were very, very different procedures. However, they are procedures that usually scare folks.

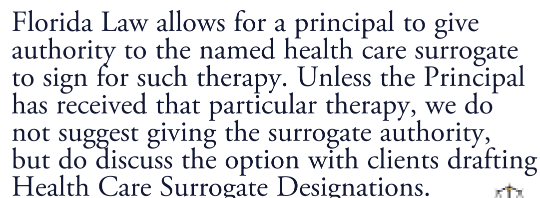
Contemporary Electroshock therapy ("ECT") has been radically altered: significantly smaller doses of electricity are administered to a completely anesthetized patient. As an example, with long term medication dependent depression, ECT has demonstrated uncommonly good results in management of the underlying depression. The electric current "re-boot" of the brain is particularly beneficial as long term anti-depressant psychotropic medication can cause unwanted and debilitating side effects.

In addition to the increased safety of the procedure, the public's growing understanding of how "re-booting " works is improved. We now all engage frequent re-booting of IPhones, IPads, computers and other tech devices and have acquired, if not an understanding, at least an appreciation of the need for such technique.

Consequently, the idea of ECT to "re-boot" the brain is not nearly so overwhelming or so frightening. …and that is good news because ECT appears to be more and more efficacious in treatment of a variety of brain disorders.

This increased understanding of the value and ability for the brain to engage new neural pathways has resulted in a great deal of neuro-research.

While such therapy is not in mainstream use, it may soon become an alternative/ additional therapy option in the treatment of dementia particularly of the Alzheimer's type. It is being considered in clinical trials in post stroke syndrome and traumatic brain injury (TBI) patients where the TBI has caused paralysis. Neurons, currently blocked from communicating with their usual neuron partner because of some impediment (plaque build-up/blood clot, simple loss of connect-ability) will (maybe? Often? Sometimes?.....hence the research) make a new connection to another nerve cell when properly stimulated: a collateral neural pathway!



Florida Law allows for a principal to give authority to the named health care surrogate to sign for such therapy. Unless the Principal has received that particular therapy, we do not suggest giving the surrogate authority, but do discuss the option with clients drafting Health Care Surrogate Designations.

Legacy Letters

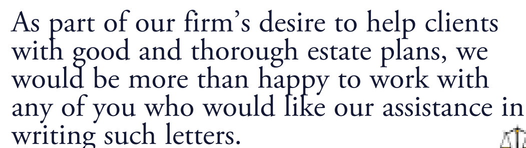
- the Value of Them Can't Be Overstated -

In anticipated fashion, Baby Boomers are redefining elder year behavior and dismantling formerly held beliefs and practices. The "sex, drugs and rock 'n roll" generation is addressing everything from personal private hygiene issues to new funeral practices.
As a result of this silver tsunami, talk of dying and ways to confront end of life are now dinner party and more intimate family dinner conversations. Family discussions often include an elder's direction regarding health care questions and direction to family about what actions are to be taken or not. Seeing Florida yellow DNR directions on grandparents' refrigerators has become almost commonplace for visiting grandchildren.

On a more personal level, elders are engaging in writing letters either to an individual or to a generation defining their personal values and sharing their hopes for both future remembrance of themselves as well as hopes for future accomplishments of their progeny.

While clearly not a medical-legal action, the resulting psychological as well as concrete health benefits from such exercise, seem to be significant. Letter writers have reported a feeling of control and a lessoning of both anxiety and depression in just the exercise of writing the letters, whether they have been communicated or are being held until later. Writers have reported a feeling of completeness that transcends completion of a legal estate plan.

Perhaps one of the best resources on this subject is a novel: The Legacy Letters by Carew Papritz. Although the premise is contrived, the resultant letters are a good source of inspiration for both legacy letter writing as well as just plain ole "living well."



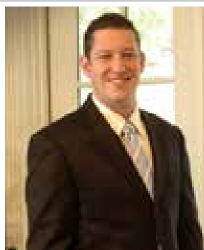
As part of our firm's desire to help clients with good and thorough estate plans, we would be more than happy to work with any of you who would like our assistance in writing such letters.

Entity Selection Matters -Using the Planning the Politicians Use -

A July 10, 2019 Wall Street Journal article was titled, ***Joe Biden Used Tax-Code Loophole Obama Tried to Plug***, in order to avoid a 3.8% medicare tax on their compensation income. Typically, taxpayers have a choice to create C corporations, S corporations, partnerships, limited partnerships, or limited liability companies. Each of these have different taxing characteristics, limitations, and benefits. The focus of the article was on use of S corporations for Biden's book sales, which allowed him to avoid the 3.8% self-employment tax on all profits over and above a reasonable low salary for managing the company.

Entity selection involves a number of considerations. Liability protection and tax attributes are the two most important. However, who may be a shareholder, profit participation, voting rights, the right of withdrawal, and the effect on estate tax values are some of the other characteristics that are often discussed and of concern to clients.

The Firm assists many business owners with their estate and business planning. The base estate plan is often the first consideration, since all business interests and investments sit on top of that foundation. See inverted pyramid on page 7.



Aaron M. Flood
Economic Analyst
Wealth Management
Advent® Axys Analyst

Joseph C. Kempe
Professional Association
Attorneys and Counselors at Law

Avoiding State Income Tax with Florida Trusts

- Migrating Residents and Non-Florida Beneficiaries -

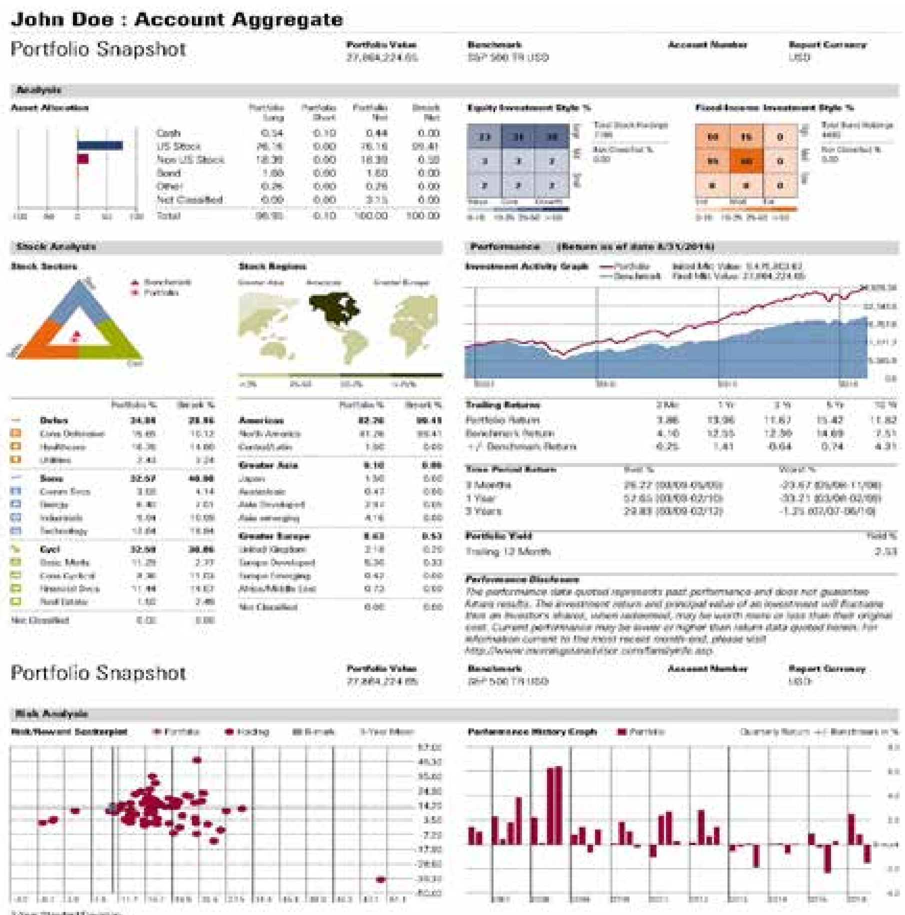
An increasingly useful area of tax law, is use of trusts to avoid state income taxes. Recent Supreme Court decisions have prohibited states from taxing a nonresident trust simply because a beneficiary resides in the state. For example, in the Kaestner case, North Carolina was prohibited on due process grounds from taxing a nonresident trust when the only connection with the state is that a beneficiary resided there. States historically have tested the bounds of our Constitution in enacting their tax laws, and how states will address Kaestner and several other recent court decisions is not yet known. New York, for example, has recently enacted laws aimed at curtailing the use of income tax avoidance trusts, but whether they are Constitutional is not yet known. Some commentators believe that if the trustee and administration occurs outside of the state, that should be determinative. Others believe that if a beneficiary has additional and greater powers to affect the trust, that could be sufficient. It will be sometime until cases test the sliding scale of due process and what connections to a state will tip the laws back in favor of the states.

States tax trusts based upon one or more of four attributes: (1) where it was settled or created, (2) where it is administered, (3) where the trustee resides, or (4) where the beneficiary is resident. Various exceptions and distinguishing factors can matter, depending on the particular state law. For example, New York will attempt to tax a trust settled by a New York resident, unless the trustee, assets, and administration are outside of New York. As the Kaestner case decided, where the beneficiary resides on its own, is insufficient. As such, it is common for Florida residents to create trusts for their heirs, who often live in high-tax states. If (1)-(3) is avoided, then the Kaestner case can be relied upon as precedent that the trust cannot be taxed simply because a beneficiary resides in a high-tax state. As a result, administrative trustees serving at the direction of families in non-taxing states like Florida, are often used to administer the trust, with ultimate control residing with the beneficiary or family.

As discussed in the article on the cover related to Migration to Florida, some residents of high-tax states are shifting income to no-tax states using trusts they settle. New York, for example, recently enacted law that will continue to tax a trust otherwise exempt (see next above paragraph) if the trust was created by an incomplete gift for federal estate and gift tax purposes. If it were a completed gift, the new rule doesn't apply. In other jurisdictions, the use of incomplete gift, nongrantor trusts, or INGs, has become a useful tool in the tax planning toolbox.

How We View Client Portfolios in Morningstar to Assess Risk

- Just One Lense That We Use To See -



7520 Rate History

	2020	2019	2018	2017	2016
Jan	2.0	3.4	2.6	2.4	2.2
Feb	2.2	3.2	2.8	2.6	2.2
Mar		3.2	3.0	2.4	1.8
Apr		3.0	3.2	2.6	1.8
May		2.8	3.2	2.4	1.8
June		2.8	3.4	2.4	1.8
July		2.6	3.4	2.2	1.8
Aug		2.2	3.4	2.4	1.4
Sept		2.2	3.4	2.4	1.4
Oct		1.8	3.4	2.2	1.6
Nov		2.0	3.6	2.4	1.6
Dec		2.0	3.6	2.6	1.8

Use of the 7520 rate is required in many estate tax planning strategies. Generally, the lower the rate the better. Those that acted in the second half of 2016, and who act before rates significantly rise further, have or will benefit.

Conner R Kempe Esq.
Dartmouth A.B. Economics
Tuck Business Bridge, Dartmouth
Stetson Law
U.of San Diego, LL.M., Tax Law
Estate Planning
Wealth Management

Joseph C. Kempe
Professional Association
Attorneys and Counselors at law

Confronting Estate Tax Changes

(continued from cover)

threatened tax reform by Presidential elections. For example, on December 31, 2012, the Bush tax cuts (extended 2 years by Obama) were set to expire, resulting in the potential for the federal estate, gift, and generation skipping tax exemptions to fall from $5 million back to where they were 10 years earlier- to $1 million. In 2016, the polls showed Hillary Clinton would win, and her platform called for (1) the elimination of various commonly used estate tax reduction tools, (2) an increase of the estate, gift, and generation skipping tax rates, and (3) a reduction of the exemption thresholds.

Democratic platforms have also called for the elimination of various commonly used estate tax reduction tools. These platforms further call for the reduction of estate, gift, and generation skipping tax exemptions, which in 2020 have risen to $11.58 million. These exemptions currently fall to $5 million (indexed) in 2026, unless sooner terminated by our government or extended or increased by them. The political winds will tell!

The most commonly used estate tax reduction tools that Democratic platforms have sought to eliminate are qualified personal residence trusts, family partnerships, multi-generational exempt trusts, and transactions commonly used with grantor trusts. These were in jeopardy under the prior fiscal cliffs and will be the subject of future proposals. A description of these techniques in the context of fiscal cliffs, can be found in the cited material in this Client Update on the top of page 3.

Trillions of dollars of wealth were shifted out of senior family members' taxable estates by them confronting the fiscal cliffs of the last decade, with the largest in 2012. The results were many billions if not trillions of potential estate tax savings, and that savings is extending over potentially many generations. In many cases, that shifted wealth has doubled (if not tripled) in value as of 2020- during that period the S&P 500 rose from 1,200 to 3,300. This wealth often sits in trusts, invested for growth and controlled by the senior family members that transferred it, not subject to being taxable in that senior family member's taxable estate. In many cases, it serves as a financial backstop to the senior family members financial security, because it can be accessed by the non-transferee spouse (who may be a beneficiary) or was transferred in exchange for low interest promissory notes that can be repaid. What is happening with that wealth and what can be done to eliminate the unrealized capital gain in this growth has been the focus of client planning.

As senior family members age, so do their descendants. Many of our clients who confronted prior fiscal cliffs are quite comfortable with the wealth they retained and are in their 80s and 90s. They also have come to learn that while the use of estate, gift, and generation skipping tax exemptions to transfer wealth is a priority in this type of planning, they realize that the children will often inherit the capital gains tax on the assets transferred, thus reducing the net tax benefit. Assets owned at death and that are part of the taxable estate receive a basis "step-up," but the price of that is potential estate tax. The current estate, gift, and generation skipping tax rate is 40%. It has been as high as 70%, of all wealth above the exemption threshold. The capital gains rate is currently 10% to 20%, and it has been as high as 35%. The capital gains tax is only incurred on realized gains when assets are sold. These two realities- the bias toward avoiding estate tax and resulting shift of capital gains taxes to junior family members, coupled with comfort with their circumstances, have caused clients to pursue two types of planning, which we call "Inclusion Planning" and "Acceleration Planning."

Inclusion Planning can best be understood with the following example: Dad transferred a $5 million portfolio of securities to a trust for two children and the grandchildren in 2012. Mom is a discretionary income beneficiary of the trust and can receive principal if needed. Mom and Dad are trustees. The portfolio is now worth $10 million and has $7.5 million of unrealized capital gains. Mom and Dad have a current taxable estate of $12.5 million and Mom and Dad are comfortable with their income and principal, but like the idea of the 2012 trust as a backstop, should they ever have a need. They question whether they can somehow avoid the capital gains passing to their children, since their current estate tax exemption is $23.16 million ($11.58 each, less prior taxable gifts). What have client's been doing and what can Mom and Dad do now?

Continued on next page

A Historical Perspective of the Estate and Gift Tax Exemptions and Rates

The original estate tax was enacted in 1916, with an exemption of $50,000 and a rate of 10%. The highest the rate has been is 77%, which was in the 1960s. The current exemption is reduced under current law in 2026 to $5 million (indexed).

Historical Gift Tax Exemption Amounts (Per Person)

Year	Estate Tax Exemption	Top Estate Tax Rate
1997	$600,000	55%
1998	$625,000	55%
1999	$650,000	55%
2000	$675,000	55%
2001	$675,000	55%
2002	$1,000,000	50%
2003	$1,000,000	49%
2004	$1,500,000	48%
2005	$1,500,000	47%
2006	$2,000,000	46%
2007	$2,000,000	45%
2008	$2,000,000	45%
2009	$3,500,000	45%
2010	$5,000,000 or $0	35% or 0%
2011	$5,000,000	35%
2012	$5,120,000	35%
2013	$5,250,000	40%
2014	$5,340,000	40%
2015	$5,430,000	40%
2016	$5,450,000	40%
2017	$5,490,000	40%
2018	$11,180,000	40%
2019	$11,400,000	40%
2020	$11,580,000	40%

The Tax Cut And Jobs Act expires in 2025

Note: The generation skipping tax rate and exemption is the same as the highest estate and gift tax rate and the exemption threshold has historically been the same as that of the estate and gift tax.

Melissa D. Lazarchick, Esq.

Probate Litigation
Estate Administration
Guardianship Proceedings
Fiduciary Services

Joseph C. Kempe
Professional Association
Attorneys and Counselors at law

Confronting Estate Tax Changes

(continued from page 6)

It has been common for clients to modify gifting trusts like this to permit Mom or Dad or both to hold certain powers, that can cause the assets of the trust to be taxed in their estates, but only to the extent it does not cause an adverse estate tax. By doing so, not only has the wealth been removed from the estate tax system, but the capital gains tax can also be avoided by causing a "step-up" in basis to date of death value. This planning is generally done with formulas built with contingencies, so that should the estate tax exemption become lower in the future, no adverse estate tax will occur.

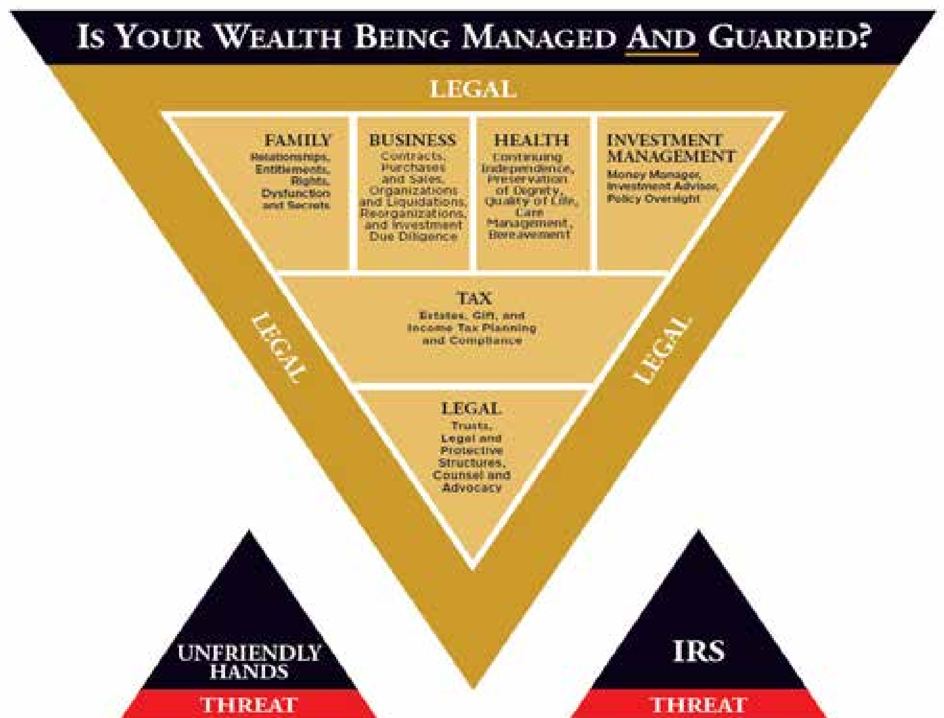
Mom and Dad in the above example might also conclude that it is an appropriate time to see their children control and benefit from some of the wealth that has been shifted. Typically, trusts like they established in 2012 will not split and transfer to their two children until the later of Mom's and Dad's death. We are finding client's desiring to accelerate that timetable, and we call this "Acceleration Planning." Acceleration Planning essentially involves modifying trusts, by decanting or otherwise, to establish trusts for children now in advance of senior family member death. Some senior family members desire to see how that wealth will be managed, and others desire to see their children benefit from that wealth during their lives. In the above example, this may involve the entire $10 million, $5 million each, or only a portion of it being given to their two children, in trust with them each serving as trustee of their respective trusts.

The above discussion is intended to provide a retrospective view of the results of planning that confronted fiscal cliffs in the past. We anticipate a repeat of this in 2020, as the election heats-up. Nevertheless, the Trump 2017 tax reforms sunset in 2026. Some economists also believe that even a great economy can't solve our National debt problem and that something will need to be done.

We are watching and sharing!

What Wealth Management Should Look Like But Popularly Doesn't!

- Don't Confuse Investment Management with Wealth Management -



How to Title Non-Florida Real Estate - New York Addresses Ownership Differently –

New York is an aggressive taxing state and their methods are often adopted by other states. It is not uncommon for non-residents, such as Florida residents, to acquire New York or other state properties through entities. The two most common choices of entity are (1) LLCs- limited liability companies, or (2) QPRTs- qualified personal residence trusts. QPRTS are increasingly being used because of changes to New York law aimed at avoiding loss of tax revenues with LLCs and also because their use not only potentially avoids New York estate tax, but also federal estate tax.

LLCs have historically been used because a Florida resident can buy New York real estate using one and not own New York real property taxable by New York at death. Instead the Florida resident on death owns shares of the LLC, which are by law deemed to be intangible assets that are located in Florida. New York has attacked this with two changes in position: (1) by disregarding single member LLCs as entities and deeming the sole owner to be the owner, and (2) by no longer permitting entities to hide the true individual owners, who no longer can remain anonymous and may thus be subject to audit of their residency. As a result, we are commonly using multi-member LLCs that aren't disregarded under the New York rationale and QPRTs that also offer potential federal estate tax savings.

Sonya Mochegova, J.D.
Senior Paralegal
B.S. U of M Amherst, Honors
M.A. Micro and Cell Biology, Berkeley
J.D. University of North Carolina
Estate Planning
Real Estate
Wealth Management

The Secure Act

(continued from page cover)

The SECURE ACT was signed into law on December 20, 2019, and its principal objective is the elimination of the lengthy duration of the stretch. This results in the need for IRA and other retirement plan owners to review the impact of these changes on their estate plan. The Act does have some positive provisions, however, such as delaying required distributions until age 72 and permitting retirement contributions for some over 70 1/2.

With five exceptions for "eligible designated beneficiaries," the SECURE Act eliminates the deferral of 34 and 80 years in the above examples. Instead, the entire IRA account must be withdrawn within 10 years. However, an owner will still have choices: (1) it can all be deferred until December 31 of the year that contains the 10th anniversary of the date of IRA owner's death, (2) withdrawn immediately, or (3) it can be withdrawn anywhere in between. Thus, integration with trusts in many instances has increased in importance, since significant wealth may be accelerated in unprotected form and an owner using trusts can control when.

In order to be deferred for the 10 year period, the beneficiary named must satisfy a host of rules associated with whether the beneficiary qualifies as a "designated beneficiary." If the beneficiary does not constitute a "designated beneficiary," the 10 year period is reduced to 5 years. As a result, trusts are often used to capture the funds being distributed for protection and use by the retirement plan beneficiary. The SECURE ACT acceleration of distributions encourages integration of retirement funds with various types of trusts and for a variety of reasons. Some trusts can even be structured to regain the historic stretch using a beneficiaries life expectancy. Charitable remainder trusts and others are being advocated by various commentators to accomplish this and other objectives.

The 10 year rule does not apply to the following "eligible designated beneficiaries:"

1. The surviving spouse;
2. To minor children of the owner, until they reach the age of majority;
3. A disabled beneficiary;
4. A chronically ill beneficiary; and
5. A beneficiary who is not more than 10 years younger than the owner.

The SECURE ACT presents factors that necessitate the review of retirement plan beneficiaries. The impact of the SECURE ACT encourages the integration of retirement plans with trusts, more so than under prior law. Protection of retirement plans from being consumed prematurely, liability and divorce protection, and tax deferral beyond 10 years are all reasons why one would consider the integration of retirement funds with any number of trust alternatives.

Migration to Florida

(continued from cover)

cited as primary motivations for this migration, increasingly crime in urban cities, lifestyle, and weather are cited as reasons.

We are also finding that those considering the move are addressing their planning earlier, which is good. For example, a recent resident of New York involved with a growing company expects to sell his business within 5 years. If the stock of the company is sold while a New York resident, the sale will become subject to New York tax- with a rate which is as high as 32.62%, and given Trump's SALT reform, that state tax isn't deductible against the federal income tax. However, if the stock were sold after Florida residency and domicile were established that New York tax would be avoided. What might our advice have been? Consider the creation of trusts in jurisdictions with favorable trust laws that will permit the stock to be owned for his and his family's benefit, but without subjecting it to New York income tax. Additional income producing assets can be added to the trust now, while he has a high salary from his company, and if the income is not currently needed can accumulate without New York tax until residency is changed to Florida. The family would also typically purchase a Florida home and begin to document the commencement of a change of domicile- a process of migration to Florida. Coupled with other acts of abandonment of domicile in New York, and the establishment of greater relationships in Florida, the migration process can be complete and significant New York tax avoided within a relatively short period of time.

It is clear that New York and other state auditors are closely monitoring these moves, but with time and proper planning confronting an audit becomes routine. For a more detailed discussion of establishing residency in Florida, see our Winter 2019, Client Update newsletter, at www.jckempe.com (or Google Kempe law).

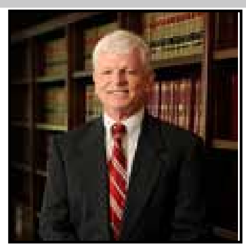
Joseph C. Kempe
Professional Association
Attorneys and Counselors at law

SEC Reg. BI Begins June, 2020
- Only Now, Is It Your Best Interest -

It may surprise some, but broker-dealers aren't required to serve your best interests and don't hold a duty of loyalty to you. For others, they may have suffered the consequence and now know better. On June 5, 2019, the SEC's Regulation Best Interest (Reg. BI) becomes effective. BI establishes a "best interest" standard of conduct for broker-dealers and associated persons when they make a recommendation to a retail customers of any securities transaction or investment strategy involving securities, including recommendations of types of accounts. Furthermore, they must clearly identify any potential conflicts of interest and financial incentives the broker-dealer may have with products being offered.

SUMMARY:

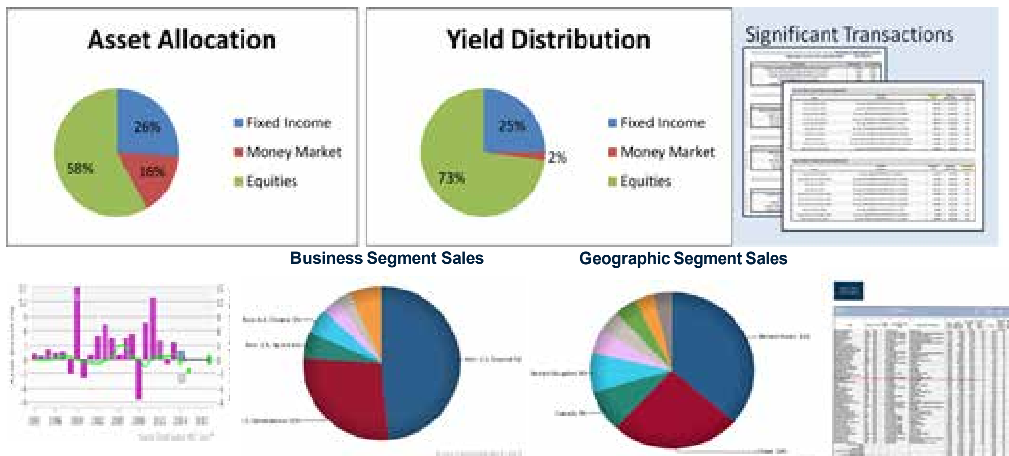
- Reg. BI is intended to improve safeguards for investors and standardize conduct of broker-dealers and financial advisors.
- It is similar to the proposed fiduciary rule under the Labor Department, and states that financial professionals shall make investment recommendations that serve the client first and foremost (their best interests).
- Previously, brokers were only held to the "suitability standard." This meant that when brokers advised their clients, they only had to recommend investments that were suitable, but not necessarily in their clients' best interest. For example, a high commission mutual fund could be sold, rather than a low commission ETF that accomplishes the same objective within the investment portfolio.



John L. Avery Jr., Esquire
Trial and Litigation Attorney
Appellate Law
Real Estate and Business Litigation

Joseph C. Kempe
Professional Association
Attorneys and Counselors at Law

Wealth Monitoring Services
- Our Proprietary Monthly Client Snapshot -



KEMPE
Law | Estates | Tax | Wealth

Client Snapshot

Client Name:	John and Jane Sample
Client #:	999.281
Date:	01/22/2020
Reporting Period:	December 2019
Legal Assistant:	Sonya M. Mochegova
CPA:	Chris G. Bourdeau
Advent Analyst:	Kristen Janicki
Lawyer:	Joseph C. Kempe

CURRENT	
Total Family Wealth:	41,305,000
Tax Exempt Trusts & Entities	30,608,000
Husband's Estate Size:	3,091,000
Wife Estate Size:	6,896,000
Joint Estate Size:	710,000
Current Estate Tax:	0
Percent of Current Estate:	0
*Projected Gross Estate:	51,556,000
*Projected Estate Tax:	1,654,000
Percent of Projected Estate:	3.2%
Estate Tax Bracket:	40%
IRA Portfolio:	1,029,000
*Total Family Partnership	11,738,000

*Based upon a 5% return, net of expenses over life expectancy and no valuation discounts.
*The current Estate Tax estimate assumes a $11,400,000 exemption and 40% tax through 2025, reverting to the 2017 exemption of $5.49M indexed for inflation in later years. We are assuming an inflation rate of 2.5%.

YTD Investment Performance	
Portfolio:	19.72%
S&P 500:	31.49%
Barclays Agg:	8.72%
Performance Since 2013	
Portfolio:	5.39%
S&P 500:	13.65%
Barclays Agg:	3.32%
Current Year Realized Gains and Estimated Tax Status	
2019 Gains/(Losses):	862,760
Protected Tax Status:	Yes

(Performance and Realized Gains are through December 31, 2019 on monitored investment accounts. The IRR for periods over a year are annualized as per GIPS recommendation.)

Income for the Period Ending 2018	
Total Income:	1,172,032
Tax Free Income:	148,655
Adjusted Gross Income:	1,023,377
Taxable Income:	985,532
Marginal Tax Bracket:	24%
Gift & GST Exemption Used	
Husband Gift:	4,893,656
Wife Gift:	920,712
Husband GST:	4,534,269
Wife GST:	402,600

Estate Planning Developments

Reviewed & Current	YES	NO
Will:	X	
Trust:	X	
DPOA:	X	
HCP:	X	
Living Will:	X	
IRA Integration:	X	
Recommendations:	Roth Conversion	
Document Code:	Single 80/20	

Miscellaneous		
Promissory Notes Current:	Yes	
QPRT Termination Dates:	2016 & 2017 (Ext)	
Crummey notices verified:	N/A	
Family Partnership Records Current?:	Yes (4/18)	
RBD Date: H/W	4/1/05	4/1/02
RBD Compliance:	Yes	Yes
RMD Compliance:	2019 Complete	

Legal Developments

All eyes will be watching the November elections and the direction the government will take. From an estate planning perspective, it will be similar to how the fiscal cliffs in 2012, 2013, and 2016 were confrontal, with individuals taking steps to use their exemptions in advance of tax reform, which could reduce tax exemptions. Will our government maintain a bias to the right, or shift dramatically to the left? Only time will tell, but the current economic condition of the U.S. will necessitate some methods of paying for our deficit if the economy isn't robust enough to do it on its own. The good news is that during 2019, the IRS enacted regulations confirming that the use of the increased estate, gift, and generation skipping tax exemptions ($11.58 million in 2020) will not be clawed back in 2026, where under current law the exemptions decrease to $5 million (indexed). This doesn't mean that a more socialist government couldn't attempt this, but historically such attempts would be rare and would confront Constitutional challenge.

Economic Developments

Treasury Yield Curve
01/17/20
2.40% 2.20% 2.00% 1.80% 1.60% 1.40%
1-Mo 1-Yr 3-Yr 5-Yr 7-Yr 10-Yr 30-Yr
Source: ycharts.com

Observations

Yields on long term debt have recently climbed, in conjunction with the Treasury Department announcement that it will begin selling 20-year government bonds. The Treasury Department hasn't sold 20-year bonds since March of 1986, 34 years ago. Long term yields are expected to rise faster than shorter-term ones in the coming months, which is reflective of the concern with the U.S. deficit. Larger budget deficits are expected to remain in the trillions of dollars over the next decade. The concern is whether our growing economy can fund the deficit and reduce U.S. debt, or whether taxes will need to be increased. The problem exists, whether or not a more socialist political agenda occurs with a Democratic controlled government. Depending on the elections, how taxes will be increased, and the degree of increase will be the real question in Trump's second term or with a New Administration.

Economic Statistics

	Reported	SGS
Consumer inflation	2.29%	10.04%
Unemployment	3.50%	20.80%
GDP	2.07%	-2.08%

Source: BLS, Shadow Government Statistics

Benchmark Returns YTD

S&P 500 TR
Dow Jones TR
Russell 2000
MSCI EAFE
MSCI Emerging
Source: Yahoo Finance. Total Returns. Data through 01/21/20

Family Office Creation - Clients Move to Preserve Tax Deductions -

Our Winter 2019 Client Update described the impact of the Lender decision and it has motivated many clients to create Family Offices. Their motivation is to avoid loss of the deductibility of certain expenses they incur every year associated with personal investment management and tax and legal fees. See the diagram on the bottom of this page for a simple illustration.

Essentially, a properly structured family office will involve a family management company formed to provide services to family members and ultimately others, for profit. The arrangement is designed to convert what are known as IRC § 212 expenses into IRC § 162 trade or business expenses. The office seeks to profit by participating in the return generated on investment assets, uses those revenues to satisfy expenses associated with services it provides to family members and others, and the result is the after tax return generated on investments is greater, since those engaging the office's services no longer pay third-parties with after tax dollars.

We are happy to discuss the feasibility of such a solution without cost or obligation.

Dawn Chadwick, LA
Health Care Litigation

Jodi-Ann Wallace
Corporate Estate Planning

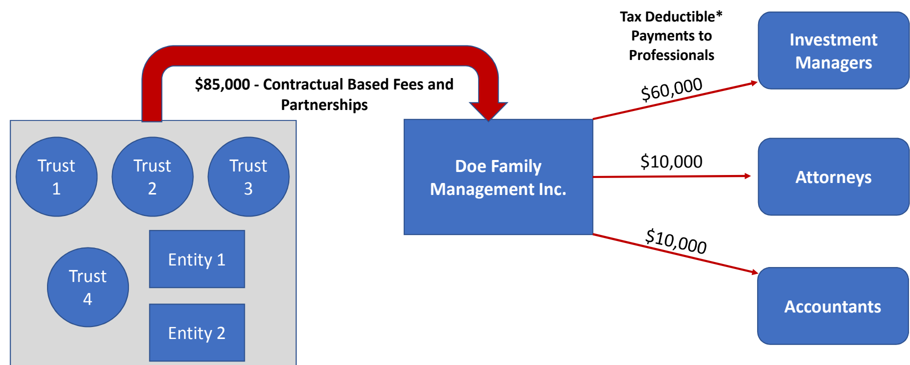
Who Are Your Descendants?

- Who Do You Want Them To Be? -

Social norms have changed and change and their consequences may be more than you realize. With the growing trend of genetic testing, coupled with more frequent use of egg and sperm donation, who may inherit from you may not be who you intend or clear. If a grandchild while in medical school donates egg or sperm, would a genetic descendant be entitled to inherit from you? If a child seeks reproductive assistance while married, and later that marriage ends in divorce but the former daughter-in-law becomes pregnant after the marriage has been dissolved, is that child a descendant of yours? Would you intend the child to be a descendant? What if a grandchild named Michael becomes transgender, non-binary, pansexual, or otherwise and changes their name to Michelle. If your estate planning documents reference a grandson named Michael, will a self-identified granddaughter named Michelle inherit from you? The problem is that the laws have not kept up with all levels of technology and our more liberal social norms. State laws are attempting to resolve these issues statutorily but they have not caught up. As such, we suggest each person consider what they would want. A provision we have begun to incorporate into some trusts starting this year follows:

The term "issue" means lineal descendants and whether or not of adoption. Issue shall not include those born of or from the donation of egg or sperm where no adoption, parental acknowledgement, or supervision and responsibility occurs. For this purpose, acknowledgement or supervision and responsibility shall mean a child born from the donation of egg or sperm that is raised by me or my issue or that is recognized as such through a signed Birth Certificate or an Affidavit of Acknowledgement or like document filed or recorded in the public records of my domicile or the domicile of my issue, acknowledging recognition. I specifically disinherit any such person or persons claiming otherwise and specifically desire any such claim to be held to be null and void with respect to any type of inheritance as "issue" of mine. When a bequest or devise is "per stirpes," it is made to persons who take, equally amongst themselves, by representation from a common ancestor. Whenever a gift is made to "issue," such issue take "per capita" if of equal lineal descent from a common ancestor, but per stirpes if of unequal lineal descent. Any reference to an individual named in this document shall continue to be a reference to that person even if such person has a reassignment of gender or a change of name. Gender references and legal names are used in this instrument for ease of identification, and a person shall not be deemed deceased or to be a different person due to a name change or gender.

John & Jane Doe Family Office Structure



Joseph C. Kempe
Professional Association
Attorneys and Counselors at Law

Our Tax Compliance and Planning Accounting Team

We are pleased to announce that **Owen Bradley, CPA and Peter Crane, CPA** have joined the Firm

Mr. Bradley joins us from the international accounting firm, Deloitte Tax, LLP, where he was a member of their tax consulting , private client services, and wealth management departments. A graduate of Auburn University with a B.S. degree in Business Administration with major in Accounting, Mr. Bradley has focused his practice on IRS audits, strategic tax planning, and tax compliance for corporations, partnerships, individuals, and charities.

Owen was a team leader for the Alabama Army National Guard and received an Army Commendation Metal and Combat Infantry Badge during his deployments in Afghanistan, where he was an Infantry Team Leader.

Mr. Crane began his professional career as a Senior Tax Associate with the international accounting firm, PricewaterhouseCoopers, LLP in St. Louis, Missouri. At PwC he focused on individual, corporate, and partnership tax compliance and planning. Considering Florida home, he returned where he was an International Tax Senior with the global technology and business service provider, Syniverse, at their headquarters in Tampa, Florida. Most recently, Mr. Crane was a Tax Senior with Crippen & Company, in Ocala, Florida, where he focused on individual client services, and tax compliance. There he focused on individual tax planning and he gained valuable experience providing tax compliance, planning, and accounting services to clients in the equine industry. He also has represented and defended equine businesses subject to IRS examinations.

Mr. Crane is a graduate of the University of Florida, cum laude, with a B.S. in accounting. He is a member of our Tax Compliance and Wealth Management Departments.

We welcome them as members of our tax compliance, planning, and wealth management departments.

Sector Performances as of January 17, 2020

Sector	1Yr	3Yr	5Yr
Basic Materials	17.11	5.53	5.05
Communication Services	27.53	7.14	8.72
Consumer Cyclical	19.70	15.02	12.09
Consumer Defensive	22.83	7.06	5.56
Energy	-5.02	-7.57	-5.05
Financial Services	24.54	12.90	12.12
Healthcare	18.22	14.54	8.55
Industrials	25.06	11.28	9.81
Real Estate	17.76	5.06	2.23
Technology	45.94	25.34	19.09
Utilities	24.28	10.89	6.74

Source: Morningstar

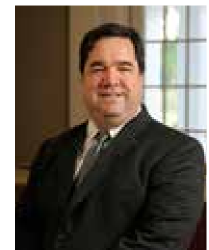
Mike Posten II, CPA
f/w PricewaterhouseCoopers
Tax Accountant and Wealth Management

Benjamin Devlen, CPA
f/w WTAS LLC (Arthur Andersen) Tax Accountant and Wealth Management

Aaron M. Flood
Economic Analyst
Wealth Management
Advent® Axys Analyst

Maureen Lloyd Rigaudon
Tax Accountant
Wealth Management
Advent® Axys Analyst

Denise Alpert, CPA
f/w LKD CPAs & Consultants and Deloitte Tax, LLP
Tax Accountant and Wealth Management



Chris Bourdeau, CPA
Tax Accountant and Wealth Management

Joseph C. Kempe
Professional Association
Attorneys and Counselors at Law

Pitching a Tent Doesn't Count for Homestead - Preconstruction Planning -

Our Winter 2019 Client update described the many potential benefits of Florida homestead. In order to qualify, a person must occupy their permanent residence on January 1 of the year in which homestead is claimed. What if you sell your old home, buy a new property on which you intend to build a new home, and rent during the construction period. That is what happened to the Baldwins, but the construction of their home was delayed and wouldn't permit them to move-in until after January 1. So, they pitched a tent commencing December 26th. The court said that won't qualify. Baldwin v. Henriquez, No. 2D18-2658 (Fla. Dist. Ct. App. 9/13/19)

The Baldwins should have claimed homestead on the new property before they demolished the old structure. There are several advantages associated with planning new construction in this manner.

Sandy Parrish
Administration
Receptionist

Diana Gonzalez
Administration
Tax Department Asst.

Joseph C. Kempe
Professional Association
Attorneys and Counselors at Law

Shirt Sleeve to Shirt Sleeve

(continued from cover)

One writer describes the problem as "independence killing the American family." The creation of independent family members is causing estrangement. Studies suggest that the biggest contributor to failed preservation of family wealth is a lack of communication and trust around group decision making. Historically, working class families worked through issues at the dinner table- can Johnny use the car tonight? Can we afford Mary going to college? Children shared bedrooms and bathrooms and negotiated use. Statistically, members of these working class families constitute 80%-90% of wealthy families today. Working class families also worked together to maintain homes and contribute to household expenses. They were interdependent on other family members. Children in wealthy families today are growing-up not participating in group decision making and efforts, which makes them less able to take over family business or wealth management in the future.

Wealthy parents out of love don't want to burden their children with life's problems. They encourage independence. There is nothing per se wrong with encouraging independence, so long as it does not cannibalize interdependence. If it does, it can lead to a lack of communication skills and trust around groups. This lack of connection at its worse, can lead to emotional problems like loneliness, anxiety, depression, substance abuse, and worse. Jonathan Green of the The O'Connor Group in Boston (a large group of psychiatrists and psychologotists that work with wealthy children) states that children from wealthy families are 2.5 more likely to evidence these emotional problems than the general public.

Families that work together toward common goals tend to create and maintain stronger forms of wealth. One successful family depicts this as a braid of three cords: assets, structure, and family. The braid, intertwined, was much stronger than any single cord. This can also be demonstrated by the difference in approaches taken by the Rothschilds and Vanderbilts. "…I could here repeat Anselm Rothschild's advice to his sons and the success of that family, or the fable by Krilov, of the father and his seven sons and seven reeds: 'Each held separately, could easily be broken, but when united, no one could break any one of the seven'." Nicholas Pritzker. Nathan Rothschild wrote: "It requires a great deal of boldness and great deal of caution to make a great fortune, and when you've got it, it requires 10 times as much wit to keep it." In contrast, William K. Vanderbilt (a lifetime trust beneficiary) said: "It has left me with nothing to hope for, with nothing definite to seek or strive for. Inherited wealth is a real handicap to happiness." Some commentators see a large sense of "we" in the Rothschild quotes and a sense of "woe me" in the Vanderbilt quote.

What is the solution? Inherent in the problem is the effect of wealth on self-esteem. You see that in the Vanderbilt quote. Participation and contribution in groups provides value and recognition and can produce self-esteem. Reintroduction of family participation through meetings with a purpose is promoted by several commentators and experts in this field as a solution- causing a need for interdependence. Where the family business is investment assets, rather than an operating business, family office and family partnerships can create forums for participation with structure and purpose. But it is the culture and not the structure that matters- "Culture eats strategy for breakfast." Peter Drucker. Various programs exist to design a family culture with a purpose as a subpart of the estate planning process. Note: Credits given to Thomas Rogerson of GenLeg Co., Inc., for his studies and write-up on this topic.

We are pleased to announce that
Jessie Pulitzer, Esquire
has joined the Firm

Ms. Pulitzer has been a practicing attorney in Palm Beach County since 2013. She has focused her practice on complex divorce litigation and high net-worth marriage and divorce process. She has also represented individuals and corporations in a variety of trial and litigation matters, including appeals. She was previously associated with the Critton, Luttier & Coleman firm, and before then with Wiederhold, Moses, Kummerlen & Waronicki, P.A.

Ms. Pulitzer becomes a member of our Wealth Management, Estate Administration, and Estate Planning Departments. She will also become a member of our newly formed Multigenerational Fiduciary Service Department, which has been created to serve the needs of families as wealth passes between generations. This department has been developed in order to not only shelter wealth from state and federal tax systems, but also to educate junior family members on the need to preserve family wealth and to protect it against adverse marital rights and third party liability.

Jessie attended the University of Georgia and Florida Atlantic University and graduated Summa Cum Laude with a Bachelor's Degree in Rhetorical Studies. She received her Juris Doctorate from Nova Southeastern University's Shephard Broad Law Center in 2013 and has since been an active member of the Palm Beach County Bar Association, the Susan Greenberg Family Law American Inn of Court, the Equitable Distribution Committee of the Family Law Section of the Florida Bar, and the Palm Beach County Chapter of the Florida Association for Women Lawyers, where she has served as a board member.

Jessie comes from a close-knit family whose roots in Palm Beach date back three generations. She spent her childhood between Palm Beach and family's citrus groves in Okeechobee, where she cultivated her love for all things outdoors. Jessie is a graduate of St. Andrew's School in Boca Raton and excelled as both an honors and AP student and a competitive equestrian and tennis player. She is passionate about helping the local community, as evidenced by her involvement with the Center For Family Services, where she was a member of the Board of Directors; Meals on Wheels' "Pie it Forward" Committee; the American Heart Association, "Lawyers Have Heart" Committee; and the Ann Norton Sculpture Garden, Gentlemen of the Garden Ladies' Committee.

The Family Mission Statement -It's the Process that Matters-

Throughout this Client Update there have been discussions on legacy, family interdependence, and education of junior family members. We commonly encourage families of wealth to create a family mission statement, which describes and sets forth what can serve as a multigenerational beacon and reference back to its traditions. As Dr. Covey found, "The goal is to create a clear, compelling vision of what you and your family are all about. Good families—even great families—are off track 90 percent of the time, he wrote. What makes them good is they have a clear destination in mind, and they have a plan to get there. As a result, when they face the inevitable turbulence and human error, they keep coming back to their plan.

The mission statement should also address the history of the creation of their family wealth, what it took to create it, and what the goals are for it in the future and how they might add to it. Money mission statements are a particularly effective

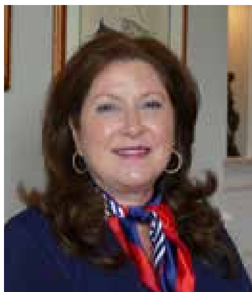
(continued this page)

The Family Mission Statement

(continued from left column)

way for clients to crystallize their purpose around money, as they are essentially declarations of the family's long-term goals, attitudes, and beliefs about money. They can serve as powerful tools offering a framework for families to structure conversations around money and wealth with each other, ideally lasting through future generations. Meanwhile, money mission statements also help families practice not just talking about money, but also using it (and teaching children to use it) in ways that are consistent with the values they identified in their mission statements. Finally, involving the right people into the process – family members and relevant professionals across disciplines, such as tax professionals, estate planners, and financial therapists and/or psychologists – can ensure that support is available in all areas where it is needed.

A short example: "The mission of our family is to create a nurturing place of faith, order, truth, love, happiness, and relaxation, and to provide opportunity for each individual to become responsibly independent, and effectively interdependent, in order to serve worthy purposes in society. In order to provide security to accomplish our mission, we will nurture, protect, and conservatively grow our wealth and participate in nurturing, protecting and growing it for generations to come."



Donna Baummier, LA
Estate Administration
Fiduciary Services
Wealth Management

Joseph C. Kempe
Professional Association
Attorneys and Counselors at Law

2020 Estate and Gift Tax Exemptions
- Highest Ever -

Annual Per Person: **$15,000 for present interest gifts of property or by using "crummey notices" for gifts in trust.**

Medical and Education: **unlimited if paid directly to institution.**

Lifetime Gift Tax: **$11.58 million to anyone. Unlimited if to a U.S. spouse.**

Estate and Gift Tax: **$11.58 million to anyone, unlimited if to a U.S. spouse, less lifetime taxable gifts.**

Generation Skipping Tax: **$11.58 million to anyone two or more generations below or for gifts in trust for multiple generations, including the next.**

Noncitizen Gifts of U.S. Property: **$157,000 annually to a spouse, and $60,000 to others on a cummulative lifetime basis.**

Gift of U.S. Property By U.S. Spouse to Nonresident Alien Spouse: **$157,000 per year.**

Helping The Third Generation
- How Do Investment Policies and Trust Distributions Affect Goals -

After in excess of 30 years of client representation, the Firm finds itself routinely serving as family counsel for several generations of family members. A senior family member dies; trusts for children and grandchildren are created; and the Firm finds itself addressing the tax, estate planning, and asset protection of these junior family members, since much of the wealth that has passed to them emanates from trusts settled by parents or grandparents who were residents of Florida. As Florida trusts, Florida law controls them and since Florida has no income tax, we are commonly assisting non-Florida resident heirs with ways of avoiding exposures to northern state taxes and other threats. For example, recent Supreme Court decisions make clear that a Florida trust cannot be taxed by a state simply because a beneficiary resides there. It is thus common for us to coach these junior family members on the benefits of Florida trusts and how to use and benefit from the wealth they have inherited, without unnecessary dissipation or exposure to outside threats. Also and unfortunately common, the impact of a child or grandchild's divorce on family wealth needs to be discussed and any threat minimized with proper trust planning and administration. As a result of these common client family needs, we have created a new department which we call our Multigenerational Fiduciary Service Department. It is designed to help family members, who commonly serve as their own trustees over portions of family wealth, fulfill their duties and responsibilities.

Additionally, some heirs are savvy and experienced with financial matters. Others are not. For some heirs, it is important for them to understand how to manage newfound wealth. For others, it is important that the wealth they manage not lose the protective legal structures their parents and grandparents created. For example, we are routinely explaining to heirs how an investment policy affects their long term financial security and how extraordinary draws against principal can jeopardize their financial security and goals. We have created and integrated computerized financial management programs and models that allow heirs to set goals, assess the probability of successfully achieving those goals, and to see how changes may affect the probability of such achievement. See graphs on the bottom of this page for an example.

Our Multigenerational Fiduciary Service Department was created to continue to help families across generational lines. There are many threats to wealth that motivate individuals to create trusts. Not all trusts are the same and not all people are the same. The dynamics involved in individual affairs can be quite diverse, but organization and proper management can avoid waste, dissipation, and threats. Our goal is to help families confront these issues.

Money Guide - Monto Carlo Simulation
Below is a tool designed to illustrate the effect of budgeting and investment policy decisions on goals based upon historic data and modifiable inputs.

Probability of Success →

Play Zone® Scenario

Below Confidence Zone

Total Spending: $14,310,000

Explore ▾ Save or Reset ▾

Recommended Scenario

In Confidence Zone

Total Spending: $9,275,000

Explore ▾ Compare to ▾

Goals

Needs

Retirement - Trust Distributions:

$ 270,000 | $175,000

Portfolio(s) and Average Returns

After Retirement:

Capital Growth I : 6.19% | Cap Growth I : 6.19% | Cap Growth I : 6.19%

Carolyn Engvalson
Estate Administration

Kristen Janicki
Estate Administration
Wealth Management

Joseph C. Kempe
Professional Association
Attorneys and Counselors at Law

The IRS Can Come Knocking for A Long Time -Transferee Liability for Unpaid Taxes-

In U.S. v. Ringling, (DC SD 2/21/2019), a district court found that beneficiaries were liable for an estate's unpaid tax liability under Code Sec. 6324(a)(2). The estate's federal estate tax was not paid when due and each beneficiary received property includible in the gross estate. If estate taxes are not paid, the IRS can seek collection of the taxes from such beneficiaries and recipients as transferees under Code §6324(a)(2). The time period on federal estate tax collections from a transferee is generally 10 years from the date the assessment of tax is made against an estate. In Ringling, the IRS filed suit in the 9th year of that 10-year period, or 19 years after the date of death.

The Ringling case illustrates:

(a.) Transferee liability extends to recipients of all property included in the gross estate including:

1. Transferees of lifetime gifts from the decedent that are included in the gross estate under Section 2035 because made within 3 years of death;

2. Gift recipients whose gift was a discharge of indebtedness to the decedent;

(continued this page)

Alison Overton, LA
Estate Planning

Grace Legner
Estate Planning

Lisa Sarvey, J.D.
Estate Planning

Teagan Chandler
Estate Planning

Joseph C. Kempe
Professional Association
Attorneys and Counselors at Law

Bookkeeping Services Now Offered

- Helping Our Clients Maintain Independence -

As our clients have aged, the services they need to maintain independence has caused the Firm to grow to meet those needs. A common need is bookkeeping and bill payment assistance. Related to this is reporting of financial and medical oversight to family members in distant states. A summary of the level of personal bookkeeping services we offer and customary pricing is provided below:

Estimated Fees	Description of Options
No bill paying. Review of bank activity only. **$250/mo.** **($3,000/yr), per account**	**Option 1: Viewing/Monitoring Account Only** • Obtain online login and password bank information from client; • Monitoring of bank activity including checks and automatic payments such as utilities, caregiver/household employee, and independent contractors; and • Immediately notify client if any inconsistencies or fraud like activity.
Less than 15 checks a month. Bill Paying and Bookkeeping services. **$416.67/mo.** **($5,000/yr), per account**	**Option 2: Limited Bill Paying/Bookkeeping Services** • We provide limited bill paying services; • Set up and manage QuickBooks Account; • Obtain online login and password banking information from client • Travel to/from client home for signature of checks on a biweekly basis; • Collect and gather bills from client; • Download or Manual input of bank activity into QuickBooks account and perform monthly bank reconciliation; • Provide monthly bank register; and • Provide Quarterly limited financial statements, ex. Profit and Loss and Transaction List by Vendor Report.
The same as above but with 15 checks or more a month **$625/mo.** **($7,500/yr), per account**	**Option 3: Full Bill Paying/Bookkeeping Services** • We provide full bill paying services; • Set up and manage QuickBooks Account; • Obtain online login and password bank information from client; • We prepare checks with any 3 Firm members sign checks after client's approval; • Collect and gather bills after change of billing address to the firm. Provide client Weekly Unpaid Bills Report for approval: • Download or Manual input of bank activity into QuickBooks account and perform monthly bank reconciliation; • Provide Weekly accounts payable reports; • Provide Monthly bank register; • Provide Quarterly Transaction by Vendor Reports; and • Provide annual Balance Sheet and Profit and Loss Statement, General Ledger, ex. Profit and loss, and detailed expense breakdown.

These services are often combined with reporting services and financial oversight, such as are illustrated by examples of some reports used on pages 5 and 9 of this Client Update.

Transferee Liability

(continued from left column)

3. Transferees who receive the property as surviving joint tenants;

4. Property passing to remaindermen when the decedent had a life tenancy in the property; and

5. Life insurance proceeds on the life of the decedent.

(b.) The IRS may take a long time before asserting transferee liability. The statute of limitations is 10 years from the date the assessment of tax is made against the estate. Here, the IRS filed suit in the 9th year of that 10-year period (and 19 years after the date of death).

(c.) The IRS will pursue transferee liability even when the estate tax liability is not that significant. Here, the unpaid tax was $28,939 (but with interest and penalties the amount sought was $65,874.80). There are numerous Code provisions and procedures for relieving a fiduciary from liability for taxes - but this is not the case for beneficiaries. Conservative recipients of property may not want to spend their inheritances or received property until they know the 3 year assessment period has expired without an assessment of tax against the decedent's estate (or that all assessed tax has been paid).

Buy-Sell Agreements for Your Closely Held Entity

- Agree Before It's Too Late -

It is not uncommon for people to start a business and form a corporation where there are a small number of shareholders, usually two or three, but not take the steps to create an agreement among the shareholders as to issues that may arise in the future between them. These issues generally concern operations, taxes, transfer of shares, and the consequences of death or incapacity.

Most closely-held non-public corporations are formed as Subchapter S corporations for tax purposes. A buy-sell agreement can prohibit transfers of stock to persons who are ineligible to be shareholders of an S corporation. Increasingly, LLC's are being used and similar issues exist. See: Entity Selection Matters on page 5.

A buy-sell agreement can ensure that ownership of the corporation remains with the individuals who are working for the corporation by requiring the surrender of stock by a person if the reason for originally making the person a shareholder is no longer applicable (e.g., termination of employment) or upon an event that would cause another person to become a shareholder (e.g., death, incompetence, divorce, or bankruptcy). If a corporation wants to issue stock to key employees to allow them to share in the profitability of the company, the corporation needs the right to repurchase the shares if that employee resigns or is terminated, unless otherwise agreed.

Another key reason for a buy-sell agreement is to provide for orderly transfers of corporate control of the corporation by limiting transfers to certain specified transferees or requiring sales and purchases upon certain triggering events. An agreement might provide, for example, for a purchase by the corporation (or a pro rata purchase by the remaining shareholders) upon the death of one of the shareholders. A shareholder who dies and who provided essential services to the corporation may have to be replaced with someone who can provide such services. Or the surviving shareholders may not want to be "partners" with the deceased shareholder's heirs. The buy-sell agreement may provide that the owners (cross-purchase) or the company (redemption) must purchase and maintain life insurance on each owner. If an owner dies the life insurance proceeds are available to help fund the buy-out which is often mandatory in the event of death.

It sometimes happens that a shareholder no longer wants to work for the corporation in its business, so the remaining shareholders need a mechanism to purchase the shares. The buy-sell agreement can establish the price for the shares upon a shareholder's death or upon the shareholder selling their interest to the other shareholders. Or if a pre-determined price is not established, the buy-sell agreement can provide for other valuation approaches.

The buy-sell agreement can also provide a mechanism for a "divorce" between the shareholders if they reach an impasse in terms of issues that arise in the business. Without establishing a separation mechanism in a buy-sell agreement, it becomes very difficult to resolve these issues short of litigation. We have used clauses that allow one shareholder to set a price for half of the business and the party receiving the notice has the option to sell at that price or to buy-out the other shareholder at that price.

These are just a few of the issues that support business owners of a closely held business making sure that they have a buy-sell agreement. It may be the best money ever spent because, although when the business starts no one can imagine anything other than a harmonious relationship, events occur that may make it difficult to resolve disputes at a later date.

David C. Tassell, Esq.
Real Estate Attorney
Counselors Title Company, LLC - president
Real Estate Sales and Purchases
Commercial Transactions

Terri Rodgers, LA
Real Estate Legal Assistant
Counselors Title Company, LLC

Karen McCampbell
Real Estate Legal Assistant
Counselors Title Company, LLC

Affiliated Personal Service Organizations

Counselors Title Company, LLC
•
Counselors Realty, LLC d/b/a Coastal Estates

Joseph C. Kempe
Professional Association
Attorneys and Counselors at Law
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