CLIENT UPDATE and wealth advisor

FALL 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.

USE YOUR TAX EXEMPTION: GIFT TO A TRUST FOR YOUR SPOUSE

- TIMING CAN BE IMPORTANT AND THAT TIMING MAY BE UNKNOWN -

As we approach the elections, it is once again time to plan for the prospects for change. Democratic Party proposals have included a call for reduction of the estate, gift, and generation-skipping tax exemptions by nearly 70%, from their current $11.58 million to $3.5 million. This results in a $3.5 increase or more in estate taxes on individual estates worth $11.58 million or greater and assumes no increase in tax rates. Democratic proposals, however, increase the estate, gift, and generation skipping tax rates above their current rate of 40%. Joe Biden has not yet adopted all of these proposals,

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USING RECORD LOW INTEREST RATES IN FAMILY PLANNING

- HUGE OPPORTUNITIES FOR WEALTH TRANSFER -

In our current historically low interest rate environment, tremendous amounts of wealth can be transferred in a tax advantageous way when senior family members loan funds to junior family members for investment. For example, if parents loan a child in September 2020 $1million in exchange for a promissory note that imposes 1% interest payable annually, with the principal amount due in 20 years, and the investment made by the child generates a positive annual return of 5% after tax and the interest paid, the future value of that investment in 20 years would be $2,653,298. At an 8% return it would $4,660,957. Properly done, this wealth generation can be multigenerational, and can escape estate and gift tax in the senior family and

Continued on page 7

"GRANTOR TRUST" STATUS: SUPERCHARGE FAMILY TRUSTS

- THE POWER OF TAX FREE COMPOUNDING -

When clients are planning gifts to junior family members, to reduce their estate size to avoid future estate taxes, they are often made using trusts to protect that wealth. We call this "exempt wealth," that by using trusts causes that wealth to be exempt from unfriendly hands, such as divorce, in-law rights, third party liabilities, and the wealth transfer tax system. Clients have many options when creating these trusts, and one of the more important considerations is whether to create the trust as a "grantor trust," which is sometimes referred to as an "intentionally defective trust."

Continued on page 4

REFINANCING FAMILY LOANS: IS LOWERING THE RATE TAXABLE?

- INCOME AND GIFT TAX CONSEQUENCES OF INTEREST REDUCTIONS -

Loans between family members are quite common. They may exist for any number of reasons. As explained above in a separate article, significant tax free wealth transfers can occur to borrowing junior family members, while reducing the estate tax exposure of a lending senior family member. Can old loans be improved in accomplishing these objectives, by reducing a prior higher interest rate? The answer is, "yes, but be careful!"

Continued on page 14

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

WEBSITE: www.jckempe.com

2020: Very Bad, Would Not Recommend!
Rating: ★★★★★

How you view 2020 will depend a lot on your health, age, and location. For some, the Covid-19 virus caused the loss of loved ones. For others, it meant the inconvenience of wearing a mask. For our young, education institutions continue to grapple with students who are not sick but who carry a virus who can infect others. Many businesses and schools went virtual, with a realization that brick and mortar was less important with technological platforms of communication. Zoom became a new name and mode of communications. Everyday life for most everyone was upset.

When asked, many money managers will tell you that the Covid-19 pandemic has been good for the equity markets. The reasoning is that it has accelerated the inevitable use of technology and away from brick and mortar buildings. Technology, especially platform companies like Amazon, Facebook, Google, Apple, and Microsoft, have lead the market rise. These five companies have grown to exceed 20% of the S&P 500. With interest rates at all-time lows, the money supply at all-time highs, record low inflation, and improving labor markets, money managers suggest optimism for the economy and recognition that the markets are leading economic indicators. They will say their crystal ball shows no prospect for recession. They are mostly bullish on 2021, with the thought that this economic backdrop will cause the rest of the economy to fall-in behind the leaders. Some industries, however, may be forever harmed by the pandemic- commercial real property for one. What can go wrong?

The elections are this year! There is no cure for Covid-19! The markets should rise from rising company earnings, provided the virus stays muted or a vaccine is found and taxes do not rise too much. They are likely to rise! Even with a Trump win, the degree of government spending to fight the economic consequences of the pandemic will necessitate renewed budgets and increased taxes. Through the first 10 months of fiscal 2020, the government took in $2.82 trillion in revenue and spent $5.63 trillion, for a year-to-date deficit of just over $2.8 trillion, according to the Treasury Department's Bureau of the Fiscal Service. Through the first 10 months of fiscal 2019, by comparison, the deficit stood at $866.8 billion. Trump had a 10 year balanced budget plan based upon pre-Covid numbers.

Trump is presently proposing what is essentially status quo, with some capital gains tax reduction, a middle class tax cut, while making existing business incentives permanent. Biden has proposed tax increases across the board. Within Biden's platform is an increase in capital gains tax from 20% to 39.6%, by treating gains as ordinary income. Biden has also proposed returning the estate tax to 2009 levels, which would reduce the exemption to $3.5 million and increase the top rate from 40% to 45%. A return to 2009 levels would also reduce the lifetime gift and generation skipping tax exemptions to $1 million. Additionally, Biden's platform seeks to eliminate cost basis "step-up" at death, which avoids the passage of capital gains to heirs. Although Biden does not currently have these in his platform, during the Obama Administration, proposals were made by the Democrat Party to eliminate various advanced estate planning strategies, such as QPRTs, GRATs, grantor trusts, valuation discounts using family limited partnerships, and the elimination of long term generation skipping tax exempt trusts.

Given the prospects for delay in election results, who is elected may not be known before January 1, 2021. We are advising our clients to confront the possibility of change well before year-end. This Client Update addresses the types of planning being undertaken before year-end. For example, using QPRTs and creating family limited partnerships should be considered. Historically, tax reform has grandfathered changes affecting family partnerships and QPRTs involve transfers by deed of residences under the law existing at the time of transfer. It would be highly unlikely legislation could Constitutionally change that result. Furthermore, we are recommending that clients consider the creation of gifting trusts, to use their gift tax exemptions in advance of the effective date of any reform. Since any 2021 legislation could be retroactive to January 1, 2021, being able to react to post election developments may be time sensitive. We are thus recommending clients consider creating trusts well in advance and opening accounts for them with nominal amounts of money- $100. Transfers of greater amounts of wealth using the current $11.58 million exemption can then occur on an expedited basis into these preexisting trust accounts, should one desire to utilize their exemption and avoid loss with tax reform. Spouses should consider this planning for each other, while complying with the "reciprocal trust doctrine" (explained in the first article on the cover page of this Client Update).

We trust you are safe and secure and we look forward to a five star 2021 ★★★★★.
God Bless and be Safe!

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

Joseph C. Kempe
Professional Association
Attorneys and Counselors at Law

ATTORNEYS

JOHN L. AVERY, P.A.
JESSE J. HAP, ESQ.
CONNER R. KEMPE, ESQ.[1]
JOSEPH C. KEMPE, ESQ.[1,2,3]
MELISSA D. LAZARCHICK, ESQ
MARNIE RITCHIE PONCY, P.A.[4]
JESSIE G. PULITZER, ESQ.
DAVID C. TASSELL, P.A.

OF COUNSEL
JACQUELINE DELGADO, ESQ.[5]
WILLIAM N. LAZARCHICK, JR. P.A.[6]

[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

PARALEGALS, LEGAL ASSISTANTS

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

ADMINISTRATION AND BOOKKEEPERS

ESTHER GARNER
TAMI G. KEMPE
MARLEINE MILFORD
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 this Client Update. Also 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 $ 2,168,000.

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

Why Health Care Advance Directives Are Usually Not Applicable with a Covid Patient

- Your Rights are Yours to Exercise -

The threshold to trigger a patient's Health Care Advance Directive must be a medical finding that the patient lacks sufficient mental capacity to make a medical decision. Most patients with Covid present to a hospital in respiratory distress but with mental capacity. Even with a serious decline in respiratory function, patients usually maintain mental capacity. Thus, when a patient in acute respiratory distress is offered the option of artificial ventilation (respirator), he or she usually chooses to go on a ventilator. Respiratory distress is not only uncomfortable, it can be downright terrifying. The usual response to such discomfort is to elect the oxygen relief a ventilator provides. Subsequently, these same patients may lose capacity during the ventilation period. However, their documents still do not provide for clear decision-making on the part of either the surrogate or the medical staff because their prognosis for recovery remains uncertain (There are some patients who survive the overwhelming antigen-antibody reaction referred to as a cytokine storm and come off a ventilator even after a period of weeks. They then go on to recovery).

Part of the complexity of this virus: absent other factors, a patient with a diagnosis of Covid can and usually does recover…. regardless of age. So now, although the patient lacks capacity, physicians are unable to determine their prognosis to the medical certainty legally required to follow either a Living Will, or as to whether their "capacity is lost with little chance of recovery" so as to invoke their Advance Directive Plan of Care.

To summarize: patients usually have capacity when the treatment decision whether to ventilate is made (hence the decision is made by a capacitated but oxygen hungry person who is just plain looking for relief); and then, upon loss of capacity, there is no medical certainty as to the prognosis of the virus.

This is a serious medical/legal/ethical issue. It confronts patients, health care surrogates and physicians. The situation is further exacerbated by the "no visitors allowed" pandemic hospital restrictions.

We have received calls from clients asking for advice as to how can they best protect themselves from long term ventilation and ultimately futile efforts. Our advice is to make a "treatment plan" with your named health care surrogate and the attending physician regarding whether, when and how long you would want to continue treatment on a ventilator upon diagnosis of Covid.

We suggest the following:

1. Clearly express to your health care surrogate your desired parameters of care. Particularly when "enough is enough." This is your best protection for both appropriate and compassionate care.

2. Request a conversation with the medical team (with your surrogate present by phone) as early as possible during treatment. Because of staff rotation, request the plan/conversation be noted in the medical chart. Make certain staff knows who your surrogate is and has all contact information.

3. Finally, make clear the determination of your surrogate is to be respected.

As always, we remain available to help you when and if you need us.

Supercharge Family Trusts

(continued from cover)

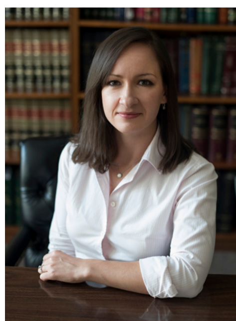
A grantor trust is an owner of property separate from the grantor who gifted property to it for estate and gift tax purposes. However, for income tax purposes, the grantor is deemed to still own the property. This is why a grantor trust is sometimes called an "intentionally defective trust," because it is defective for income tax purposes. The grantor is treated as owning the property in the trust for income tax purposes and thus pays all corresponding income taxes. It is this consequence that supercharges the trust for tax purposes, because while the grantor is paying the income tax it reduces his or her taxable estate and enhances the growth of the property transferred out of his or her taxable estate. For example, if $30,000 of income tax is paid by the grantor allowing the trust to grow that amount tax free while earning a compound annual rate of 6%, in excess of $1 million of wealth is removed from the grantor's estate without estate or gift tax over 20 years-a $400,000 estate tax savings. Furthermore, since the grantor paid the income tax, it further resulted in a reduction of his or her estate by the income tax paid, potentially resulting in an additional estate tax savings of over $400,000. This tax status is also what allows a senior family member to sell property to a grantor trust without gift or capital gains taxes on the sale. This strategy is commonly referred to as a "sale to an intentionally defective grantor trust," and also employs the same interest rate leverage explained in the second article on the cover page of this Client Update.

We are pleased to announce that Attorney Jesse J. Hap has joined our Real Estate Investment and Transaction department.

He joins us after practicing with the West Palm Beach firm of Jones Foster, P.A. and an internship with the Fourth District Court of Appeals. Mr. Hap's practice has been focused on residential and commercial real estate; landlord tenant relationships and disputes; condominium and association law; and title issuance.

Mr. Hap is a Cum Laude graduate of the University of Florida Levin College of Law, where he was a Notes and Comments Editor of the Florida Law Review and an Appellate Advocacy Teaching Assistant. Prior to then, he attended and graduated from Florida State University, Cum Laude, in Criminology, where he was a member of the Dean's and President's Lists and the President and Re-Founder of the Pre-Law Society.

Mr. Hap attended the Suncoast High School, and is a native of Palm Beach County, Florida.



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

Joseph C. Kempe
Professional Association
Attorneys and Counselors at Law

What Takes So Long to Close an Estate

- IRS Estate and Gift Tax Process -

Most estate settlements close within nine months of a decedent's death. If probate is avoided, sometimes much shorter. Nevertheless, there will often be unfiled income tax returns for the year of death which will require filing and income tax reduction opportunities. If there is a taxable estate (one exceeding $11.58 million under current law), an estate tax return must be filed even if there is a surviving spouse and no tax is due. Even if the estate does not exceed the estate tax exemption, surviving spouses often desire to file an estate tax return (Form 706) to elect portability, which passes any unused exemption of the deceased spouse to them.

The estate tax return is due within nine months of death. If there is a surviving spouse, a 6 month filing extension is commonly elected. Generally, once the Form 706 is filed, it is assigned to a reviewing agent within the first 6 months and within 45 days thereafter the agent will contact the taxpayer (or representative). If the return is chosen for audit, the IRS goal is to complete it within 18 months of filing.

In general, IRC 6501(a) requires the IRS to assess an estate tax liability within three years after the filing date (or due date, if later) of the estate tax return. When a false or fraudulent return has been filed with the intent to evade tax, the tax may be assessed at any time. See IRC 6501(c). IRC 6501(e)(2) allows an extended six-year statute of limitations on assessment where omitted items includible in a gross estate exceed 25 percent of the total gross estate reported on the estate tax return. See IRC 6501(e)(2).

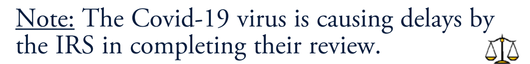
It is worth noting that these timelines can also be impacted by gifting history and gift tax reporting. In general, IRC 6501(a) requires the IRS to assess a gift tax liability within three years after the due date of the gift tax return, or three years after the gift tax return was actually filed, whichever is later. IRC 6501(c)(9) provides that if a gift is not shown on a gift tax return in a manner adequate to apprise the IRS of the nature of the gift, then gift tax may be assessed at any time with respect to that gift. A gift may be inadequately disclosed if it is:

A. Omitted completely from the return.

B. Shown on the return, but the manner in which it is shown is not adequate to apprise the Secretary of the nature of the gift.

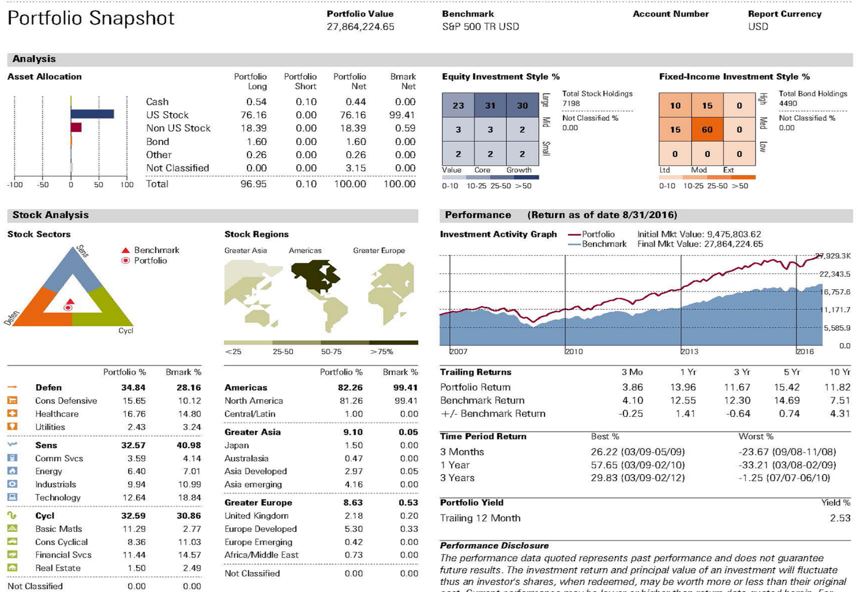
For this purpose, failing to provide a "qualified appraisal" may result in the IRS taking the position that the gift was not adequately disclosed, leaving open a statute of limitation that can permit audit and assessment even after receipt of a closing letter. See left column on page 10.

Note: The Covid-19 virus is causing delays by the IRS in completing their review.



How We View Client Portfolios in Morningstar to Assess Risk

- Just One Lense That We Use To See -



John Doe : Account Aggregate

Portfolio Snapshot

Portfolio Value	Benchmark	Account Number	Report Currency
27,864,224.65	S&P 500 TR USD		USD

Analysis

Asset Allocation

	Portfolio Long	Portfolio Short	Portfolio Net	Bmark Net
Cash	0.54	0.10	0.44	0.00
US Stock	76.16	0.00	76.16	99.41
Non US Stock	18.39	0.00	18.39	0.59
Bond	1.60	0.00	1.60	0.00
Other	0.26	0.00	0.26	0.00
Not Classified	0.00	0.00	3.15	0.00
Total	96.95	0.10	100.00	100.00

Equity Investment Style %

	Value	Core	Growth
Large	23	31	30
Mid	3	3	2
Small	2	2	2

Total Stock Holdings 7198
Not Classified % 0.00
0-10 10-25 25-50 >50

Fixed-Income Investment Style %

	Ltd	Mod	Ext
High	10	15	0
Med	15	60	0
Low	0	0	0

Total Bond Holdings 4490
Not Classified % 0.00
0-10 10-25 25-50 >50

Stock Analysis

Stock Sectors

	Portfolio %	Bmark %
Defen	**34.84**	**28.16**
Cons Defensive	15.65	10.12
Healthcare	16.76	14.80
Utilities	2.43	3.24
Sens	**32.57**	**40.98**
Comm Svcs	3.59	4.14
Energy	6.40	7.01
Industrials	9.94	10.99
Technology	12.64	18.84
Cycl	**32.59**	**30.86**
Basic Matls	11.29	2.77
Cons Cyclical	8.36	11.03
Financial Svcs	11.44	14.57
Real Estate	1.50	2.49
Not Classified	0.00	0.00

Stock Regions

	Portfolio %	Bmark %
Americas	**82.26**	**99.41**
North America	81.26	99.41
Central/Latin	1.00	0.00
Greater Asia	**9.10**	**0.05**
Japan	1.50	0.00
Australasia	0.47	0.00
Asia Developed	2.97	0.05
Asia emerging	4.16	0.00
Greater Europe	**8.63**	**0.53**
United Kingdom	2.18	0.20
Europe Developed	5.30	0.33
Europe Emerging	0.42	0.00
Africa/Middle East	0.73	0.00
Not Classified	0.00	0.00

Performance (Return as of date 8/31/2016)

Investment Activity Graph

Trailing Returns	3 Mo	1 Yr	3 Yr	5 Yr	10 Yr
Portfolio Return	3.86	13.96	11.67	15.42	11.82
Benchmark Return	4.10	12.55	12.30	14.69	7.51
+/- Benchmark Return	-0.25	1.41	-0.64	0.74	4.31

Time Period Return	Best %	Worst %
3 Months	26.22 (03/09-05/09)	-23.67 (09/08-11/08)
1 Year	57.65 (03/09-02/10)	-33.21 (03/08-02/09)
3 Years	29.83 (03/09-02/12)	-1.25 (07/07-06/10)

Portfolio Yield	Yield %
Trailing 12 Month	2.53

Performance Disclosure

The performance data quoted represents past performance and does not guarantee future results. The investment return and principal value of an investment will fluctuate thus an investor's shares, when redeemed, may be worth more or less than their original cost. Current performance may be lower or higher than return data quoted herein. For information current to the most recent month-end, please visit http://www.morningstaradvisor.com/familyinfo.asp

Portfolio Snapshot

Portfolio Value	Benchmark	Account Number	Report Currency
27,864,224.65	S&P 500 TR USD		USD

Risk Analysis

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	1.8	3.2	3.0	2.4	1.8
Apr	1.2	3.0	3.2	2.6	1.8
May	0.8	2.8	3.2	2.4	1.8
June	0.6	2.8	3.4	2.4	1.8
July	0.6	2.6	3.4	2.2	1.8
Aug	0.4	2.2	3.4	2.4	1.4
Sept	0.4	2.2	3.4	2.4	1.4
Oct	0.4	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

Planning for Tax Reform and Elections

(continued from cover)

but he has called for recognition of capital gains in property comprising an estate on death. There is also a belief that whether or not a Democratic controlled government is empowered, that our budget, debt, and deficits will require tax increases. How and on whom they will fall is anyone's guess but taxing the wealthiest is politically most advantageous. Should this occur, legislation could be passed in 2021 and made retroactive to January 1, 2021.

As a result of these circumstances, those who have potential taxable estates may wish to act now by using any number of traditional estate planning techniques that best fit their circumstances. A taxable estate includes all assets owned by an individual, including homes, retirement plans, investments, and life insurance. It also includes prior taxable gifts. (A taxable gift is one that exceeds annual exclusion gifts and certain others.) Therefore, after considering a person's age, their current taxable estate, and a projected growth factor, a projected taxable estate can be determined and if it exceeds $3.5 million ($7 million for a couple) it may be prudent to act. The following reflects a summary of some strategies that one might wish to employ in these circumstances:

A. **Reciprocal Trusts.** The problem with a gift designed to use your current $11.58 million exemption is that you lose the income. You cannot gift property and retain the income, without that property being taxed in your estate. The Internal Revenue Code ("IRC") prohibits this and forces inclusion of the gifted property in your taxable estate. See IRC § 2036. What if a husband and wife (or anyone with another) agrees to mutually settle a trust for each other with the income payable to the donee spouse, as a beneficiary? If a husband and wife did so for each other, they have retained the same level of income they had before their mutual gift to each other, in trust. If it weren't in trust, they would own it at death and it would be part of their taxable estate, so gifting in trust is essential to this planning. By having it in a properly structured trust, one would think it wouldn't be taxed in the other's estate. Furthermore, with appropriate planning, that income could extend to the surviving spouse after a death. This would be a great strategy for a married couple to use in order to shelter $23.16 million from the estate tax system. However, it violates the so-called "Reciprocal Trust Doctrine" and doesn't work. It is simplest to understand this doctrine by considering it an agreement and not a gift, and the courts consider the income retained in the gifted property by uncrossing the gifts. In other words, you are deemed to have retained the income from the assets you transferred, which the IRC prohibits. The two "interrelated" trusts leave the husband and wife "in approximately the same economic position as they would have been had they created trusts naming themselves as life beneficiaries," thus violating IRC § 2036 mentioned above. *United States v. Estate of Grace*, 395 U.S. 316 (1969). The doctrine has been refined and distinguished since the Supreme Court's decision, but remains subject to debate and interpretation. Much of the law in the area focuses on the Supreme Courts use of the word "interrelated" and the phrase "same economic position." The following reflects trust structure design that can be used to avoid application of the doctrine, and is based upon a number of cases since *Grace*:

(1) Beneficiaries: If one trust is for the benefit of a settlor's spouse and descendants, while the other is for the benefit of only their descendants, it is unlikely the IRS could argue that both spouses are in the same economic position. Nevertheless, with proper planning access to those financial resources can be gained or restored.

(2) Powers of Appointment: In Estate of Levy v. Commissioner, the existence of a power in one spouse as beneficiary to appoint the property to others was alone sufficient to avoid application of the doctrine. Powers of appointment are tools we commonly recommend in estate plans to provide flexibility for an unknown future.

(3) Distribution Standards: Different standards for distributions from a trust can be created in order to distinguish the two trusts, and to argue that the economic positions of both spouses has changed. For example, one trust can provide that all income is paid to the beneficiary spouse but no principal invasion is permitted, while the other might provide that income or principal is only available for health and support. There are a variety of standards for distribution that can be mixed, in order to avoid interrelation and argue for a change in economic position. For a discussion on trust design and these standards, see our Winter 2019, Client Update, which commences on the bottom of the first page, at https://www.jckempe.com/news-and-events/newsletters/

Continued on page 8

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

Using Record Low Interest Rates in Family Planning

(continued from cover)

junior family members' estates, under current law potentially avoiding a 40% dissipation on death in each generation.

The rate charged in intrafamily loans is regulated by the IRS, in order to avoid a gift. If not enough interest is charged, the IRS will impute it, which creates both income and gift tax ramifications. The required interest that must be charged is published monthly, but that rate can be fixed for term loans for the duration of the loan. A demand loan would fluctuate monthly. The rates for September 2020 are .14% for three years or less; .35% for 9 years or less; and 1.0% for loans longer than 9 years.

Lending money to junior family members is often integral in advanced planning, particularly when selling interests in private companies or family partnerships to junior family members. The dual purpose is often shifting growth to junior family members while retaining cash flow and financial security for senior family members. A common advanced planning concept involves a sale to a "grantor trust" (discussed separately on cover page). These trusts can be part of reciprocal trust planning, or simply used to allow property to grow outside of an estate without making a gift. In a family setting, the benefits can be quite substantial. For example, if an interest in a family partnership or closely held business represents $10 million of underlying property value ("liquidation value") that is sold, the following potential benefits can be achieved:

(1) The ownership interests can be sold at a discounted value, often by as much as 35%- so, the sale would be for as low as $6.5 million;

(2) The assets or business grow outside of the senior family member's taxable estate without making a gift;

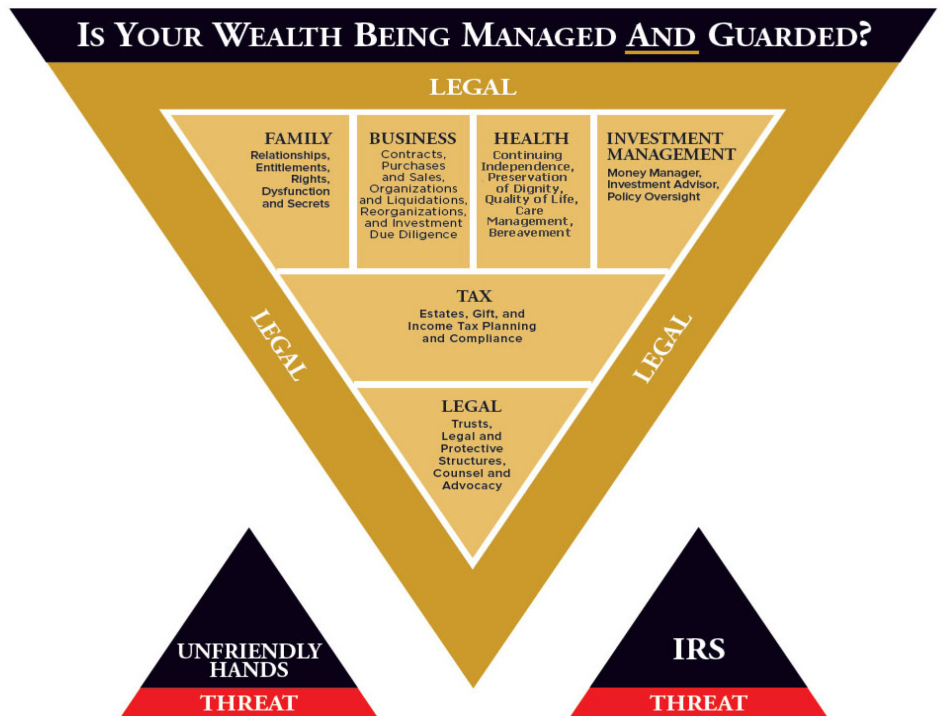
(3) There is no tax paid by the senior family member on the sale, because it is sold to a "grantor trust," which for income tax purposes means the transaction is a nullity; and

(4) Should the senior family need extra cash flow, the promissory note (which is often an interest only balloon note) can be prepaid in whole or part.

These transactions can be sophisticated and involve compliance with a number of rules and legal principles. The sale and promissory notes must be bona fide and respected and have economic substance. Often the note must be recognized in the estate plan of the senior family member, so that it passes on death to the proper and most appropriate recipient. Often, for example, a child's obligation will pass to the child's share of any inheritance or a trust for that child, where the note becomes a part of a multigenerational wealth passage plan.

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

- Don't Confuse Investment Management with Wealth Management -



What Basis Does the Donee Receive in a Gift
- Not As Simple As You May Think -

When gifting property, consideration should be given to the cost basis the donee receives, as it will be needed to report the ultimate capital gain on future sale by the donee. You can view this as reducing the value of the gift by the capital gains tax that will be paid, but for gift tax purposes it is the fair market value ("FMV") on the date of the gift. In general, cash is best to give followed by any other property with the greatest appreciation potential but with the highest cost basis or unrealized gain. Any gift tax paid by the donor or donee will increase the cost basis of gifted property.

If the FMV at the time of the gift is less than your cost basis, the donee's cost basis will depend on whether the future sale is at a gain or loss. Thus, these records need to be kept. If the donee's future sale produces a gain, it is the donor's basis plus or minus any adjustments while the donee held the property. If it is a loss, it is the FMV at the time of gift, plus or minus any adjustments while the donee held the property. As a result, basis is lost if you gift property whose FMV is less than your basis. Example: You gift a $1 million property with a cost basis of $1.5 million. The donee sells it a year later for $1.25 million. In this example, the donee's cost basis is $1.25 million and $250,000 of cost basis is lost. It should also be noted that the holding period of the donor carries over to the donee.

Colby J. Kempe, JD
Tufts A.B. US History
Tuck Business Bridge, Dartmouth
Ave Maria Law, Cum Laude
U of FL, LL.M., Tax Law (attending)
Estate Planning
Wealth Management

Joseph C. Kempe
Professional Association
Attorneys and Counselors at law

Planning For Tax Reform and Elections

(continued from page 6)

(4) Trustees: In Estate of Bischoff v. Commissioner, the Tax Court suggested that avoiding making each spouse the sole trustee of the trust created by the other would help avoid application of the doctrine. As such, mixing the trustees and potentially having co-trustees or unrelated trustees would help to avoid interrelation and also an argument over whether one's economic position has changed.

(5) Timing: Funding trusts at different times can provide an argument that the trusts are not interrelated. Grace established that 15 days was insufficient, where the two trusts were identical. It may be possible to even use preexisting trusts.

(6) Assets: Some commentators argue that the funding of each trust with different types of assets can provide a defense to application of the doctrine, particularly if they have materially different economic profiles.

In summary, a husband and wife (or two non-married individuals) can establish trusts for each other to utilize their current estate, gift, and generation skipping tax exemptions, provided they avoid application of the Reciprocal Trust Doctrine. Avoiding application of the doctrine is highly dependent on the need for the current income and the timing of distributions. In general, variations between trusts can make them nonreciprocal and can thus avoid application of the doctrine. In order to help clients design nonreciprocal trusts that satisfy their financial needs, it is often helpful to understand how clients use their cash flow. For example, if cash flow is used for the education of children or grandchildren; siblings or their families; gifts to charity; or any variety of other uses, this type of information allows us to design trusts to satisfy avoidance of the doctrine.

B. **Gifting Trusts.** Gifts of wealth should almost always be made in trust, so as to provide protections to the beneficiaries. These protections are typically aimed at protecting the property gifted from divorce, in-law, creditor, and tax risks, by exempting the wealth from these threats. Nevertheless, a gift once complete severs access to the income by the donor, who cannot in general be a beneficiary while removing the value of the property gifted from inclusion in the donor's taxable estate. But, are there other ways of accessing cash flow if needed? What if the children of the donor as beneficiaries, gifted income being distributed back to the donor? What if the donor borrowed funds from the trust? In general, if property is gifted and the Internal Revenue Service ("IRS") can prove that there was an agreement or understanding that the donor would retain or receive the income, the IRC would cause the property to be taxed in the donor's estate, as explained in "A., Reciprocal Trusts," above. If though this did not happen immediately but happened in the future and as a result of a change in circumstances of the donor, a defensible position could be taken that there was no understanding or agreement associated with the gift. In essence this would be no different than wealth given to children over their lives being used to help a parent who became in need. Alternatively, the trust could loan needed funds to the donor-parent. As long as it was a bona fide loan with adequate interest, there should be no estate tax inclusion of the trust property in the donor-parent's taxable estate. Whether the loan is bona fide would likely be tested against the solvency of the donor-parent's estate at the time the loan was made, and whether it was repaid to the trust at death. As such the loan does not increase the donor's estate value and provides a neutral result, while providing the donor-parent with access to needed cashflow. This neutral result is primarily created by our current historically low interest rate environment.

C. **Grantor Trusts.** Trusts created for others are a common method of transferring wealth. This wealth transfer can be enhanced if the trust does not have to pay income tax on its income. A donor often has a choice of continuing to pay the tax from the income on the property transferred. For example, if the property transferred to a trust generates taxable income of $100,000, the accumulation potential of the trust is reduced by the tax paid and in today's environment by potentially in excess of 37% or $37,000. If however the trust were a "grantor trust," the donor would pay that tax, enhancing the accumulation potential of the trust. The donor's payment is not considered a gift. Democratic proposals have included elimination of these grantor trusts. See third article on cover page.

D. **Qualified Personal Residence Trust.** Democratic Party proposals seek to eliminate common estate planning strategies designed to avoid estate and gift taxes. One of the most common strategies is a qualified personal residence trust ("QPRT"). We are commonly recommending use of QPRTs before creation of nonreciprocal trusts, because a QPRT has a multiplying effect on use of your exemption. A QPRT is a statutory tool that provides for an exemption from normal rules and is one of the first strategies we recommend for client consideration. They are commonly recommended because of the control of use and sale

Continued on page 15

We Are Not Investment Advisors
- But We Are Advisors To Wealth -

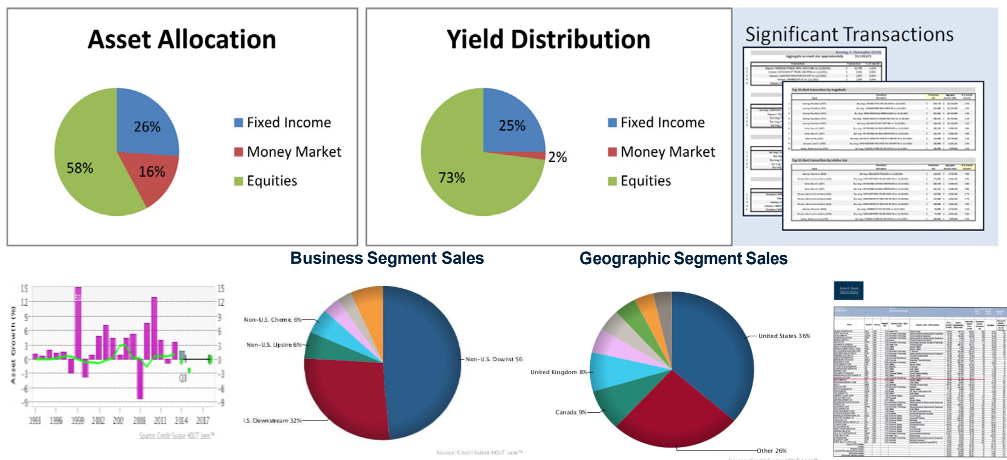
We are commonly asked to help individuals with their investment portfolios. It is not uncommon for surviving spouses or clients as they age to request help with an understanding of their portfolios, risk, and how best to have it managed. Where advanced estate planning has been undertaken, there are often various trusts, business entities, and intrafamily cash flows that become interrelated with a need to have them managed. The interplay between accounting, tax compliance, consistency with legal form, and documentation is paramount.

We presently represent thousands of clients with many billions of dollars of wealth with the preparation of their estate plans. For some families, we represent several generations. For some, who have us prepare their tax returns, the routine information received to prepare tax returns allows us to maintain their estate plans and reflect any changes of law and any changes in circumstances in an efficient manner. This is commonly able to be done at a cost point that is not more than a client commonly pays an accountant. We prepare approximately 1,500 returns a year. Of these clients for whom we perform tax compliance, we oversee approximately $1 billion of client portfolio wealth. Our oversight is from the perspective of family legal counsel. Money managers and investment advisors undertake the investment advice, and in our role we view their cost and performance through a number of lenses, that include risk assessment and decision attribution. The cost benefit of the management can then be compared to others and industry standards. Our lenses include Bloomberg attribution, Morningstar risk analysis, Credit Suisse HOLT analysis, and customized propriety reporting for each such client. What should be clear is that this model is free of conflicts of interest in wealth management, which is not commonly seen in other wealth management advisory platforms.

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 Name:	John and Jane Sample
Client #:	999.281
Date:	8/20/2020
Reporting Period:	July 2020
Legal Assistant:	Sonya Mochegova
CPA:	Michael L. Posten, II
Advent Analyst:	Aaron Flood
Lawyer:	Joseph C. Kempe

Client Snapshot

	CURRENT
Total Family Wealth:	$84,546,000
Tax Exempt Trusts & Entities	51,956,000
Husband's Estate Size:	-
Wife Estate Size:	32,588,000
Joint Estate Size:	-
Current Estate Tax:	10,532,000
Percent of Current Estate:	12%
*Projected Gross Estate:	101,551,000
*Projected Estate Tax:	15,102,000
Percent of Projected Estate:	15%
Estate Tax Bracket:	40%
IRA Portfolio:	438,000
*Total Family Partnership	N/A

•Based upon a 3% return, net of expenses over life expectancy and no valuation discounts.
•The current Estate Tax estimate assumes a $11,580,000 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:	**2.63%**
S&P 500:	2.38%
Barclays Agg:	7.72%

Performance Since 2011

Portfolio:	**7.04%**
S&P 500:	14.13%
Barclays Agg:	3.60%

Current Year Realized Gains and Estimated Tax Status

2020 Gains/(Losses):	($68,531)
Protected Tax Status:	**Yes**

(Performance and Realized Gains are through July 31, 2020 on monitored investment accounts. The IRR for periods over a year are annualized as per GIPS recommendation.)

Income for the Period Ending 2019

Total Income:	$1,030,720
Tax Free Income:	$239,920
Adjusted Gross Income:	$790,800
Taxable Income:	$777,000
Marginal Tax Bracket:	37%

Gift & GST Exemption Used

Husband Gift:	N/A
Wife Gift:	5,320,946
Husband GST:	N/A
Wife GST:	4,620,038
DSUE Available:	N/A

Estate Planning Developments

Reviewed & Current	YES	NO
Will:	X	
Trust:	X	
DPOA:	X	
HCP:	X	
Living Will:	X	
IRA Integration:	X	
Recommendations:	99-year lease for MI QPRT	
Document Code:	Single 80/20 mod.	

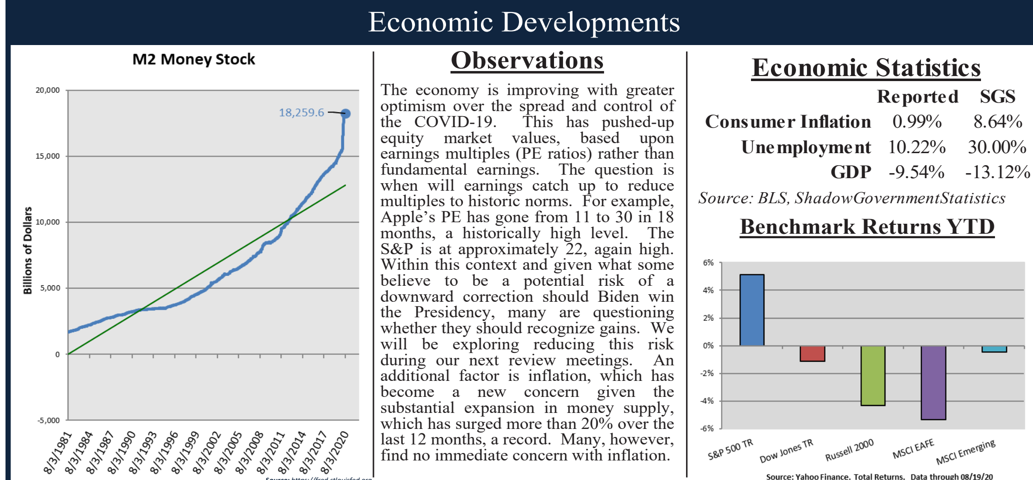
Miscellaneous

Promissory Notes Current:	Yes	
QPRT Termination Dates:	FL 2018/19/20 (Lease) MI 2020	
Crummey notices verified:	N/A	
Family Partnership Records Current?:	Yes 4/21/2020 and in progress	
RBD Date: H/W	-	12/05
RBD Compliance:	-	Yes
RMD Compliance:	Yes	

Legal Developments

We have either reviewed or are in the process of reviewing whether to file a protective claim for refund on your behalf with the IRS, related to the constitutionality of the Affordable Care Act. The Supreme Court has agreed to consider an appeal concerning the Act in the case of California v. Texas, which increased your taxes. We are also monitoring election developments and proposals for tax reform. A decision will likely need to be made this year on whether and how to utilize your residual estate, gift, and generation skipping tax exemptions.

Economic Developments



Observations

The economy is improving with greater optimism over the spread and control of the COVID-19. This has pushed-up equity market values, based upon earnings multiples (PE ratios) rather than fundamental earnings. The question is when will earnings catch up to reduce multiples to historic norms. For example, Apple's PE has gone from 11 to 30 in 18 months, a historically high level. The S&P is at approximately 22, again high. Within this context and given what some believe to be a potential risk of a downward correction should Biden win the Presidency, many are questioning whether they should recognize gains. We will be exploring reducing this risk during our next review meetings. An additional factor is inflation, which has become a new concern given the substantial expansion in money supply, which has surged more than 20% over the last 12 months, a record. Many, however, find no immediate concern with inflation.

Economic Statistics

	Reported	SGS
Consumer Inflation	0.99%	8.64%
Unemployment	10.22%	30.00%
GDP	-9.54%	-13.12%

Source: BLS, ShadowGovernmentStatistics

Benchmark Returns YTD

Gift Tax Adequate Disclosure Requirement -Starting the Three Year Statute of Limitations-

Much of advanced estate tax planning involves transactions involving gifts. The proper reporting of those gifts is important through the filing of a Form 709, gift tax return. The IRS provides that in the case of gift tax returns, the statute of limitations (the time frame in which the IRS can review a taxpayer's gifts) is three years from a gift tax return's due date (including extensions) or the date that the return is actually filed. In order to trigger the statute and prevent government review after the 3-year limitation, the taxpayer must file the Form 709 and check that all gifts are adequately disclosed. `If a gift is adequately disclosed, then generally the IRS cannot effectively change the gifts after the three-year statute of limitations has expired. However, if the IRS finds that a gift is not adequately disclosed, the statute of limitations is extended and the gifts can be reviewed at any time.

For this purpose, a gift is not adequately disclosed without including in the return prescribed information. When real estate or closely held businesses are involved, gifts must generally be supported by a"qualified appraisal" or generally the equivalent of one. A qualified appraisal is done by a "qualified appraiser," who is a person trained in and who regularly performs valuation assessments of the type of property involved in the gift.

As mentioned, if a transfer is made that results in a gift, the value for gift tax purposes can be audited and tax assessed at any time. In U.S. v. Ringling, for example, the IRS filed suit for estate tax assessments (including prior gifts) against beneficiaries 19 years after the decedents death. It is important that whoever files a gift tax return has experience with applicable law and regulations on the subject and that proper legal disclosures are made.

Dawn Chadwick, LA
Health Care Litigation

Jodi-Ann Wallace
Corporate Estate Planning

Joseph C. Kempe
Professional Association
Attorneys and Counselors at Law

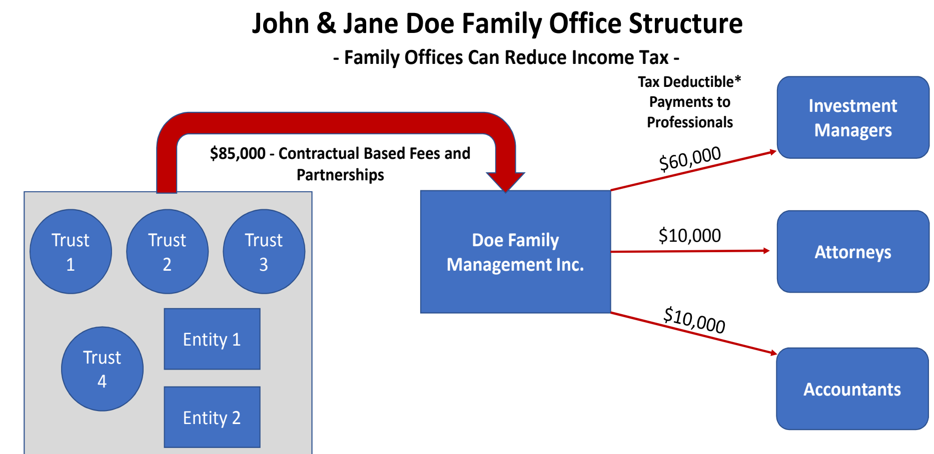
States Becoming More Aggressive with Tax Laws

- Avoiding Nexus Through Source Income and Assets -

States can tax all the income of their residents without regard to where the income is derived or sourced. As a general rule, states can only tax the income of non-residents on sourced income within that state. However, an increasing number of states are seeking to tax nonresident trusts as resident by seeking to determine whether there is any income or assets in their jurisdiction that may allow them to tax all of the trust's income. For these states, avoiding any income or assets in their jurisdiction can be extremely important in order to avoid state income tax on income not sourced to that state.

New York and New Jersey are the two highest profile, high-tax states that look to source income as a crucial factor in determining whether they may tax the entire income of what is ostensibly a nonresident trust but which they may consider resident. North Dakota also lists source income as a relevant factor in determining whether it has sufficient nexus to tax a trust's entire income. Other states, including Idaho, Iowa, Michigan, Montana, Pennsylvania and Virginia, look to whether there are assets located in their jurisdiction. Courts in many other states with extremely broad taxing statutes, such as Illinois, may ultimately view such factors as relevant in judging whether their statues are Constitutional 'as applied' to a taxpayer, even if these factors are not explicitly mentioned in their state statute or other guidance. In theory, even a small amount of source income or assets ($1) may be sufficient to create nexus for a state to tax the income of the entire trust, if other factors create a resident trust under that state's law.

A careful review of the location of assets and source of income is thus prudent. Divesting a trust of troublesome assets or sources of income is an obvious solution, but there are other measures that can be taken when doing so is not feasible. Certain structures may isolate the asset or source of income from other assets or sources of income, avoiding that states reach over them and taxation. Clients may wish to consider these measure in advance, in order to prevent unintended source income from tainting all of a trust's income. These solutions can save significant state income tax in the above-mentioned states without the need to completely divest of the assets in question. It appears that this type of planning will become more important as states seek revenues to confront their worsening budgets.



Our Tax Compliance and Planning Accounting Team

What makes us somewhat unique is the synergies we create by having two groups of professionals collaborate on client projects. Most business and estate planning we do is done by a team of lawyers, CPAs, and paralegals. Several of the lawyers have post doctorates in tax law, and Mr. Kempe's youngest son who just graduated law school is currently attending the 3rd ranked post doctorate tax law program at the University of Florida. These teams that collaborate provide a more robust service for our clients, where planning, implementation, and tax reporting is done by the same team. A more quality product is often produced and more accurate and proper tax reporting occurs. Because it is done routinely by us, it often reduces the cost that would otherwise occur from two or more professional service organizations.

Sector Performances as of September 3, 2020

Sector	1Yr	3Yr	5Yr
Basic Materials	15.09	3.93	8.32
Communication Services	15.89	8.52	9.68
Consumer Cyclical	37.43	20.81	15.80
Consumer Defensive	10.00	7.08	7.46
Energy	-36.40	-17.63	-11.72
Financial Services	-0.36	4.60	8.34
Healthcare	20.55	10.49	9.17
Industrials	3.09	5.15	8.91
Real Estate	-10.64	-0.29	2.62
Technology	53.27	26.24	24.78
Utilities	-8.27	2.47	7.50

Source: Morningstar

Mike Posten II, CPA
Tax Accountant and
Wealth Management
F/W PricewaterhouseCoopers
U of FL, Masters of Accounting

Benjamin Devlen, CPA
Tax Accountant and
Wealth Management
F/W WTAS LLC (Arthur Andersen)
Notre Dame, Masters of Accounting

Maureen Lloyd Rigaudon
Tax Accountant
Wealth Management
Advent® Axys Analyst

Denise Alpert, CPA
Tax Accountant and
Wealth Management
F/W LKD CPAs & Consultants
and Deloitte Tax, LLP
Barry U, Masters of Accounting

Chris Bourdeau, CPA
Tax Accountant and
Wealth Management

Marleine Milford
Bookkeeper
Advent® Axys Analyst

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

Owen Bradley, CPA
Tax Accountant and
Wealth Management
F/W Deloitte Tax, LLP

Peter Crane, CPA
Tax Accountant and
Wealth Management
F/W PricewaterhouseCoopers

What the CARES Act Means for your Charitable Giving

The CARES Act provides increased incentives for charitable giving. The adjusted gross income (AGI) limitation for deducting charitable contributions has been suspended for 2020. This year only, individual taxpayers can now deduct up to 100% of their AGI for a cash gift to a public charity. Philanthropically inclined taxpayers experiencing a significant liquidity event in 2020 can do so on a tax-free basis during this window of opportunity. Note that contributions of capital gain property, or donations to private non-operating foundations or donor advised funds remain subject to the pre-CARES Act rules (60% of AGI for Cash, 30% of AGI for Capital Gain Property, reduced to 20% if donated to a Private Foundation).

Separately, families with dual philanthropic and estate planning objectives can take advantage of historically-low interest rates when establishing dual purpose structures such as a charitable lead annuity trust ("CLAT"). For example, a $1,000,000 CLAT settled in September 2020 would have to pay out an annual charitable annuity of $52,130 per year for twenty years to avoid using any of the donor's basic exclusion amount. Assuming a 6% rate of return, the Trust will have $1,290,000 of corpus at the end of the 20 year term which would pass free of estate tax to the donor's heirs. Had this same trust bee established in September 2018, at then prevailing interest rates, the annual charitable annuity amount would have been $69,730 per year with only $642,000 of corpus remaining after the 20 year term. Said differently, the CLAT setup at today's low-rates will shift TWICE as much estate-tax-free wealth to the younger generation! Structured properly, these trusts can qualify for a full deduction in the year of establishment and accumulate tax-free wealth if structured as grantor trusts (See cover page.)

Carolyn Engvalson
Estate Administration
Fiduciary Services
Wealth Management

Donna Baummier, LA
Estate Administration
Fiduciary Services
Wealth Management

Joseph C. Kempe
Professional Association
Attorneys and Counselors at Law

When IRAs are Paid to Trusts

- Understanding "DNI" - Distributable Net Income -

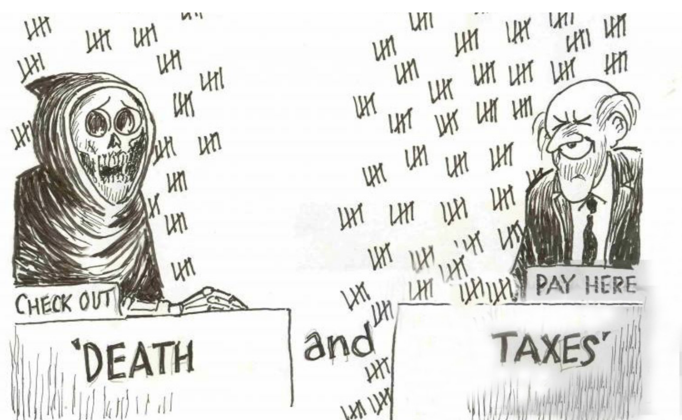
It is common to integrate retirement plans with trusts. Doing so has a variety of estate planning benefits. Properly integrating retirement plans with trusts, allows the owner to capture that value under their estate and generation skipping tax exemptions. It also provides a fuller protection of that value from unfriendly hands, that can occur through divorce, with in-law rights at death, third party law suits, and the tax system. This article focuses on potential income tax benefits and planning opportunities for heirs.

Trusts are separate taxpayers, unless they are a considered "grantor trusts." They can be viewed as faucets, able to pass the tax consequences out to trust beneficiaries. Either the trust or the beneficiaries (not both) will pay the income tax on trust income. Who pays the tax is a function of distributable net income ("DNI"). DNI is taxable income of the trust, subject to modification. Capital gain are generally, with some exceptions, subtracted from, and tax free income added to, taxable income. The trust will pay tax on DNI that is not passed-out to beneficiaries. To the extent it is passed-out, the beneficiary will pay tax on that income distributed to them.

When traditional (non-ROTH) retirement funds are paid to trusts, the entire amount is taxable and thus increases DNI. As a matter of state law, trusts will direct how income and principal are paid to beneficiaries. Amounts paid by IRAs to trusts, such as an annual required minimum distribution ("RMD"), typically carry both income and principal out of the retirement account. If income is paid to a trust beneficiary, the portion of the IRA distribution constituting principal will remain in the trust, often subject to discretionary distribution. As a result, the beneficiary will pay tax to the extent of the DNI received, and the trust will pay tax on the remainder.

Trust income is typically taxed at the highest federal individual rate, subject to lower rates on a relatively small amount. As a result, distributing DNI to trust beneficiaries can produce favorable tax benefits if the beneficiaries are in lower brackets. Contrariwise, some beneficiaries may reside in states where their tax brackets exceed the federal rates and accumulating the DNI within the trust (as a Florida sited trust with no taxing nexus in another state) can avoid the state tax. A properly written trust that is administered in Florida (or other state with no income tax) can be optimized, where beneficiaries with different economic circumstances can be treated differently. Distributions can be made to tax DNI in a beneficiary's low rate, or may be withheld to avoid payment to a beneficiary in a high-tax jurisdiction.

As can be seen, there are a variety of benefits associated with the integration of retirement plans and trusts. This article focuses on income tax planning, but there are potentially many more benefits associated with integration of retirement funds and trusts.



Marriage and the Family Business
-When the Next Generation Marries-

Family Businesses: It is becoming more and more common for family-owned businesses to require the participating family members to enter into prenuptial agreements to protect the business in the event of divorce. Without a prenuptial agreement, the business itself, as well the income derived from the business, can be subjected to the divorce process, even if the business was in existence prior to the marriage and even if the other spouse had little or no involvement in the business during the marriage. Even if the other spouse has no right to the business itself, he or she may still be entitled to seek discovery of the business's finances, including full access to its books and records of the business, which often includes taking depositions of the key officers and employees of the business and otherwise putting the business under a microscope. In the end, the former spouse could end up owning part of the business and could be entitled to receive alimony payments derived from the business income, even if he or she never was involved in the business itself. With a prenuptial agreement, a person can limit his or her spouse's ability to make a claim against the income received from the business or against the business itself in the event of divorce.

Jessie G. Pulitzer, Esquire
Multigenerational Planning
Premarital Planning
Fiduciary Service
Joseph C. Kempe
Professional Association
Attorneys and Counselors at law

We are finding ourselves more often counseling the second and third generations of our clients. It is quite common for wealth to pass to these heirs in trusts, established by our former resident clients. The interplay of trust and family laws of different states often require collaboration and the interplay of different state and federal laws, but a basic understanding of these rules while planning a marriage is beneficial.

Prenuptial agreements are a deeply personal and highly sensitive topic for most people, and understandably so – it is not every day that you are faced with negotiating financial issues against the person you presumably love the most. However, when handled properly, the prenuptial agreement process should be treated as an insurance policy: financial protection that will never be if things go as planned. Unfortunately, the nature of life is such that things do not always go according to plan, so it is wise to have prepared for emergency situations before they arise. By entering into a prenuptial agreement, you are simply deciding ahead of time how to handle certain issues should an unanticipated crisis in the marriage occur.

There are several reasons people enter into prenuptial agreement prior to marriage and each prenuptial agreement is specifically drafted to serve the purpose of the specific individuals.

Trusts: While trust documents often provide protections in the event of divorce, a trust's assets and income can be subjected to the divorce process despite the trust's intentions, depending on the specific facts of each case. Without a prenuptial agreement, the trust's exposure to divorce depends on many factors, including when and by whom the trust was formed, how the trust was funded and the treatment of any income generated by the trust. Even if a spouse is the beneficiary of a trust established by someone else, the income from that trust during the marriage can be deemed marital property in certain circumstances and may also be considered as a source of income for potential alimony claims. A prenuptial agreement, on the other hand, can ensure that neither the assets owned by the trust or the income derived therefrom are subjected to claims by the other spouse.

Inheritance: Money or assets inherited by one spouse during the marriage generally are not subject to a divorce proceeding. However, what the inheriting spouse does with the money or assets during the marriage can inadvertently cause the inheritance to be considered a marital asset in a divorce. By spelling out each spouse's rights in a prenuptial agreement, entangling an inheritance with a divorce can be avoided.

Alimony: Alimony is another potential issue in a divorce that can be avoided or limited by way of a prenuptial agreement. Alimony typically comes into play in a divorce when one spouse relies on the other for financial support during the marriage. If one spouse is unable to support himself or herself upon divorce, the judge will determine whether the other spouse has the financial resources to maintain the dependent spouse's lifestyle similar to what he or she enjoyed during the marriage. Depending on the length of the marriage, the money-earning spouse can be required to provide this support for a number of years, or in some cases, for the rest of the reliant spouse's life. It should come as no surprise that this is one of the most highly-litigated issues in divorce cases, especially considering the vast discretion the judge has in determining the lifestyle for which a spouse should be supported. To avoid this proverbial "can of worms," a prenuptial agreement can provide the flexibility necessary to take into account the needs, wants, and individual expectations of the individual parties to the marriage. For example, with a prenuptial agreement, the parties can agree to a certain alimony amount in advance or can even decide to waive entitlement to alimony all together. However, it is not just the spouse of superior economic earning power that benefits from a prenuptial agreement. The economically dependent spouse, who may have given-up educational or career opportunities to marry someone of higher earning power, can also benefit from having guaranteed support as negotiated in the prenup.

Conclusion: No one enters into a marriage anticipating a divorce (or at least, no one should!). However, anyone familiar with the divorce process knows how difficult it can be for everyone involved. You are essentially putting the fate of everything you own in the hands of a judge who is tasked with dividing it between the spouses. Even in the most amicable situations, this can be a costly and time-consuming process. By entering into a prenuptial agreement, you are protecting yourself and your assets in the unlikely event a divorce occurs. In the best case scenario, you put the signed prenuptial agreement in a drawer never to be needed again. In the worst case scenario, you enter the divorce process knowing that several important issues have already been addressed and resolved in advance by the prenuptial agreement.

Fleeing Taxing States -The Pandemic Accelerates Flight and States Attempt to Halt It! -

The pandemic is hitting some states harder than others. States with large urban environments and higher taxes, were hit hard with rising costs and lost revenues. Simultaneously, as a result of increased violence, the potential for greater exposure to viruses, and the ability to work remotely, residents are fleeing to suburbs or often neighboring or even distant non-taxing states.

New York, New Jersey, California, and others have proposed significant tax increases to cover their lost revenues. Many of these states are also becoming more aggressive in determining who is resident for income tax purposes. See page 10. Simultaneously, states like California and New York are making it more difficult to leave. California, for example, has proposed an "exit" tax - taxing the property of those who change their resident status. New York is increasing its audit of those claiming they are no longer resident.

As a result of these initiatives, premigration and postmigration review of a persons circumstances, sources of income, and asset holdings is prudent to assure exposures and compliance with evolving rules.

Sandy Parrish
Administration Receptionist

Allison Judkins
Fiduciary Administration

Joseph C. Kempe
Professional Association
Attorneys and Counselors at Law

Reducing Interest On Family Loans

(continued from cover)

The interest rate charged by a lender can have gift and income tax consequences that are not comprehended if no payment is made, unless the rate complies with certain Internal Revenue Code ("IRC") rules. See IRC § 7872 (and indirectly 1274(d)). These rules cause any "below-market loan" interest on a "gift loan" to be considered paid and then gifted, resulting in a recognition of income by the senior family member lender for income tax purposes with that amount then treated as a gift to the borrowing junior family member. Since the interest is imputed, it is not understood to be occurring by the lender, which can create a future surprise on IRS audit. IRC § 7872 interest is published each month and is known as the "applicable federal rate" ("AFR"). In some cases the lower of the current month or prior two months AFRs is the applicable AFR that can be used or imputed.

For the above reasons, demand loans (able to be demanded by the lender at any time) should seldom be used in family planning, because the AFR changes monthly and must be adjusted as if a new loan were created each month. Term loans are most common, and as long as the AFR for the month of the loan is used, there will be no imputed income or gift tax result imputed.

Many existing loans will have high interest rates, since interest rate markets are at an all time low and AFRs are based upon the rates imposed on "outstanding marketable obligations of the United States" with comparable durations. The consensus of commentators seems to be that if the promissory note permits" prepayment" by the borrower, it should not be considered a gift if the parties renegotiate to provide that in lieu of being prepaid the lender accepts a reduction of the interest rate. Some commentators suggest that additional consideration be provided to avoid the appearance of a gift of the difference in value of the notes, by providing some form of compensation for the reduction, such as reducing the principal balance, shortening the maturity, or providing additional collateral. Some commentators suggest the borrower actually have sufficient liquidity to prepay the loan or actually exchange funds. If the promissory note is not prepayable, the risk is that the IRS could treat the exchange of notes as a taxable realization event where the difference in note value is recognized as income and a gift for gift tax purposes.

If a promissory note does not have a prepayment feature, the IRS may treat a modification as an exchange of property, resulting in income tax and a potential gift to the extent the new note has a value less than the value of the old note, which has a higher interest rate. If the note is an installment sale, based upon a prior sale by the lender to the borrower, that exchange would potentially result in recognition of any capital gain inherent in the installment obligation. If the installment obligation were a result of a prior sale between the lender as a grantor to a "grantor trust" (see article on cover page), such transactions are generally a nullity for income tax purposes.

Rethinking Grantor Retained Annuity Trusts -GRATs

- Maybe Now Longer Is Better -

Historically, in a world where GRATs could exist indefinitely, short term rolling GRATs were best. Now, where the concept of GRATs could be eliminated with tax reform, perhaps locking-in a long duration GRAT is better. A GRAT is essentially a trust that pays you back what you put in, with what is essentially an interest factor called the 7520 rate. See left margin of page 6. Since you get back what you put in, there is little if any gift- commonly referred to as a "zeroed out GRAT." Any amount left in the trust after repayment is removed from the taxable estate without causing a taxable gift. With rates so low, the hurdle rate (in September 2020, .40%) is not difficult to beat.

However, something interesting happens with long term GRATs and if established in advance of tax reform, the benefits could be considerable. For example, if a 99 year GRAT is established in September 2020 with $1 million with a .40% 7520 rate and provides a $12,500 payment to a donor for 99 years, the value of the gift is $200. If the donor dies when the rate is 3% (last seen in 2019), the amount included in the gross estate of the grantor-decedent would be $12,250/.03 or $408,333. If rates were 5% and the trust were still worth $1 million, only $245,000 would be included in the donors estate and $755, 000 would be transferred estate and gift tax free.

PPP Loan Forgiveness -Will There Be A Tax Surprise -

The IRS has a stated position that expenses funded by Payroll Protection Plan loans are nondeductible. This causes an increase in taxable income. There is debate over this treatment from both political and legal standpoints. There could be legislation to eliminate this potential hardship, because the whole point of PPP loans was to interject capital into businesses so they could survive the pandemic. Creating a hardship that may not even be known until tax time or an audit, with penalties, seems contrary to the legislation. However, some tax scholars believe a position can be taken in law that a loan forgiveness funded expense is not one that is disallowed under our existing Tax Code, and with proper disclosure the risk of penalties can be avoided. We would be happy to discuss.

Alison Overton, LA
Estate Planning

Grace Legner
Estate Planning

Pamela Bruchal
Tax Department Assistant

Lisa Sarvey, JD
Estate Planning

Teagan Chandler
Estate Planning

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. Reports shared with other family members as directed.

Planning for Tax Reform and Elections

(continued from page 8)

of the home retained by our clients. The potential tax savings is best illustrated by example. If a 75-year-old with a $3 million home established a QPRT and survived 8 years (the term is variable and set on establishment) the potential estate tax savings exceeds $1 million, because the actual exemption used is only approximately $750,000.

E. **Family Partnerships**. Family partnerships are another commonly recommended tool. They are holding company structures that are established for family governance and management of family assets. Their peripheral benefits involve reducing the value of estates. This valuation reduction is artificial and serves to enhance the ability to transfer greater wealth by gift or sale to junior family members. Typically, this enhancement is by approximately 35%. Similar benefits can exist or be achieved with any valuable property that is owned in private companies, such as real estate partnerships or closely held businesses.

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

Katherine Bergel
Administration
Property Management

Affiliated Personal Service Organizations

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

Counselors Title Company LLC Adheres to Best Practices

- Client Opportunity In a Best Practice Model -

Counselors Title Company LLC ("Counselors Title") is an affiliate company of the Firm. When a Firm client closes a real estate transaction that requires the issuance of an owner's title policy, the owner's title policy is issued by Counselors Title and it also closes the transaction. A real estate attorney is assigned by the Firm and legal representation is provided at no charge. To avoid this loss of representation without cost, it is imperative that a client contact us prior to signing any documents, including the real estate brokerage listing agreement.

The American Land Title Association has created a set of industry guidelines and standards that are required to be followed by title insurance agencies. These guidelines are established by the Consumer Financial Protection Bureau and are established under the Dodd-Frank Act and follow the Gramm-Leach Bailey Act. The industry guidelines presented by American Land Title Association are divided into "pillars" of information. Each of these pillars represent a different requirement for compliance. Counselors Title complies with all the pillars, which are summarized below.

Pillar One – Licensing
The goal of pillar one is to establish and maintain current license(s) as required to conduct the business of title insurance and settlement services.
Counselors Title maintains the appropriate license(s) to operate in the state in the State of Florida.

Pillar Two – Escrow Account Controls
The goal of pillar two is to adopt and maintain appropriate and effective escrow controls to meet client and legal requirements for safeguarding client funds.
Counselors Title maintains all escrow funds in separate accounts as required by Florida regulations and underwriter requirements. We conduct three-way escrow account reconciliation, which is completed monthly, reviewed, and then forwarded to our underwriter.

Pillar Three – Information and Data Privacy
The goal of pillar three is to establish and maintain a written privacy and information security program to protect non-public information as required by the governing authority.
Counselors Title maintains strict efforts to safeguard and control all necessary private information. Data is controlled and secure. Each of our applicable staff members use their own log-in credentials so that the continuity of data can be logged and maintained.

Pillar Four – Settlement Policies and Procedures
The goal of pillar four is to adopt standard real estate settlement policies and procedures that ensure compliance with Federal and State Consumer Financial Laws.
Counselors Title uses DOUBLETIME, which tracks and monitors each file from start to finish. Through this tracking, critical steps are monitored for conformity with industry and best practice standards.

Pillar Five – Title Production
The goal of pillar five is to adopt and maintain appropriate procedures for the production, delivery, reporting and remittance of title insurance policies designed to meet both legal and contractual obligations.
Counselors Title strives to deliver all final title policies timely. Our contract with our underwriter(s) further dictate the procedure for production, delivery, reporting and remittance of the final title policy. Prior to the issuance of the final tile policy, each file is reviewed for accuracy and to ensure that all of the terms and conditions of the title insurance commitment were satisfied.

Pillar Six – Errors and Omission and Fidelity Insurance Coverage
The goal of pillar six is to maintain appropriate levels of professional liability and fidelity coverage to ensure the financial capacity to stand behind the professional services rendered.
Counselors Title maintains all levels of insurance as required by lenders, underwriters, and state requirements that is appropriate for the scope of our business. We hold coverage for Errors and Omission, including professional liability and fidelity coverage (employee theft, forgery, and transfer fraud). In the states that require additional coverage such as a surety bond, we are also compliant.

Pillar Seven – Consumer Complaints
The goal of pillar seven is to adopt and maintain procedures for receiving and addressing consumer complaints so that any instances of poor service or non-compliance do not go undiscovered.
Counselors Title pays close attention to our professional reputation. As such, any consumer complaints are dealt with immediately and swiftly to help the consumer to the best conclusion. Our first line of correction would lie with our staff. Our staff is specifically trained to listen for communications that would indicate a consumer is not satisfied. In most cases, proper communication eliminates consumer complaints. In the event a consumer makes a complaint, they can communicate that complaint through email, our website, by phone, or in person. Though seldom are there complaints, all are resolved promptly.

If contemplating a real estate sale or purchase, or a refinancing, whether it be residential or commercial, please contact us before you sign any document in order to secure the most opportunity in your transaction.

Joseph C. Kempe
Professional Association
Attorneys and Counselors at Law
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