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ESTATE PLANNING

# Business Advisory

## RECENT CHANGES IN LAWS WARRANT REVIEW OF ESTATE PLANS

The phase in of changes that liberalized federal tax laws may have an impact on your estate plan. This may be an appropriate time to review the impact of these changes on your estate plan.

### Estate Taxes

Existing federal tax laws provide that the level at which federal estate taxes become payable increased to $2 million on January 1, 2006. It will remain at this level for 2006, 2007 and 2008. A married couple balancing the ownership of their asset value and using revocable trusts can shelter up to $4 million from estate tax for the years 2006, 2007 and 2008. The level at which estate taxes become payable for 2009 is $3,500,000 permitting a married couple to shelter up to $7 million from federal estate tax. The federal estate tax laws are repealed for 2010 so there is no federal estate tax payable no matter the asset value for only that year. Thereafter, federal estate taxes become payable at $1 million, unless the tax laws are changed.

Please consider the impact of these changes on the federal law in your estate plan. If your revocable trust includes a marital deduction trust solely for the benefit of your spouse and a family trust that is solely for the benefit of your children and not your spouse, your spouse could be disinherited as the asset value level at which federal estate taxes becomes payable increases or the federal estate taxes are repealed. These changes would result in more asset value being allocated to the family trust for the benefit of your children and less, or no assets, being allocated to the marital deduction trust for the benefit of your spouse.

As the asset value allocated to the family trust for the benefit of your children increases, exposure to Ohio estate tax increases. The Ohio estate tax payable on $2 million allocated to a family trust in which your children are beneficiaries is $115,000. The Ohio estate tax can be reduced and deferred upon your death by having your spouse as the sole beneficiary of the family trust and your children not being permitted to receive distributions from the family trust until both you and your spouse are deceased.

Exposure to Ohio estate taxes can be reduced by changing your domicile from Ohio to Florida. Our estate planning attorneys are licensed to practice law in both Ohio and Florida and can assist you with the change of domicile process, if you qualify. Additionally, your estate plan documents can be converted from Ohio to Florida estate plan documents.

### Federal Gift Taxes

The amount that you may give without adverse gift or estate tax consequences per recipient per year has increased from $11,000 to $12,000 for 2006. A married couple may give to an unlimited number of individuals $24,000 per calendar year. Generally, gifts in excess of this amount reduce the $1 million transfer tax shelter that is used to reduce gift and estate taxes. If you anticipate exposure to estate taxes, making annual gifts of $12,000 per recipient per year (or $24,000 for a married couple) should be considered.

You may make direct payments of medical expenses and tuition without adverse gift tax consequences and without impacting the $1 million transfer tax shelter or the $12,000 annual exclusion. Nonrefundable prepayment of tuition for grandchildren should be considered. Also, IRC Section 529 plans can be used to make gifts for funding a college education.

### Estate Plan Simplification

With the value of assets exempt from federal estate tax now at $2 million and increasing in future years, some of the provisions that have been included in your estate plan primarily for tax purposes may no longer be necessary. It may be more important to receive a higher basis for income tax purposes than sheltering assets from estate taxes if the value of your assets is below the level at which estate taxes become payable.

### Low Federal Income Tax Rates

The maximum federal income tax rate on dividends, and on long-term gains from the sale of securities, is at 15%. This low income tax rate provides planning opportunities. Dividend income is taxed at a lower rate than interest income or annuity payments. Business succession planning is simplified because there is less concern about dividend treatment if a family corporation purchases shares of the senior family members. While we do not provide investment advice, our estate planning attorneys can discuss with you techniques to take advantage of the new income tax laws.

## Life Insurance

The volatile financial markets have had an impact on life insurance companies. Today an investment in a life insurance policy is almost like an investment in a publicly traded stock. The performance of the insurance policy, and the condition of the insurance company, should be reviewed from time to time by a qualified insurance expert to ensure that the policy performance is satisfactory. Also, you should review your property insurance to ensure that the coverage is available and is high enough that real estate and articles owned by your trust are appropriately insured.

## Retirement Plan Death Benefits

The federal laws concerning income taxation of death benefits payable from retirement plans changed several years ago. The current rules make it more difficult to defer the payment of income taxes over a long period of time after your death if the death benefits from your retirement plans are payable to certain trusts. If your retirement plan death benefits are payable to a trust, rather than to specifically named individuals, we can review your current beneficiary designation arrangement and trust agreement and discuss the tax and non-tax implications.

## Minimizing Probate Process

In most situations, the probate process can be minimized by having your assets properly titled. Our estate planning attorneys can review the ownership of your assets and make recommendations for minimizing the probate process without adverse tax implications.

## Family Limited Partnerships and Family Limited Liability Companies

There have been some adverse developments concerning family limited partnerships and family limited liability companies. Several court decisions must be considered in planning for these entities. Also, it may be appropriate to take defensive action at this time to avoid the adverse impact of these recent decisions. We will be pleased to discuss with you action that can be taken at this time concerning the recent court decisions.

## Medicaid Planning

The rules concerning qualification for Ohio Medicaid were revised. It is now clear that a person can be a beneficiary of a trust yet still qualify for Ohio Medicaid assistance if the trust has specific language mandated by the new rules if the beneficiary would qualify but for the trust. If your estate plan provides for benefits to current or future Medicaid recipients, we can discuss the applicable rules with you.

## Trust Administration

Ohio and Florida have passed laws that modify the manner in which trusts are administered. These are the Principal and Income Act and the Prudent Investor Act. Also, the Ohio General Assembly is considering a major change in the laws that apply to Ohio trusts. If adopted, it is anticipated that the new Ohio trust laws should become effective on January 1, 2007. As it becomes clearer what action will be taken by the Ohio General Assembly, it may be appropriate to modify revocable trust agreements in anticipation of the new Ohio rules.

## Fiduciary Designations

Your estate plan documents name persons to fiduciary positions. These include your agent to make health care decisions for you if you are not capable of making them yourself, an agent to engage in financial transactions on your behalf, an executor in your will, a trustee in your trust agreement, and a guardian for your minor children. Circumstances may have changed since these persons were nominated for these fiduciary positions in your estate plan documents. We will be pleased to review your estate plan documents with you and discuss with you whether any modifications should be made concerning the persons nominated for fiduciary positions.

## Recommendations

We recommend that all of our clients consider the impact of the legal developments and changed circumstances on their estate plans. We will be pleased to discuss with you how changes may have an impact on your particular estate plan.

## Additional Information

Any of our estate planning department members, **Gary Bilchik**[1] (gbilchik@bfca.com), **Ginger Mlakar**[1,2] (gmlakar@bfca.com), **Nick Shofar** (nshofar@bfca.com), and **Jeff Weiler**[1,2,3] (jweiler@bfca.com) can be reached at (216) 363-4500. Biographical information is available at www.bfca.com.

*As a reminder, this Advisory is being sent to draw your attention to issues and is not to replace legal counseling.*



*1 Admitted to practice in Ohio and Florida.*

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