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INSIDE THIS ISSUE

- No Estate Tax Means Extra, and Different, Planning
- Ask Allie
- Announcements
- Distribution of This Newsletter

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NO ESTATE TAX MEANS EXTRA, AND DIFFERENT, PLANNING BY ANDREW HOOK AND MICHAEL GRAHAM

The good news, one might say, is that 2010 represents a one-year repeal of the federal estate tax. Moreover, the gift tax rate for 2010 has dropped to 35% (from 45%). Finally, the federal generation skipping transfer (GST) tax, which has been an additional tax that could push the tax rate on gifts to grandchildren to the 70% range, is also repealed.

Why isn't there dancing in the streets? Read on. In summary, the changes and issues described below are so dramatic and so different from prior law, that we are recommending that all clients have their wills and revocable trusts, if applicable, reviewed to determine whether these estate planning documents need to be revised in order to avoid tax loss and confusion. Why?

First, for 2010 a new system called "carry over basis" (COB) means that many who would have paid no tax will now be paying capital gains tax when they sell inherited assets, while still searching for records to show how much these parents or grandparents paid for those shares, this gold, or that home. We all expect that capital gain tax rates will increase dramatically over the coming years.

Second, the 2010 repeal was unexpected (Both Republicans and Democrats introduced legislation to stop the repeal.) and many wills and trusts should be amended to take advantage of up to \$4.3 million in "free additional basis" for inherited assets. The 2010 law provides \$1.3 million in basis adjustment for all estates and potentially another \$3 million of basis adjustment for a married person, but only with the right will or trust provisions.

Third, and perhaps most importantly, virtually every tax sensitive will or trust written since 1982, and many written before then, uses words and

formulas based upon the federal estate and GST tax systems. Those tax systems do not exist in 2010. It is a little like referring to “the property tax laws of the Soviet Union.” While logic tells us to pretend they still exist when reading those old wills and revocable trust agreements, the potential conflicts between descendants, often of a prior marriage, surviving spouses, and the Internal Revenue Service, which will surely support the most tax expensive possible reading, are sure to arise. This puts the taxes and the assets themselves at risk.

While it is possible that Congress will reconvene in 2010 and retroactively repeal the repeal (remember that they are from the government and they are here to help us), these are exactly the same people in Congress who were unable to agree on this subject in December of 2009. Those who oppose estate tax in any form are even more unlikely to negotiate once they have tasted “estate tax freedom.”

It is also worth remembering that the federal estate and GST taxes automatically reinstate themselves in 2011 with higher rates and lower exemptions than in 2009. While too complex to address in this article, if a person is domiciled in a state other than Virginia, and if that other state has a state death tax, or if a Virginian owns real property or tangible personal property, like art, in such a state, even more document revisions are required.

What should you do? We recommend two actions.

First, we recommend that all clients review their wills and trusts with their estate planning advisors to see whether new language should be included to: (i) clarify tax based formulas for 2010, and (ii) add tax formulas to take advantage of the exceptions in 2010 to COB, thus reducing future capital gains tax, and to compensate, in 2011 and thereafter, for lower estate tax exemptions (\$1 million instead of \$3.5 million).

Second, we recommend that all clients begin a concerted effort to collect and record the ownership and other tax basis information for every single asset they own. This includes residences, stocks, bonds, and other investments, art and collectibles, that is, everything. This information may save your beneficiaries substantial time and money.

The lawyers at Oast & Hook have studied the potential impact of the repeal of the federal estate tax and GST tax and are offering a free seminar to those who think they could be affected. Reserve your seat now. Make sure your estate plan is not obsolete. The two-session seminar will be held on February 22nd at the Virginia Beach Central Library, 4100 Virginia Beach Boulevard, Virginia Beach, Virginia 23452. Session one begins at 10:00 a.m., and session two begins at 4:00 p.m. If you have any questions about this seminar or to register, then please phone Jennifer Lantz at 757-399-7506.

Andrew Hook is an officer in the law firm of Oast & Hook, P.C. A Certified Elder Law Attorney, he practices in the areas of elder law, estate and trust administration, estate planning, long-term care planning, asset protection planning, special needs trusts, and personal injury settlement consulting. Michael L. Graham is the senior lawyer in The Graham Law Firm, P.C. He is Board Certified in Trust and Estate Law by the Texas Board of Legal Specialization, a Fellow of the American College of Trust and Estate Counsel, and a nationally known speaker and writer in the trust and estates field.

Ask Allie

O&H: Allie, we know that there is a lot of advice for humans who want to get a good night's sleep. Please share any tips you have to help pets sleep better.

Allie: Sure! A recent article in *Parade* magazine discusses this issue. External parasites (fleas and ticks) and bacterial or yeast infections can cause scratching and discomfort, so you should have your pet checked regularly. Allergies can also cause itching. For dust mite allergies, you should wash your pet's bed every week or so. If your pet sleeps on your bed, then you should enclose the mattress, box springs, and pillows in barrier covers, and wash linens often. Older animals can suffer from arthritis that can make it difficult for them to be comfortable and get good sleep. You should work with your veterinarian on a plan that might include pain medications, supplements, or losing weight. If your pet wants to play all night, then you may want to play with your pet more during the day or early evening hours. Hopefully, some of these tips will help both your pet and you get a good night's sleep. Time for me to play!

Announcements

The Alzheimer's Association will be offering a Family Caregiver Education Series. These programs will be held from 11:00 a.m. to 1:00 p.m. at the Bayside Library, 936 Independence Boulevard, Virginia Beach, Virginia. Brown bag lunches are welcome, and drinks will be provided. These programs are free to family caregivers. The first program, "Safety in the Home and Away," was held January 13th. The second program is entitled "Personal Care for the Person With Dementia by Family Caregivers," and it will be held on Wednesday, February 10th. Please register at least two business days before each program by phoning Carol Gurioli at 757-459-2405 or e-mailing her at carol.gurioli@alz.org.

Oast & Hook will hold its quarterly Social Workers and Administrators Breakfast on February 15th at the Virginia Beach Central Library, 4100 Virginia Beach Boulevard, Virginia Beach, Virginia 23452. The topic is "Paying for Long-term Care Without Running Out of Money." Registration begins at 9:00 a.m., and the presentation begins at 9:30 a.m. Questions will be answered from 11:00 a.m. to 11:30 a.m. The breakfast is designed to be both a networking opportunity and also an educational opportunity for area professionals who work with seniors, the disabled, and their families. Seats are limited, so please register early for this breakfast by phoning Jennie Dell at 757-967-9704.

Distribution of This Newsletter

Oast & Hook encourages you to share this newsletter with anyone who is interested in issues pertaining to the elderly, the disabled and their advocates. The information in this newsletter may be copied and distributed, without charge and without permission, but with appropriate citation to Oast & Hook, P.C. If you are interested in a free subscription to the *Oast & Hook News*, then please e-mail us at mail@oasthook.com, telephone us at 757-399-7506, or fax us at 757-397-1267.

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