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In this issue:

Attorney Advertising

MOVING ANNOUNCEMENT

We are pleased to announce that our White Plains office **will be moving later this summer to**:

1133 Westchester Avenue, Suite N208
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Watch for our moving announcement

All phone numbers and email addresses will remain the same.

ESTATE PLANNING IN A WORLD OF TURMOIL

Every presidential term brings with it promises and proposals to improve the tax code which, we are told, will finally correct all inequities. However, the result is that one thing is certain: there is no such thing as a "permanent" tax law. There have been numerous proposed iterations of the federal estate tax issued by the White House, but whatever the result, the focus in estate planning since 2013 has been less on the federal estate tax and more on state estate taxes.

For now, we have a $5,490,000 federal estate tax exclusion per individual and, if married, the unused exemption ports, or passes, to the surviving spouse so that the exclusion doubles to $10,980,000 without the need for sophisticated estate planning for federal estate tax purposes. Ironically, even if the federal estate tax is repealed or reformed in some manner, New York, Connecticut and (for 2017) New Jersey assess separate estate taxes which are <u>not</u> portable and stand separate from the federal estate tax.

The best way to describe the state estate tax exclusions is that they are "use it or lose it". Without properly drafted Wills and trusts, a married couple will only have the use of one exemption, not two, and in the case of New York, could cause an estate tax on the entire estate from the first dollar.

Since April 1, 2017, New York has a $5,250,000 exclusion (with a final increase on January 1, 2019 to match

(continued on page 2)

that year's federal estate tax exclusion). Connecticut and New Jersey have $2,000,000 exclusions, but New Jersey's state estate tax will be repealed as of January 1, 2018. The rates in these states are very similar and range from approximately 5% to approximately 16%. Keep in mind that for federal and state estate tax purposes, you can leave an unlimited amount to your spouse (assuming your spouse is a United States citizen).

New York is extra nefarious because if an estate is valued at $5,512,500 (just 5% higher than $5,250,000), the exclusion disappears and the estate tax is due from dollar one and would be $452,300 on $5,512,500 of assets. In essence, New York gives a break if you are under the exclusion, but if you are over by 5%, you are taxed on the whole amount. In the end, the "effective" rate is about 8%. Not a huge percentage, but $452,300 is still real money.

So, what is there to do about minimizing or eliminating state estate taxes?

- *Continue planning with "credit shelter trusts"*

The backbone of most estate plans involves creating a trust for the surviving spouse of an amount equal to the estate tax exclusion. The surviving spouse can live on this trust by receiving the income and have access to principal and when he or she dies, the trust will pass estate tax free to the children or other heirs. Let us assume you have a $10,000,000 New York estate. The following explanation will illustrate how the "credit shelter trust" will eliminate New York estate tax. If Husband has $5,000,000 of brokerage accounts and dies on April 30, 2017 and leaves all his assets to Wife, who also has $5,000,000 of brokerage accounts, her taxable estate on her death on April 30, 2018 will be $10,000,000 and the New York estate tax will be $1,067,600. The children will only receive approximately 89% of the estates. There will not be any federal estate tax because Husband leaves his $5,490,000 exclusion to Wife so that, when combined with her $5,490,000 exclusion, the $10,000,000 of combined assets will be below the threshold.

Instead of Husband leaving his $5,000,000 outright to Wife, if he holds the $5,000,000 in a "credit shelter trust" for Wife, upon her death on April 30, 2018, her taxable estate is $5,000,000, not $10,000,000. The reason is that the "credit shelter trust" avoids estate tax at Wife's death since she doesn't have unilateral rights over the trust and the $5,000,000 bypasses her estate and passes to children free from estate tax. Since Wife is only estate taxed on her $5,000,000 and since that is below the $5,250,000 New York threshold, the children will receive 100% of the estates.

- *Create Irrevocable Life Insurance Trusts*

There is a special estate tax rule for life insurance which provides that any life insurance owned by an Irrevocable Life Insurance Trust will pass to your family free from federal and state estate tax. Life insurance owned by you counts as an asset subject to estate tax, so consider gifting your life insurance policies to this trust if it would otherwise cause you to trigger a federal and/or state estate tax. This is also an opportunity to consult with your life insurance professional to determine if the policy is performing as anticipated and promised.

- *Gift*

You can gift $14,000 per year (or $28,000 if you are married) each year to each beneficiary. If you gift more, you will use a part of your $5,490,000 estate and gift tax exemption. Payments of medical and/or tuition expenses directly to the institution do not count against these exemptions. New York and New Jersey have no gift tax, so individuals with estates under $5,490,000 should consider gifting to get under your state estate tax threshold. Connecticut residents aren't so lucky; their $2,000,000 estate tax exemption is also their gift tax exemption. In any case, be very careful about gifting because once you gift, you cannot get it back.

Please call Michael Markhoff, Esq. if you would like to discuss.

New York Court Extends Notice of Automatic Renewal Statute to Billing Agreements

Both commercial businesses and professional practices alike frequently enter into agreements containing "evergreen" provisions, i.e. such agreements automatically renew unless the business or practice delivers a timely notice of non-renewal to the other party. More often than not, the business or practice owner forgets to calendar the expiration date of the agreement and an inadvertent renewal takes place.

Several relatively obscure provisions of the New York General Obligations Law prohibit the effectiveness of such evergreen provisions in New York unless the other party to the agreement reminds the business or practice in writing, within a period of 15 to 30 days prior to the date of expiration of the agreement, that the automatic renewal will take place shortly. These provisions of the GOL apply to real estate leases, equipment leases and a contract for "...service, maintenance or repair to or for any real or personal property." Over the years, many business owners have gone to court to have the reference to a "service contract" interpreted more akin to a "services contract." These attempts have sometimes been successful (real-time financial information services, telephone answering service, mobile MRI services, alarm system, real estate management, etc.) and other times not (consulting agreements, employee benefits plan administration, attorney retainer agreement, etc.).

A recent New York appellate court decision has extended the reach of the statute to apply to billing agreements for medical practices. The court determined that the billing and medical records of the practice constituted the "personal property" referenced in the statute, and that the services provided by the billing company qualified as a "service contract."

Owners of professional practices of all kinds in New York should take notice of this development. Owners of commercial businesses should be mindful of these GOL provisions in general as well if they discover that they have unknowingly become subject to extended terms for contracts of these types which they did not desire.

For further information, please contact Joshua S. Levine, Esq.

IRS Clarifies Substantiation of 401(k) Plan Hardship Distributions

If your 401(k) plan allows participants to take hardship distributions, it is important that you receive adequate substantiation of the hardship.

The Internal Revenue Service recently provided guidelines on the documentation needed to support a participant's hardship financial need. According to the guidelines, an employer can obtain from the participant either (a) copies of backup documentation or (b) a summary of information concerning the need if the participant is notified of the hardship rules, including that the participant must retain the backup documentation in his or her own records.

For a more detailed summary of the IRS hardship substantiation guidelines, please visit our website or call Jay Fenster, Esq. or Mark Hamilton, Esq.

GASB #45 is Being Replaced by GASB #75

For Municipalities and School Districts that provide medical, dental and/or life insurance benefits to retirees, changes in financial statement disclosure and liability development will be needed due to the replacement of GASB #45 by GASB #75.

The effective date/timing of these changes will vary, based on fiscal year end, as follows:

June 30 Year End: Effective for FYE June 30, 2018
September 30 Year End: Effective for FYE September 30, 2018
December 31 Year End: Effective for FYE December 31, 2018
May 31 Year End: Effective for FYE May 31, 2019

For employers who "pre-fund" their liability, the "Plan" has earlier (by one year) reporting requirements.

The entire unfunded liability (now called "Net OPEB Liability") must now be reported on the face of the financial statements.

OPEB Expense will result from changes in the Net OPEB Liability, plus or minus minor adjustments for certain deferral items. Program improvements are not deferred, they are recognized immediately.

For unfunded programs, the discount rate must now reflect current municipal bond rates/indices as of the end of the employer's fiscal year. Pre-funded programs may reflect actual investment returns, but only to the extent that assets are projected to satisfy future benefit payments (which then defaults to the municipal bond indices).

One actuarial funding method is permitted for all programs (Entry Age Normal). The method change will not have any impact on liabilities for current retirees, but is likely to increase liabilities for actives.

All employers must have a full valuation performed once every two years (the GASB #45 three year cycle for smaller employers has been eliminated). Abbreviated "mid-cycle" valuation work for the interim year may be performed (rather than another full valuation). However, year to year changes in the discount rate need to be reflected.

Danziger & Markhoff provides GASB #45 actuarial services to more than 140 municipalities and school districts nationwide. Please call us if we can be of assistance.

Please contact Edward A. Echeverria, Senior Actuary, if you have any questions.

In Our Firm

The partners are pleased to announce the addition of two new associates to the firm:

Christopher Miehl, Esq. and Robert Larson, Esq.

Chris joined the firm in May and will focus his practice on estate planning and estate administration. Chris develops and implements estate and tax planning strategies specifically tailored for each individual client. From preparing simple Wills that leave assets to a surviving spouse or children to drafting sophisticated trusts designed to minimize estate and generation-skipping taxes, Chris has the experience and knowledge to meet a wide range of estate planning objectives. He has also worked extensively with closely held businesses regarding the development of a succession plan as well as structuring asset protection strategies.

Robert joined the firm in June and will focus his practice on healthcare and corporate law. Robert's prior extensive experience in practicing healthcare law, as well as being a licensed practical nurse since 1992, gives him a unique view of healthcare transactions.