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DENTAL PRACTICE TRANSITIONS

We are pleased to announce that our Dental Practice Transition Group continues to grow and expand its services to the dental community. During calendar year 2017 we were involved in over forty dental practice transitions representing both sellers and buyers. In addition to such transactions, we have coordinated with our estate planning and retirement plan design groups to provide seamless representation in those practice areas as well.

The dental transition market continues to evolve. We are now seeing transactions involving single site practices for sale and multi-site practices owned by one dentist, as buyers and dental service organizations ("DSOs") acquire practices and strive to develop a footprint in specific geographic areas.

Although the dentist to dentist transactions continue to follow historical terms and provisions, the onset of more DSO transactions in New York adds another layer of regulatory scrutiny. New York State still requires that a dental practice be owned by a New York licensed dentist and the DSO business model must not run

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REVIEW YOUR OPEN PAYMENTS DATA BY MAY 15TH

The Open Payments Database of the Centers for Medicare and Medicaid Services describes financial connections, both ownership and compensation, between doctors, dentists, chiropractors, podiatrists and optometrists, on the one hand, and drug and device makers on the other, based upon information provided to CMS by such drug and device makers. Each year, providers have until May 15th to review, and if appropriate, dispute, the data submitted by such industry representatives for the prior year in order to have it corrected before its initial publication. Accordingly, May 15, 2018 is the deadline with respect to the relevant 2017 data. Such data will be made available to the public on June 30, 2018.

In order for a provider to verify his own particular information in the database, he must first register at the website, www.cms.gov/openpayments. Disputed relationships, which have not been resolved within 60 days after the commencement of the review period, will be disclosed on the website with a notation that they are being disputed. If the ultimate resolution reflects a modification to such information, the revised information will be reflected in the database.

Providers are encouraged to register and review their data, so as to avoid any negative implications patients may draw from perceived conflicts of interest, as well as lessening the possibility of scrutiny by regulators with respect to potential violations of anti-kickback and other self-referral statutes.

For more information, please contact Joshua S. Levine, Esq. of the firm.

ESTATE AND GIFT TAXES UNDER THE 2018 TAX LAW

Two issues have become evident after the passage of The Tax Cuts and Jobs Act which is effective as of January 1, 2018. First, there is no such thing as a "permanent" tax law, and second, with regards to estate and gift taxes, as it has been since 2013, the focus of tax planning will be less on the federal estate tax and more on state estate taxes and income taxes.

Contrary to most media reports, estate planning in 2018 is not a concern only for high net worth individuals. While the tax planning aspect has always been of particular concern for most people, the basic need for the use of trusts for asset protection, safeguarding family members and addressing personal issues remains paramount. Also, just to complicate the matter more, **the Act will expire on January 1, 2026 (eight years from now) and then revert to 2017 levels (adjusted for inflation)**. Based on the partisanship of Congress in the last number of years and the hourly turmoil in the White House, it would be impossible to predict how much of this Act will survive after 2026, but for now, the Act provides some excellent planning opportunities.

Estate, Gift and Generation-Skipping Tax

- For individuals dying between January 1, 2018 and December 31, 2025, the new law immediately doubles the federal estate tax exemption to $11,200,000 per spouse. If a client is married, any unused exemption at the first death ports, or passes, to the surviving spouse, so that the exclusion doubles to $22,400,000 without the need for sophisticated estate planning for federal estate tax purposes. The tax rate remains at 40% on the amount exceeding the exemption.

- The gift tax exemption from January 1, 2018 to December 31, 2025 is the same as the estate tax exemption, so that an individual can now gift up to $11,200,000 (or $22,400,000 if married) without incurring a gift tax.

- Furthermore, the generation-skipping exemption is also $11,200,000, which means that a large amount of wealth (up to $11,200,000 per taxpayer or $22,400,000 if married) can now pass down two generations (such as to grandchildren).

- All three exemptions will be indexed for inflation after 2018.

The annual gift tax exclusion has increased to $15,000 per donee (or $30,000 if married). Gifts for tuition and/or medical expenses paid directly to the institution or medical provider remain unlimited.

How Does This Affect You?

This does not mean that individuals with assets below this level should ignore estate planning, especially since the exemption and rate are set to revert on January 1, 2026 (absent Congressional action) to their 2017 levels of $5,490,000 (indexed for inflation). Instead, this may now prove to be the best opportunity to plan to transfer the largest amount of wealth in history and exemplifies the importance of taking advantage of this eight year window of opportunity.

STATE ESTATE TAX PLANNING : While the Act makes significant changes for federal purposes, 18 states (notably New York and Connecticut) still impose separate estate or inheritance taxes. Tax planning is always a focal point of estate planning, and the emphasis has shifted towards minimizing and/or avoiding state estate taxes. New York and Connecticut assess separate estate taxes which are not 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.

As of January 1, 2018, New Jersey has repealed its estate tax, but still imposes an inheritance tax on transfer to individuals who are not spouses, children, grandchildren and parents.

Since April 1, 2017, New York has had a $5,250,000 exclusion (subject to a final increase on January 1, 2019 to match that year's federal estate tax exclusion as under the pre-2018 law). Connecticut has a $2,600,000 estate tax exemption in 2018 and increases to $3,600,000 in 2019 and matches the federal exemption in 2020 as under the new 2018 law.

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 January 1, 2018 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 $11,200,000

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Using A Qualified Retirement Plan To Maximize Your "Qualified Business Income" Deduction Under the New Tax Law

In late December 2017, the Tax Cuts and Jobs Act (TCJA) was signed into law. The TCJA makes the most sweeping changes to the Internal Revenue Code in a generation. One significant change, and the subject of this Client Alert, is the addition of a potentially valuable new tax deduction for business owners of so called "pass-through" entities (Sole Proprietorships, Partnerships, Subchapter S Corporations and LLCs taxed as any of the foregoing).

Generally, the new Qualified Business Income (QBI) deduction (Internal Revenue Code Section 199A) allows business owners of pass-through entities to reduce their taxable income by up to 20% of the entity's profits. However, there is a catch: owners of ***Service Businesses**** do not benefit from this deduction if their taxable income exceeds a certain threshold. Specifically, an owner of a Service Business receives only a partial deduction if the owner's taxable income exceeds $315,000 but is less than $415,000 ($157,500 and $207,500 if single), and receives no deduction if the owner's taxable income is $415,000 ($207,500 if single) or more. Significantly, the owner of a Service Business may use contributions to a tax-qualified retirement plan to reduce his or her taxable income, thereby maximizing the owner's QBI deduction.

Consider the following example of a Sole Proprietor in a Service Business with no employees (we assume for simplicity that any non-business income will be offset by the taxpayer's deductions):

	No Plan Contribution	Plan Contribution
Sole Proprietor's Net Business Income	$415,000	$415,000
Contribution to Qualified Plan		100,000
Taxable Income Before QBI Deduction	415,000	315,000
QBI Deduction	DISALLOWED	63,000
Taxable Income	$415,000	$252,000

A $100,000 contribution to a tax-qualified plan reduces this business owner's current taxable income by $163,000. That results in a current federal and state income tax savings totaling $59,240 ($47,570 federal plus $11,670 New York State). Stated differently, under these facts, the qualified plan contribution generates an out-sized income tax shield of nearly 60% ($59,240 / $100,000).

While this example seems straightforward, the QBI deduction rules are complex and results will vary based on each taxpayer's personal circumstances. If you would like to look into increasing your annual qualified plan contributions by enhancing your existing plan or establishing a new plan, please contact Andy Roth (aroth@dmlawyers.com), Jay Fenster (jfenster@dmlawyers.com), Mark Hamilton mhamilton@dmlawyers.com) or Alex Nahoum (anahoum@dmlawyers.com) of our office (914-948-1556) to discuss your particular situation.

* Technically, a so-called "specified service trade or business" is any business involving the performance of services in the fields of health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees or owners, or that consist of investing, investment management, trading or dealing in securities.

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afoul of the fee splitting and corporate practice of dentistry prohibitions. A recent investigation of a DSO by the New York State Attorney General has resulted in a substantial fine which highlights the importance of regulatory compliance.

As counsel to either a seller or buyer involved in a dental practice transition we utilize our years of experience to address the normal and customary business terms and tax ramifications as well as providing guidance on regulatory compliance.

We also assist our clients in organizing and working with a transition team which typically includes a practice consultant, accountant, financial advisor and specialty dental lender to bring each transaction to a successful conclusion. We have developed longstanding relationships with these other professionals so that we can guide our clients through the selection process to assemble the dental practice transition team to meet the client's needs.

Once the team is established and business terms agreed upon, our transactional documents address the myriad issues including, but not limited to, purchase price allocation, purchased and excluded assets, accounts receivable, work in progress, remakes, prepaid expenses, assumption of liabilities by the buyer, office lease assignment, bank financing, closing adjustments, post-closing transition, patient announcements, and the seller's restrictive covenant.

In addition to the actual dental practice transition, we coordinate estate planning and retirement plan design and administration for our client with other members of our firm. We have found that our older clients need to revisit their estate plan with our estate planning group since the estate plan was typically prepared years ago and current facts and circumstances dictate revisions. Our younger clients who now own dental practices and have started a family need to get their first estate plan in place.

The firm's retirement plan group also works with our dental clients to establish retirement plan designs for the seller to defer tax obligations at closing and calculate their required minimum distribution upon attaining seventy and one-half years of age. We also provide recent buyers with a retirement plan design to maximize practice owner contributions while minimizing staff costs. These retirement plans provide tax savings to the practice owners and provide additional retirement income once they elect to retire and sell their dental practice. We design and administer all types of retirement plans, including 401(k), profit sharing, traditional defined benefit and cash balance plans. Most recently, our retirement plan group has devised a strategy that may allow a dentist to maximize his or her "qualified business income" deduction, under the new tax law, by making contributions to a retirement plan (see article on page 3).

Please contact Greg Tapfar at gtapfar@dmlawyers.com for further information.

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exclusion to Wife so that, when combined with her $11,200,000 exclusion, both exclusions more than cover them for federal estate tax purposes.

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 Husband and Wife are only each estate taxed on their respective $5,000,000 and since that is below the $5,250,000 New York threshold, the children will receive 100% of the estates at the second death.

Review Existing Estate Plans: The act further proves the proverb that there is nothing permanent except for change. No estate plan can be placed on a shelf and left alone until after an individual dies. FOR EXAMPLE, IF YOU ARE MARRIED AND YOUR WILL HAS A FORMULA CLAUSE WHICH LEAVES AN AMOUNT EQUAL TO THE FEDERAL EXEMPTION AMOUNT DIRECTLY TO YOUR CHILDREN (AND NOT IN TRUST FOR YOUR SPOUSE), THIS COULD CAUSE THE ENTIRE ESTATE TO BE LEFT TO YOUR CHILDREN WITH FEW OR NO ASSETS LEFT TO YOUR SPOUSE.

The Act provides some wonderful opportunities, but like a television offer, may only last for a short time. Now is the time to review your estate plan to determine whether changes need to be made and whether additional planning is needed.

Please contact Harris Markhoff, Michael Markhoff or Christopher Miehl if you would like to arrange an appointment to review your estate plan or if you would like to discuss these issues in greater detail.

To read the full version of this article please visit our website at danzigermarkhoff.com

In Our Firm

We are pleased to announce the promotion of Daniel DeGeorgia to Director of Pension Administrator Development and Senior Pension Consultant. Dan has been an integral part of the firm for the past 13 years. Check out our website danzigermarkhoff.com to see Dan's complete bio.