Estate Planning Client Advisory

Spring 2021

The Law Office of Robert H. Eardley, P.A. is pleased to provide this Estate Planning Client Advisory.

Tax Updates & Recent Developments – President Biden's Proposals: In late 2017, Congress enacted broad tax reform which served to lower personal, business and estate taxes. However, many of these reforms are now at risk as we note below.

1. Estate Tax Changes Temporarily "On Hold." Presently the estate tax exemption is $11.70 million (with a flat tax rate of 40% on any excess) but is scheduled to expire at the end of 2025 and drop to $5 million (indexed for inflation). And although President Biden and most Congressional Democrats continue to support (a) a reduction of the exemption to $3.5 million without an index for inflation, and (b) a graduated tax rate starting at 45%, it appears that these changes are not at the top of the administration's agenda. The likely explanation is that the estate tax generates very little money for the feds. In fact, the estate and gift tax revenue estimate for 2021 is only $22 billion of $3.863 trillion in total tax collections.

2. Basis Step-Up Elimination "On Hold." It appears President Biden's plan to eliminate the "step-up in basis" income tax benefit at death is also at a standstill. Currently, the basis step-up at death eliminates an heir's tax liability on all pre-death appreciation.

3. Corporate Income Taxes Front & Center. Although President Biden promoted significant personal income and estate tax increases on the campaign trail, the administration's immediate focus is its $2 trillion "infrastructure plan" (actually the "Made in America Tax Plan") paid for by increased corporate taxes. According to *Forbes,* Biden's plan would (a) increase the corporate tax rate from 21% to 28%, (b) impose a minimum rate of 21% on foreign income of U.S. companies, and (c) charge a 15% minimum rate on "low tax-paying" companies with more than $2 billion in income – in order to prevent those companies from fully benefitting from deductions and credits.

According to the conservative *National Review: "[i]ncreasing corporate taxes by 7 percentage points would kneecap the United States' ability to compete with its biggest rivals. Including state taxes, America would have a 32.34 percent statutory corporate tax rate. This would be the highest in the Organization for Economic Cooperation and Development (OECD)."*

The "infrastructure plan" is not without some headwind. According to *Forbes,* Senator Joe Manchin (D-WV) is opposed to the plan and has indicated a rate of "*25% would be more appropriate.*" And at least 17 New York House Democrats have broken ranks and threatened to oppose the plan if it does not also reinstate the state and local tax ("SALT") deduction. This defection is critical since Speaker Nancy Pelosi holds a bare majority of 218 to 211. Specifically, the current SALT deduction implemented under President Trump limits taxpayers to a maximum deduction of $10,000 for state and local income taxes on the federal return.

IRA News & Pending Legislation: Some good news – several important benefits are in the works for IRA owners:

1. 75 Likely to be New Starting Age for IRA Withdrawals. In January, House Ways and Means Committee Chairman Richard Neal (D-MA) and Ranking Member Kevin Brady (R-TX) introduced the *Securing a Strong Retirement Act of 2020.* An important aspect of the bill is that it raises the required minimum distribution ("RMD") age from 72 to 75. According to Congressman Brady: "*[o]ur legislation will make it easier for folks to save, protect Americans' retirement accounts, and give workers more peace of mind as they plan for the future.*" The expectation is that this bill will be enacted due to its broad bipartisan support.

2. New IRA Life Expectancy Table Reduces RMDs Starting Next Year. On November 6th, the IRS updated the life expectancy table used to calculate RMDs for IRAs and other retirement plans. The table reflects current longer life expectancies and thus serves to (a) allow IRA owners to withdraw smaller RMDs each year, and (b) retain more funds in the IRA for a longer period. The new table becomes effective January 1, 2022.

Example: *A 72-year-old using the pre-2022 table has a life expectancy of 25.6 years while under the new table the IRA owner has a life expectancy of 27.4 years. Therefore, an IRA owner with $1 million will have a 2021 RMD of $39,063 but next year a 72-year-old's RMD would be $36,496 – nearly a 7% reduction.*

Also, the new table does not trigger even a 10% RMD until age 93!

A Practical Tip – Keep Advance Directive in the Glovebox: An "Advance Directive" is that legal document by which a person appoints his or her health care surrogate and provides directions about life support. Nowadays it is routine practice for hospitals to request a copy of the Advance Directive upon admission. We recommend keeping a copy of your Advance Directive in the glovebox of each vehicle. For a copy or PDF of your Advance Directive, please contact Julie Yamin at (239) 216-1819 or julie@swflorida-law.com

Snowbird State Tax Update: Many states have massive debt issues yet continue policies which exacerbate financial woes. As emphasized in prior *Estate Planning Client Advisories,* Florida residents with a seasonal home in another state must vigilantly monitor their Florida tax residency status. The following is a brief survey of some noteworthy tax issues unfolding across the country.

1. Hawaii Looks to Raise Tax Rate to 16%. In March, the Hawaii Senate voted to raise the top personal income tax rate from 11% to 16% starting at only $200,000. If enacted, this would leapfrog Hawaii past California's 13.3% rate. Also, the bill would increase both the capital gains and corporate tax rates by 50%. These changes do not bode well for Hawaiians, since the state's unemployment rate is already 10.3% and Hawaii is in 3rd place in total outward resident migration – exceeded only by New York and Illinois.

2. New York Set to Raise Taxes. On April 6th, Governor Cuomo and the state legislature reached an agreement to raise the personal income tax rate from 8.82% to 10.9%, on top of New York City's tax rate of 3.88%. According to *The Wall Street Journal,* approximately $2.1 billion of next fiscal year's spending is allocated for undocumented immigrants.

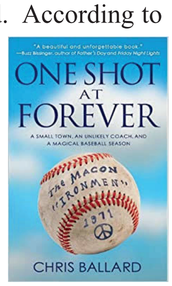
3. Maryland Enacts Country's First Digital Advertising Tax. Earlier this year, Maryland became the first state to impose an additional tax on earnings derived from digital advertising. The tax applies to businesses with more than $1 million from digital advertising revenues from Maryland – such as web-based banners. The top tax rate is 10%. According to KPMG's website, each applicable business: *"is required to file an annual declaration of estimated tax and make quarterly estimated tax payments."*

A "Twofer" – Client Spotlight & Book Recommendation: Doug Tomlinson grew up in the rural community of Macon, Illinois and had potential for a professional baseball career.

Despite his hard scrabble upbringing, Doug finished dental school and then ran a successful dental practice for 30 years in Kewanee, Illinois. Doug also married his college sweetheart, Bonnie (who was the city's mayor for a season) and raised 2 children.

At age 37, Doug received the tragic news that he had a rare form of leukemia with less than a 5% survival rate. Thankfully, after 3 years of specialized treatment and many prayers, Doug's cancer went into remission. Not a man to sit still, after "retiring" to Arizona, Doug joined the Navy at age 57 and served 4½ months as a Navy dental officer onboard the *Mercy* hospital ship. During that time, Doug and his team served 3rd world countries and treated more than 6,000 patients – none of whom had ever seen a dentist.

Doug suggested I read several books, including *One Shot at Forever* by *Sports Illustrated* writer Chris Ballard. According to Amazon:



In 1971, a small-town high school baseball team from rural Illinois playing with hand-me-down uniforms and peace signs on their hats defied convention and the odds. Led by an English teacher with no coaching experience, the Macon Ironmen emerged from a field of 370 teams to become the smallest school [in a day before high schools were placed in separate championship divisions based upon size] in modern Illinois history to make the state final…Chris Ballard tells the story…of coach Lynn Sweet…[who] reluctantly took over a rag-tag team, intent on teaching the boys as much about life as baseball. Inspired by Sweet's unconventional methods…the undersized, undermanned Macon Ironmen embarked on an improbable postseason run that…buoyed an entire town.

As I read the book I kept coming across a star senior from the 1970 team named "Doug Tomlinson" – I assumed it was just a coincidence but emailed Doug to check. Sure enough, Doug played for the Macon Ironmen. Interestingly, the 1971 team's most prominent alumnus is Atlanta Braves Manager Brian Snitker!

2021 Naples Daily News Article: The Sunday March 7th edition of the *Naples Daily News* featured an article Robert authored entitled *The Second Marriage Estate Planning Dilemma – Spousal Inheritance Right for the Surviving Spouse.* The article explains the legal rights a surviving spouse has to a significant portion of the deceased spouse's estate and discusses estate planning options to address those rights. For a complimentary print copy or PDF, please contact Julie Yamin at (239) 216-1819 or julie@swflorida-law.com.

Another Cautionary Tale – Discussing "Plans" With Family Members: Due to the impact of estate and retirement plans on family members, we regularly advise clients to keep their heirs "in the loop" regarding estate planning, finances and long-term objectives. This advice is given to position the heirs for an orderly transition when diminished capacity or death arrives. However, before discussing the estate plan, careful consideration should be given to the effect that information may have.

Case in Point: In late November, 32 year-old Joel Guy Jr. was convicted of murdering his parents, Joel Sr. and Lisa, of Knoxville. Mr. and Mrs. Guy financially supported Joel, who was purportedly studying to become a plastic surgeon. Joel learned his parents were planning to retire and trim their budget by no longer paying his bills. He subsequently stabbed his parents to death in a botched attempted to collect on their life insurance.

Words of Wisdom: "*For God so loved the world that he gave his only Son, that whoever believes in him should not perish but have eternal life. For God did not send his Son into the world to condemn the world, but in order that the world might be saved through him. Whoever believes in him is not condemned, but whoever does not believe is condemned already, because he has not believed in the name of the only Son of God. And this is the judgment: the light has come into the world, and people loved the darkness rather than the light because their works were evil. For everyone who does wicked things hates the light and does not come to the light, lest his works should be exposed. But whoever does what is true comes to the light, so that it may be clearly seen that his works have been carried out in God*." John 3:16-21.

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