

LAWYER FOR *Life*

KEEPING YOUR FAMILY HEALTHY, WEALTHY & WISE

PLANNING TO LIVE THROUGH THE 2010 ESTATE TAX REPEAL? YOU CAN STILL SAVE ON TAXES



IN THIS ISSUE:

- Planning to Live Through the 2010 Estate Tax Repeal? You Can Still Save on TaxesPage 1
- Life Insurance: A Key Part of any Estate Plan.....Page 2
- Second Time Around: Estate Planning and Remarriage
-Page 3

It is common knowledge that 2010 is a great year for heirs. If you didn't know about the 2010 estate tax repeal, all the media coverage of George Steinbrenner's recent death (and his heirs' lucky tax break) probably alerted you. Everybody is saying that 2010 is a good year to die... But what about those who plan to live through 2010? The good news is that even hale and hearty individuals can save on their taxes in 2010—it just takes a little more planning.

While the estate tax has been getting so much attention this year the gift tax has barely gotten a second glance. This is a pretty big oversight considering that the gift tax (a tax on money or property that you give to another individual while you are still living) which has traditionally served to discourage people from giving away their fortunes in order to avoid estate taxes, currently stands at 35 percent—the lowest rate since the 1930s.

This 35 percent tax only applies to gifts above the gift tax exclusion amount. In 2010 an individual could give up to \$13,000 per year (or up to \$26,000 if you give as a married couple) without incurring gift tax at all, with any amount over that taxed at the record low 35

percent. But this amazing rate won't last forever; the gift tax is expected to rise to 55 percent next year.

If you're a wealthy parent or grandparent trying to decrease your taxable estate through gift-giving, there is yet another reason to do it before 2010 is over. Although the official line may be that the recession is over, the values of many assets are still depressed; by doing some giving right now there's a way you can make this depressed state work for both you and your heirs. There's a good chance that stocks, real estate, and shares in private or family businesses will all start to increase in value soon. Giving some of these assets away now would allow your heirs to reap the benefit of that appreciation, while taking them out of your taxable estate.

It seems as if 2010 has provided us with an extremely lucky confluence of events; but as always when you're dealing with large sums of money (not to mention dealing with the IRS), you'll want to be careful. We do NOT recommend that you simply write a check to your grandkids for \$13,000+. Contact our office to find out how you can safely reduce your taxable estate while giving security to the people you love.



1615 Bonanza Street, Suite 324
Walnut Creek, California 94596
Ph: 925-943-2740
www.kirstenesq.com kirsten@kirstenesq.com

LIFE INSURANCE: A KEY PART OF ANY ESTATE PLAN



A life insurance policy can be an important part of any estate plan. Such a policy, if structured by your estate planning attorney in a particular way in conjunction with other assets of your estate, can help lower your estate tax. In addition, a life insurance policy can serve as a tool to help in the administration of your estate and help maximize your beneficiaries' potential inheritances.

Most people consider life insurance to amount to a simple lump sum to be paid out to their beneficiaries upon death. But it can be much more than that. Life insurance can be set up to help your beneficiaries avoid excess taxes, pay outstanding bills, protect assets, provide money for taxes, court fees, legal disputes and your medical bills, as well as other needs.

Federal estate taxes are likely to be put back into place by 2011 after a year when they had expired. If you are thinking of using insurance to avoid estate taxes, note that life insurance benefits are income tax-free. However, the value of the policy is calculated as part of your overall estate, so while your beneficiaries won't have to pay income taxes on the payout they receive from your policy, the overall estate benefits would be reduced by the portion of the estate tax derived from the value of the policy.

There is a way around this, however. If the life insurance policy is owned by a trust rather than to you, the proceeds are not included in your taxable estate and

pass free of federal estate taxes. This is done by setting up an Irrevocable Life Insurance Trust (ILIT). The trust itself may buy the insurance policy to be paid out to your estate. Alternatively, you can transfer an existing policy to the trust, but in that case timing is important. It must be done three years before your death.

A life insurance policy may also allow you to plan the distribution of your estate's assets with more control than might be the case under what are known as intestacy laws (pertaining to those who die without a will), retirement benefit laws or even complications that may be present in your current will.

For example, if you are ordered by a court to assign a portion of your retirement benefits to an ex-spouse, buying a life insurance policy may be helpful in providing for other beneficiaries such as a new spouse, children or other family members. Sometimes, people may want to provide for certain beneficiaries in their will while providing for others separately – and with more confidentiality – through an insurance policy or other financial instrument.

Life insurance proceeds are "liquid assets" and so can also provide practical benefits to your executor and your beneficiaries after your death. The cash from the insurance company can help your executor avoid obtaining a loan for taxes and court fees.

With cash available from life insurance, non-liquid assets, such as real estate holdings, retirement plans or poorly performing investments, such as stocks or bonds, may not have to be liquidated, since the cash from the insurance policy can be used to pay mortgages, car payments, funeral expenses, utility bills, travel expenses for family members or other costs that come up during the probating of the will or due to disputes over property. The insurance money can also be used to pay your income taxes for the last year of your life.

A life insurance policy may be useful to you whether or not you are wealthy. In some cases, the policy may be a person's only asset. In any case, you should not only consider having a policy but you should also consider transferring it to a trust. Bottom line: it may make life easier for your beneficiaries after you are gone.



SECOND TIME AROUND: ESTATE PLANNING AND REMARRIAGE



Estate planning can be especially tricky for those in second marriages.

Friction often occurs when children from a first marriage feel slighted after a remarriage. They may feel they aren't getting what they think they are entitled to get. Or

the new spouse may feel that he or she is being shorted. The resulting tension may actually affect the stability of the new marriage.

Fortunately, a proper estate plan can minimize such problems. One area of concern is estate taxes. Your estate plan should account for how estate and gift taxes will be paid and how your beneficiaries will share the tax burden. If you neglect this issue, it could result in inequities and unintended consequences for your surviving spouse, your children and the children of the surviving spouse.

One thing that should not be neglected is to remove your ex-spouse from your estate plan. You may need to terminate a will, power of attorney or trusts from a prior

marriage. Then, a new will, trusts and powers of attorney should be executed for the second marriage.

Many states require a marital share for a surviving spouse. A pre-nuptial agreement may serve to waive that right to protect children's estate rights. You must also consider any outstanding support obligations to your prior spouse or children from that marriage. These obligations, including creating and funding trusts, designating beneficiaries, obtaining required insurance and making any other required provisions for previous spouses and children, must be met. Neglecting these issues can invite family discord and litigation after your death.

Despite the best planning, conflicts are likely to arise when blended families are involved. For this reason, it is usually preferable for each spouse to have his or her own attorney. In the event that one attorney is going to represent both spouses, note that this attorney will likely take proactive steps to provide written disclosure of any conflicts to avoid surprises.





1615 Bonanza Street, Suite 324
Walnut Creek, California 94596
Ph: 925-943-2740
www.kirstenesq.com kirsten@kirstenesq.com



LETTER

Dear Clients and Other Friends:

The biggest news in this newsletter is not really news at all. We have seen it coming for almost ten years, although a lot of us did not believe it would actually happen. I am talking about the return of the estate tax, after a one-year temporary repeal, to 2002 levels. Starting on January 1, 2011, the estate tax exemption amount for each of us will go back down to \$1 million. This low exemption amount means that many people, including many of you reading this, who don't think of themselves as rich, will have an estate tax problem starting next year.

If you are a single person or a married couple who has no estate plan and a net worth over \$1million, or a married couple with a basic estate plan and a net

worth over \$2 million, I am talking about you. There are ways to address this problem that don't require you to give your assets away. There are even ways to solve the problem temporarily, on the assumption that Congress will act to help you out on a more permanent basis. We are here to help you. If this is something that you are worried about please give us a call.

Kirsten Howe