Estate Planning Client Advisory

Winter 2022-2023

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

Tax Updates & Recent Developments: In late 2017, Congress enacted legislation which affected the federal estate tax system and other taxes. Most significantly, the 2017 Tax Act temporarily increased each of the estate, gift and GST tax exemptions to a $10 million base subject to annual adjustments for inflation. However, the increased exemptions will expire at the end of 2025 and revert to the prior $5 million base (adjusted for inflation) unless Congress enacts interim legislation.

1. President Biden's Gift and Estate Tax Proposals: As many know from past *Advisories*, President Biden supports a significant overhaul of the gift and estate tax system which, most notably, would (a) reduce the estate tax exemption to $3.5 million without an index for inflation, (b) decrease the lifetime gift tax exemption to $1 million, and (c) increase the starting tax rate to 45% from the current flat 40% rate. However, with the recent change in control of the House to Republicans, these proposals seemingly are tabled for the next 2 years.

2. 2023 Exemptions Increased to $12.92 Million: In light of record inflation, base exemptions will see their largest annual adjustments ever. Specifically, for gifts and deaths occurring in 2023, the estate, gift and GST tax exemptions are increased from $12.06 to $12.92 million apiece – an $860,000 or 7.1% hike. Practically speaking, this means that a married couple may exclude almost $26 million before triggering an estate tax.

3. Annual Tax-Free Gifting Amount Increased to $17,000: The base tax-free gifting amount of $10,000 is adjusted periodically in increments of $1,000. In 2023, the tax-free amount will be adjusted from $16,000 to $17,000 to reflect inflation. Also, very importantly, gifts are not taxable income to the beneficiary.

4. Supreme Court Leaves SALT Deduction Intact – Another Reason to Move South: The 2017 Tax Act limited the state and local tax ("SALT") deduction to $10,000. Previously, taxes paid to northern states (such as for income and property taxes) were deductible on the taxpayer's federal 1040 (subject to phase-out limits). The practical effect of the pre-2017 SALT law was to subsidize northern taxpayers and high tax states with federal dollars. According to a recent *Forbes.com* article: *"A $10,000 cap might not make a big difference in states with low or no income taxes and low property tax rates. However, it stings individuals in high-tax states like New York, New Jersey, California and Connecticut…the average New York taxpayer loses out on more than $12,000 of SALT deductions each year."*

In response to the $10,000 SALT deduction limit, Connecticut, Maryland, New Jersey and New York sued the federal government asserting that the $10,000 limit was unconstitutional. However, a number of federal courts dismissed the case, and then, in a victory for state taxpayer parity, the U.S. Supreme Court recently declined to hear the case – effectively codifying the SALT deduction limit.

The most practical effect of SALT's judicial approval is that northern state residents will remain as motivated as ever to relocate to Florida and other low tax states.

Caution – Elder Abuse, Property Theft & A New Safeguard: According to a recent article in *The Wall Street Journal* entitled *"Elder Abuse Spreads, Stoked By The Pandemic,"* author Clare Ansberry reported that elder-fraud increased by a shocking 55% in just one year. And, perhaps surprisingly, Florida now ranks 2nd in the country for elder abuse – with seniors scammed out of $84 million in 2020 alone.

Among other observations, Ms. Ansberry noted that the COVID pandemic has made *"older adults…more vulnerable to abuse,"* enabled by the proliferation of new virtual transactions now available as COVID mitigation measures. In particular, Ansberry recounted the case of 86 year-old retired librarian Shirley Gibson of Miami. Last year Ms. Gibson visited the Miami-Dade County Property Appraiser's Office to pay the tax on Coconut Grove property in her family since 1904. However, she was informed that a New York company had purchased the property for $230,000 via a Deed with her purported signature.

Miami police promptly investigated and 3 suspects were arrested and charged with money laundering, grand theft, organized scheme to defraud and theft from a person 65 years or older.

According to the *Miami Times*, Miami Assistant Police Chief Armando Aguilar Jr. noted that: *"the pandemic has prompted real estate transactions to go virtual, making it easier for fraudsters to pose as someone else and pull off these types of schemes."*

To address property scams and theft, the Collier County Clerk of Courts now offers a free email alert service to help property owners monitor for fraudulent filings, such as a bogus deed or mortgage. To utilize this service, visit *www.CollierClerk.com* or contact the County Clerk's office at (239) 252-7242 for assistance. The Lee County Clerk of Courts offers a similar service available at *www.LeeClerk.org.*

State & Local Updates: Many states have massive debt and social issues yet continue policies which exacerbate these problems. As emphasized in prior *Advisories*, Florida residents with a seasonal home in a northern state must vigilantly monitor their Florida tax residency status.

The following is a brief survey of noteworthy issues unfolding across the country:

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1. Arizona Constitution Amended to Require Super-Majority for Tax Increases: In November, Arizonans approved Proposition 132 which increased from 50% to 60% the voter approval percentage needed to raise taxes via a voter referendum. Proponents argued that the 60% threshold would ensure broad voter consensus and make it difficult for Arizona to raise taxes as a first resort to fiscal challenges. Opponents posited that the supermajority requirement would threaten democracy.

2. California's "Stealth" Tax Increase: In late September, Governor Gavin Newsom signed into law a tax increase to fund an expansion of the state's family leave benefit. The law removed the $145,600 cap on the state's 1.1% payroll tax and authorized the Employment Development Department to raise the rate to 1.5%. This means that not only will California's top earners be taxed at 14.4% but those earning only $61,000 will be pushed into the 10.4% bracket. One article observed: *"[s]o California's upper-middle class will pay more than millionaires in almost every state…"*

3. California Voters Reject 1.75% Tax Increase for EVs: Despite Lyft's expenditure of $45 million in advertising, California voters rejected Proposition 30 which would have increased the top tax rate by 1.75% to subsidize electric vehicles and charging stations. Democratic division over the Proposition led to its demise, with Governor Newsom and the California Teachers Association opposing it.

4. Chicago Crime & Corporate Departures: Crime in Chicago is up 38% over 2021 and its police force has been reduced by nearly 13% since 2019. In light of this, McDonald's Corporation (headquartered in Chicago and with 400 restaurants in the city) CEO, Chris Kempczinski, complained: *[t]here is a general sense out there that our city is in crisis…[w]e have violent crime that is happening in our restaurants… we're having drug overdoses that are happening in our restaurants…[i]t has become increasingly difficult to operate a global business out of the city of Chicago…"*

Also, corporate departures from Chicago announced this year include: (1) Tyson Foods to Arkansas, (2) Boeing to Virginia, (3) Caterpillar to Dallas, and (4) hedge fund giant Citadel with 1,000 employees to Miami. Citadel CEO, Ken Griffin – Illinois' wealthiest person with an estimated $25 billion net worth and Chicago's leading philanthropist – explained: *"I've had multiple colleagues mugged at gunpoint. I've had a colleague stabbed on the way to work. Countless issues of burglary. I mean, that's a really difficult backdrop with which to draw talent to your city from."*

5. Illinois's Gas Tax "Notice" Collides with Free Speech: In May, Democratic legislators delayed a 2.2 cent per gallon tax increase from July to December. Legislation required gas stations to post *"clearly visible"* signs stating "*The State of Illinois has suspended the inflation adjustment to the motor fuel tax through December 31, 2022"* or face a $500 per day fine. According to *The Wall Street Journal* editorial board, these mandatory signs are a *"legally questionable gambit to conscript business into helping them [Democrats] get re-elected."* Further, the Illinois Fuel & Retail Association sued the state in Federal Court arguing that the sign provision is an unconstitutional violation of free speech.

6. Illinois Public Schools Failing: Only 36% of Illinois 3rd graders read at grade level, and this number drops to 27% for Hispanic students and 22% for black students. Sadly, in Decatur, Rockford and Peoria, only 2%, 7% and 8%, respectively, of black 3rd graders read at grade level – notwithstanding the fact that the Illinois State Board of Education rated 99.7% of Decatur teachers as either "excellent" or "proficient." In a recent op-ed article, *The Wall Street Journal* editorial board asked: *"[w]hy shouldn't every single adult presiding over the Decatur schools be fired?"*

7. Missouri Cuts Income Taxes: In October, the Missouri legislature approved a cut in the state's top income tax rate from 5.3% to 4.95%, with a further decrease to 4.5% by 2027 if revenue targets are met.

Avoiding Probate – Don't Forget the Basics: Probate is the court-supervised process required to transfer a deceased person's property to heirs. It is usually desirable to avoid probate because it can be expensive and time-consuming. Assets typically subject to probate are those held in one's sole name.

Fortunately, viable options exist to avoid probate. The 3 main options are: (1) joint ownership, (2) asset beneficiary designations (for IRAs, life insurance and similar assets), and (3) the Revocable Trust. Although all 3 options avoid probate, each has important pros and cons that merit consideration.

For an update on probate issues and probate avoidance options, please let us know and we would be glad to send complimentary information.

Law Firm Relocates to Larger Offices: In an effort to accommodate future client needs and potential hires, we are pleased to announce that the firm recently relocated to a larger office space. Fortunately, the new office is in the same building on the 1st floor. The new address is 1415 Panther Lane, Suite 108, Naples, Florida 34109.

Words of Eternity: *Then Jesus, indignant again, came to the tomb. It was a cave, and a stone lay against it. Jesus said, "Take away the stone." Martha, the sister of the dead man, said to him, "Lord, by this time he stinks, for he has been dead four days." Jesus said to her, "Did I not tell you that if you believed you would see the glory of God?" So they took away the stone. And Jesus lifted up his eyes and said, "Father, I thank you that you have heard me. I knew that you always hear me, but I said this on account of the people standing around, that they may believe that you sent me." When he had said these things, he cried out with a loud voice, "Lazarus, come out." The man who had died came out, his hands and feet bound with linen strips, and his face wrapped with a cloth. Jesus said to them, "Unbind him, and let him go."…. Now Jesus did many other signs in the presence of the disciples, which are not written in this book; but these are written so that you may believe that Jesus is the Christ, the Son of God, and that by believing you may have life in his name.* John 11:38-44, 20:30-31.

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