

## ESTATE PLANNING CLIENT ADVISORY

### Spring-Summer 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. **2023 Exemptions Increased to \$12.92 Million.** In light of record inflation, the base exemptions saw their largest annual adjustments ever. Specifically, for gifts and deaths occurring in 2023, the estate, gift and GST tax exemptions are \$12.92 million apiece – an \$860,000 or 7.1% hike from 2022. Practically speaking, this means that a married couple may exclude almost \$26 million before triggering estate tax.

2. **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. On January 1st, the tax-free amount was adjusted from \$16,000 to \$17,000 to reflect inflation. Also, very importantly, gifts are not taxable income to the beneficiary.

3. **IRA Legislative Updates.** In late December, Congress passed its \$1.7 trillion omnibus spending bill which included the *SECURE 2.0 Act of 2022*. This legislation supplemented SECURE 2.0 benefits from 2019 and also enhanced PATH Tax Act benefits.

First and most importantly, the legislation raised the RMD beginning age from 72 to 73 starting this year. The legislation also bumps the RMD age to 75 in 2033.

Second, in 2015 Congress enacted the PATH Act which made permanent the rule allowing a taxpayer to satisfy the annual RMD by transferring up to \$100,000 (\$200,000 for a qualified married couple) directly from an IRA to charity (called a “qualified charitable distribution” or “QCD”) without reporting this as income on the tax return. A QCD saves overall income taxes as compared to withdrawing IRA funds and then giving the funds to charity. This savings results from avoiding deduction limits on charitable donations and penalties that arise if IRA income is included on the 1040 – such as increased Medicare Part B and D premiums.

Importantly, beginning next year the \$100,000 QCD limit will be indexed annually for inflation.

**The Durable General Power of Attorney – Have One and Keep It Current:** A “Durable General Power of Attorney” – sometimes simply referred to as a “Power of Attorney” or “POA” – may be the most important component of an estate plan. The POA is a document by which one person authorizes another person (the “Agent”) to act on his behalf. The POA typically is used by the Agent to manage a client’s daily personal affairs – such as bill payment – if the client experiences diminished mental capacity.

Perhaps surprisingly, the law does not automatically grant a spouse or adult child authority to handle finances and property. Rather, if there is no POA document, the family must institute a court guardianship to have the loved one declared incompetent and a guardian appointed.

**A Real-Life Example:** Several years ago, a wealthy older widower (with no children) with advanced dementia had a POA to his sister reflecting her prior married name. The sister visited the client’s local bank to access his safe deposit box in an effort to secure his personal effects. For weeks the bank refused to honor the POA. We were forced to escalate the matter to the bank’s general counsel and finally received approval to use the POA.

**PLANNING POINTER:** If your POA (1) is not current, (2) is too abbreviated (as is often the case with online forms), or (3) contains an incorrect name – such as a daughter’s prior maiden name, the “receiving” party – such as a bank – may not honor it.

**Nebraska Supreme Court Rejects Florida Tax Residency Claim – Be Cautious!** Duane and Phyllis Acklie owned trucking giant Crete Carrier Corporation based in Lincoln, Nebraska. The Acklies asserted that they became Florida tax residents in 2008 and were subsequently audited by the Nebraska Department of Revenue for tax years 2010 to 2014. Ultimately the case went to the state Supreme Court which decided against the Acklies and assessed back taxes, interest and penalties for all 5 years. Interestingly, the Acklies had (1) obtained Florida driver’s licenses, (2) Florida registered vehicles, (3) registered to vote in Florida, (4) filed for homestead, and (5) church and country club memberships in Florida.



The question before the court was whether, under Nebraska tax law, the Acklies had “abandoned” Nebraska residency. The court opined that evidence supporting a Florida residency was “outweighed by substantial evidence of conduct...inconsistent with an intention to abandon Nebraska as their domicile.” Damaging facts included (1) significant contributions to Nebraska political campaigns, (2) serving as directors of Nebraska entities, and (3) using Omaha as their primary base for travel.

The Acklie case is a good reminder to snowbirds to be vigilant to ensure a secure Florida tax residency.

**2023 Naples Daily News Article:** The Sunday March 12th edition of the *Naples Daily News* featured an article Robert authored entitled *Establishing Florida Domicile for the Seasonal Resident*. The article offers advice and our recommended best practices to secure one’s Florida tax residency. For a complimentary print copy or PDF, or for a copy of our Collier or Lee County residency checklists, please contact Julie Yamin at (239) 216-1819 or [julie@swflorida-law.com](mailto:julie@swflorida-law.com).

**Attention Veterans – Another Benefit for Florida Residents:** For Florida veterans, the state DMV offers an easy way to provide proof of military service and obtain veteran benefits at participating vendors via a specific designation on the driver’s license. The designation is the word VETERAN in capital blue letters on the right front side. To obtain the “VETERAN” designation, simply visit a county driver’s license office with a copy of the DD-214 discharge form. There is no charge for the license update.

I (Robert) recently flew Allegiant out of Punta Gorda – since it offers a direct flight into my hometown of Lexington, Kentucky – and the agent advised me that, as a veteran, the airline offers (1) 2 free checked bags, (2) 1 free carry-on bag, and (3) priority boarding, all by simply showing my Florida license with the VETERAN designation.

**Passing Airline Miles & Credit Card Points to Your Heirs – Be Vigilant:** Airlines and credit cards are quick to celebrate all the “benefits” of their cards and loyalty programs, but in the contract fine print you will find that it may be difficult, if not impossible, to transfer miles and points at death to loved ones.

The following surveys some of the most prominent airline and credit card rewards programs:



- **American Airlines.** American allows miles to be transferred upon submission of a death certificate and affidavit with relevant information.
- **American Express.** AMEX allows points to be transferred to a new AMEX account or redeemed by the estate or an “eligible party.” The deceased’s card must not be cancelled since points are forfeited upon cancellation.
- **Capital One and Chase.** At death, miles are not forfeited but instead may be converted into statement credit (not a refund). Unfortunately, Capital One’s statement credit is only ½ cent per mile instead of the normal 2 cents during the owner’s lifetime. Chase’s statement credit is a bit better at 1 cent per mile.
- **Delta.** Unfortunately, under Delta’s *SkyMiles* program, all miles are forfeited upon the original owner’s death unless a court order requires a transfer to a beneficiary.
- **United.** United’s *MileagePlus* plan allows miles to be transferred in the company’s “sole discretion.”

Best practices for those who carry cards or programs with high mileage or point balances are:

- Ensure family has account information, user IDs and passwords to all loyalty accounts.
- Refuse to pay a transfer fee.
- Do not let the account expire due to inactivity.
- Do not take “no” for the final answer – a firm telephone call with a benefits supervisor may yield results.
- Consider transferring miles or converting points while still alive.

*Fox Business* recommends using information found at *The Points Guy* at [www.thepointsguy.com](http://www.thepointsguy.com) for specifics and helpful tips.

**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.

1. **Blue State Economic Woes Continue.** Although Florida and Texas account for only 15% of the US population, these 2 states made up 70% of overall US population growth in 2021. Interestingly, a significant portion of Florida and Texas’s growth resulted from migration from high tax states. For example, California lost 345,000 residents, New York lost 300,000 residents and Illinois lost over 140,000 residents. Florida came in 1st place with 318,000 new residents due to state migration, and Texas a close 2nd with about 230,000 new residents from other states.

A recent op-ed piece in *The Wall Street Journal* entitled “The Blue State Exodus Continues” noted that: “[t]he contrast between California and Florida is particularly striking and instructive. Gov. Gavin Newsome this summer ran ads in Florida urging residents ‘to join us in California, where we still believe in freedom.’ While women in California are free to have an abortion on demand, they can’t choose where their children go to school. Restaurants aren’t even free to hand out plastic straws.”

Moreover, employment in a number of blue states still lags pre-COVID levels, with California, Illinois and New York (-2.4%) still down. On the other hand, employment in many red states is heartily up. For example, Florida and Texas employment numbers are up 5.5% and 5.6%, respectively.

2. **California Faces Budget Crisis.** California legislators recently sent \$10 billion in direct payments to voters. Shortly thereafter, the state’s budget office made headlines by announcing an anticipated \$25 billion budget shortfall. The anticipated shortfall does not account for a potential US recession, which could leave California with up to a \$75 billion budget deficit.

3. **New York City’s Wealthy Depart.** Recently a report from New York City’s Independent Budget Office reflected that the number of taxpayers earning between \$1 to \$5 million decreased by 11% from the prior year. A recent *Wall Street Journal* article places the blame at the feet of Mayor Eric Adams, high taxes and COVID lockdowns. Also, according to IRS data, in a single year New York County lost about \$14.5 billion in adjusted gross income due to out-of-state taxpayer migration.

Adding to New York’s challenges, in May the legislature enacted a ban on the use of fossil fuels in all new buildings. Specifically, fossil fuels are banned in small structures starting in 2026 and in larger structures in 2029. This ban makes New Yorkers seemingly more dependent on an unreliable electric grid with rising prices, but without any significant climatological benefit compared with CO2 behemoths like China and India.

4. **Washington State Supreme Court Judicially Imposes Tax.** Last year, a county court found that Washington’s 2021 capital gains tax violated the state Constitution’s “uniformity requirement” by taxing long-term capital gains in excess of \$250,000 but not taxing lesser amounts. This decision was consistent with almost a century of precedent. However, in a 7-2 decision earlier this year, Washington’s Supreme Court overturned the lower court, ruling that the new 7% capital gains tax was not an income or property tax, but rather an “excise” tax not subject to constitutional limits. As *The Wall Street Journal* noted: “Washington State now has a capital gains tax imposed by judges...”

5. **Teachers’ Union Pushes for State Wealth Taxes.** Earlier this year, a multi-state alliance of legislators sponsored by “Fund Our Future” – an advocacy group affiliated with the American Federation of Teachers – met to unveil its tax proposals. States represented included California, Connecticut, Illinois, Maryland and New York, among others. As Washington State Senator Noel Frame stated: “[w]e are here today to put billionaires and millionaires on notice...they will pay what they owe.” For example, an Illinois legislator proposed to tax unrealized capital gains. And a New York legislator proposed increasing the state’s top capital gains rate by 7.5% for those earning more than \$1.1 million.

**Words of Eternity:** Jesus said to them, “I am the bread of life; he who comes to Me will not hunger, and he who believes in Me will never thirst. But I said to you that you have seen Me, and yet do not believe. All that the Father gives Me will come to Me, and the one who comes to Me I will certainly not cast out. For I have come down from heaven, not to do My own will, but the will of Him who sent Me. This is the will of Him who sent Me, that of all that He has given Me I lose nothing, but raise it up on the last day. For this is the will of My Father, that everyone who beholds the Son and believes in Him will have eternal life, and I Myself will raise him up on the last day.” John 6:35-40.

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