

ESTATE PLANNING CLIENT ADVISORY

Winter 2023-2024

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

Tax Updates & Recent Developments: In 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 expire at the end of 2025 and revert to the prior \$5 million base (adjusted for inflation).



1. 2024 Exemptions Increased to \$13.61 Million. On January 1, the base estate, gift and GST exemptions will adjust upward to \$13.61 million apiece – a \$690,000 or 5.3% hike from 2023. Practically speaking, this means that a married couple may exclude more than \$27 million before triggering estate tax.

PLANNING OPPORTUNITY. *Individuals and married couples with a net worth in excess of roughly \$10 million and \$20 million, respectively, should consider making significant, tax-free gifts to their heirs before the exemptions expire in 2026.*

2. 2024 Annual Tax-Free Gifting Amount Increased to \$18,000. The base tax-free gifting amount of \$10,000 is adjusted periodically in increments of \$1,000 to reflect inflation. On January 1, the tax-free amount will adjust from \$17,000 to \$18,000. Very importantly, gifts are not taxable income to the beneficiary.

3. Reminder – President Biden’s Gift & Estate Tax Proposals. As many know, President Biden and senior Democrats support 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, and (b) increase the starting tax rate to 45% from the current flat 40% rate.

4. GOP House Members Push for Easing of SALT Deduction. 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 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 states with federal dollars. Although Democrat state leaders predictably oppose the SALT limit, some northern state GOP House members are joining them, including Andrew Garbarino (R-NY) and Anthony D’Esposito (R-NY) – and are gaining traction. For example, *CPA Practice Advisor* recently noted that in his bid for Speaker, Mike Johnson (R-LA) committed to Congressman D’Esposito that any new tax package “would include some sort of relief for SALT.”

5. Supreme Court Hears Oral Arguments in Landmark Tax Case. In 2005, Charles and Kathleen Moore invested \$40,000 in a friend’s machine-tool company in India. The company generated profits but plowed all earnings back into the company. Fast forward to 2017 and Congress’s enactment of a one-time repatriation tax on undistributed foreign corporate income. This triggered \$132,000 in taxable income and

a surprise tax bill of about \$15,000. The Moores sued in federal court arguing that the tax violated the 16th Amendment by taxing unrealized appreciation – but they lost at both the trial and appellate (9th Circuit) levels. The Supreme Court heard oral arguments in early December. A recent op-ed piece by the *Wall Street Journal* sounded the alarm noting that, if upheld, this case may “open the door for Congress to tax wealth and property of all kinds, including art and collectibles” – if income does not actually have to be collected (or at least available) before it is taxed. We’ll see...

“R.E.S.P.E.C.T.” Your Will & Estate Planning: Queen of Soul Aretha Franklin seemingly still lives on in her hits – but now also by her various “Wills.” Ms. Franklin was thought to have died intestate in 2018, but the following year 2 handwritten Wills were found in her home – including one in a spiral notebook in her couch containing rambling statements about men in her life. All appeared settled until another handwritten and contradictory Will dated 2014 was found. Interestingly, the 2014 Will contained “scribbles,” “many hard-to-read passages” and a smiley face in lieu of the “A” in “Aretha.” Earlier this year, a Michigan jury determined that the 2014 “couch cushion” Will prevailed.



The two-fold moral of the story is obvious. First, it is not prudent to prepare one’s own estate plan. In fact, Florida does not permit handwritten Wills. Second, best practice is to maintain current originals in a secure, well-known location and properly discard superseded documents. To help avoid the “Aretha” situation, the firm offers as a courtesy secure storage of estate documents coupled with a tracking system to ensure current documents are available at a moment’s notice.

Making it to the Top 0.2% - in Age! A recent *Wall Street Journal* article polled seniors who made it to the oldest 0.2% (age 95) of the population and offered the following tips:

- **Be Adventurous.** 100 year-old Conbert Benneck of Dallas landed at Normandy after D-Day, worked worldwide as an engineer and spent 6 months skiing and traveling Europe in his younger years.
- **Maintain Social Connections.** According to her niece, Sarah Netting, who died at 101, kept finding “new people to love” even though she outlived most of her friends.
- **Take Care of Your Mind.** Mitchell Nash of Colorado noted that his mother Golde was diligent to keep her mind alert – even doing *The New York Times* daily crossword puzzle until age 99.
- **Don’t Slow Down.** Katharine Coventry of Duluth drove herself at age 100 to the DMV and renewed her driver’s license.
- **Celebrate Getting Older.** Gerri Harris of Raleigh, North Carolina marked her 95th birthday with a trip to Budapest, and at 107 even organized her own birthday party.
- **Nurture Your Passions.** Hazel Zipperer of Valdosta worked in her garden well into her 90s and religiously followed the Atlanta Braves until her death at 100.

State & Local Updates: The following is a survey of noteworthy issues unfolding across the country.

1. **Red vs. Blue State Income Growth Disparities.** *The Bureau of Economic Analysis* recently released data on state-by-state earnings from Q1 of 2022 to Q2 of 2023 – and the results are noteworthy. Nationally, overall worker and business owner earnings rose 5.4%, but New York, California and Illinois averaged only 3.37%. Not surprisingly, Florida came in at 9.1%. Also, Florida registered 8.7% growth in manufacturing earnings while California’s was only 2.5%. Surprisingly, information earnings actually declined in California by 9% but grew 6.7% in Florida. Lastly, from a “real wage” perspective, hourly earnings in Florida exceeded inflation, but in California, Illinois and New York real wages declined by at least 2%.

2. **Washington State Takes 1st Place – in Gas Prices.** Washington state’s new cap-and-trade program and clean fuel standards have been noticed at the gas pump. These policies add up to 50 cents per gallon on top of Washington’s 3rd highest gas tax of 49.4 cents – making it the most expensive state for gasoline. A recent *Wall Street Journal* op-ed piece bemoaned that these policies serve to “punish lower- and middle-income folks who spend more of their income on fuel.”

3. **Massachusetts Considers Municipality Tax on Home Sales.** In October, Governor Maura Healey proposed *The Affordable Homes Act*. The Act would allow towns to levy a tax of up to 2% on home sales in excess of \$1 million. Interestingly, 53% of Boston homes on the market currently list for over \$1 million. According to a press release from *Mass.gov*, the Act is “unlocking \$4 billion...[as] the largest proposed investment in housing in the state’s history while simultaneously striking at the root causes of housing unaffordability and making progress on the state’s climate goals.”

4. **New York Set to Ban Non-Compete Agreements: A Gift to Florida?** New York Governor Kathy Hochul is deciding whether or not to sign Bill S3100A which would ban most non-compete agreements in employer contracts. Two-thirds of businesses surveyed by the *U.S. Chamber of Commerce* said the bill would hurt business and result in compensation cuts. Governor Hochul apparently would prefer that non-competes still be allowed for those earning over \$250,000. A recent editorial board piece in the *Wall Street Journal* opined that this legislation will be “another gift to Florida [and is] one more reason for firms to move employees to other states.”

5. **Colorado Voters Reject Back-Door Tax Hike.** In 1992, Colorado voters enacted TABOR – the *Taxpayer Bill of Rights* – which placed limits on tax and spending increases, resulting in the average Coloradan receiving a \$750 refund last year. However, earlier this year Colorado Democrats put forward *Proposition HH* as a two-pronged, bait-and-switch taxing plan. One prong minimally lowered property taxes while the other prong allowed the state to raise spending by 25% annually – which would have effectively cancelled TABOR (taxpayer cost of \$21 billion over 17 years). Although financially backed by the NEA, on November 8 *Proposition HH* was rejected with less than 40% of voter support.

6. **Nebraska Joins Tax Cutting States.** In light of a \$1.5 billion budget surplus, Nebraska Governor Jim Pillen signed bills this summer projected to return \$6 billion to taxpayers over the next 6 years. The bills included (a) an individual income tax rate cut from 6.64% to 3.99%, (b) a corporate rate cut from 7.25% to 3.99% (both fully phased in by 2027), and (c) a property tax cut of \$1.76 billion. Governor Pillen noted “our tax policy chases our kids and grandparents out of the state...we can’t grow Nebraska that way.”

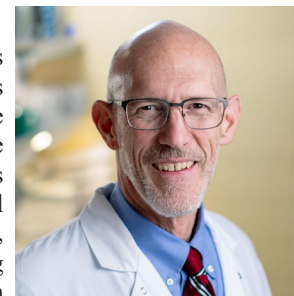
7. **Amazon’s Jeff Bezos Trades Seattle for Miami.** In November, Amazon founder Jeff Bezos announced that he is moving to Florida to be closer to his parents. A recent *Wall Street Journal* piece speculated the move is driven in part to avoid Washington state tax. Bezos holds a 9.7% stake in

Amazon valued at nearly \$140 billion. If sold, Washington’s new 7% tax on capital gains would cost Bezos almost \$10 billion (compared to \$0 in Florida). And if held until death, the stock would potentially trigger a \$28 billion state death tax (\$0 in Florida).

Recovering Lost Funds: Given the geographic mobility of most Americans, it is not uncommon for an “old” asset or account to be forgotten. To address this concern, the *National Association of Unclaimed Property Administrators* has endorsed the website www.missingmoney.com. This is a free service that can identify old bank accounts, insurance policies, stocks, bonds and safety deposit box contents. To utilize the website, simply enter your name and the state(s) in question.

Client Spotlight – Dr. Greg Poland: Naples is a great place to live and practice law – and I (Robert) am privileged to be the lawyer for many incredible folks – and in this *Advisory* we are honored to spotlight Dr. Greg Poland.

Greg is the Mary Lowell Leary Emeritus Professor of Medicine at Rochester’s Mayo Clinic and founder of its Vaccine Research Group. As senior director of the Vaccine Research Group, Greg spearheads NIH funded research to investigate novel vaccines against SARS-CoV-2, Zika, MMR, smallpox and influenza, among other pathogens. As a vaccine research physician-scientist, Greg is considered one of the world’s foremost experts on COVID-19 and has appeared on many major news outlets, including *NBC News*, *ABC News*, *Bloomberg*, *Wall Street Journal*, *New York Times*, *CNBC*, *USA Today*, *UPI*, *The Problem with Jon Stewart*, and *Jimmy Kimmel Live!*.



Greg also recently earned a Master’s degree in Theological Studies from Philadelphia’s historic Westminster Theological Seminary and serves on the ministerial team at Bay Presbyterian Church in Bonita Springs (you can find his sermons online!). He hopes to be ordained in the near future.

Greg is a devout, born-again Christian and loves to tell others about Jesus. Greg and his wife Jean of 45 years have 3 children and divide their time between Marco Island and Rochester.

Words of Wisdom: So Peter opened his mouth and said... “*God anointed Jesus of Nazareth with the Holy Spirit and with power. He went about doing good and healing all who were oppressed by the devil, for God was with him. And we are witnesses of all that he did both in the country of the Jews and in Jerusalem. They put him to death by hanging him on a tree, but God raised him on the third day and made him to appear, not to all the people but to us who had been chosen by God as witnesses, who ate and drank with him after he rose from the dead. And he commanded us to preach to the people and to testify that he is the one appointed by God to be judge of the living and the dead. To him all the prophets bear witness that everyone who believes in him receives forgiveness of sins through his name.*” Acts 10:34, 38-43.

Robert H. Eardley, Esq.

Direct: (239) 591-6776 | Email: robert@swflorida-law.com

Debra L. Phillips, A.A., Estate Paralegal

Direct: (239) 849-5931 | Email: debra@swflorida-law.com

Michelle L. Taylor, B.S., F.R.P., Estate Paralegal

Direct: (239) 878-5324 | Email: michelle@swflorida-law.com

Julie K. Yamin, M.B.A., Administrative Paralegal

Direct: (239) 216-1819 | Email: julie@swflorida-law.com