A STEP AHEAD

YEAR END GIFT AND TAX PLANNING - A POTENTIAL SILVER LINING?

Usually, as we approach year end, we are inundated with questions about gifting strategies to reduce our clients' taxable estates. This year, because of the downturn in our national economy, questions about gifting have slowed to a trickle. Even in this economy, however, there are advantages to gifting - both for tax and Medicaid planning purposes.

A review of the basic rules is helpful. Each person can gift up to $12,000 annually to others without tax consequences in 2008. Together, married couples can gift up to $24,000 per person. Multiply this sum by the number of children and grandchildren and there is the potential for considerably reducing one's taxable estate.

Gifting assets that have lost value may be advantageous to reduce a taxable estate. For example, assume you owned 1000 shares of stock in General Electric which closed, on November 1, 2007, at $40.68. A gift of $12,000 worth of that stock in 2007 would have required the transfer of about 295 shares. If you wanted to make a gift of the same value on November 1 of this year, when GE was trading at $19.40, it would take 618.5 shares. Clearly, you are able to gift a larger portion of your depressed assets without tax consequences this year. Those shares are removed from your estate and, when the market recovers, the appreciation is also out of the estate.

The same logic can be applied to Medicaid planning. The transfer of a portfolio of assets that was worth $240,000 last year would have resulted in an ineligibility period for Medicaid benefits of approximately 24 months. This year, that same portfolio may be worth 1/3 less or $160,000. The ineligibility period to transfer the portfolio now would only be 16 months.

Gift planning can be an important estate planning strategy. Whether the transfer of wealth to beneficiaries is intended to reduce estate tax liability or to protect assets and hasten Medicaid eligibility, it is important to meet with us, your planning professionals, as soon as possible.

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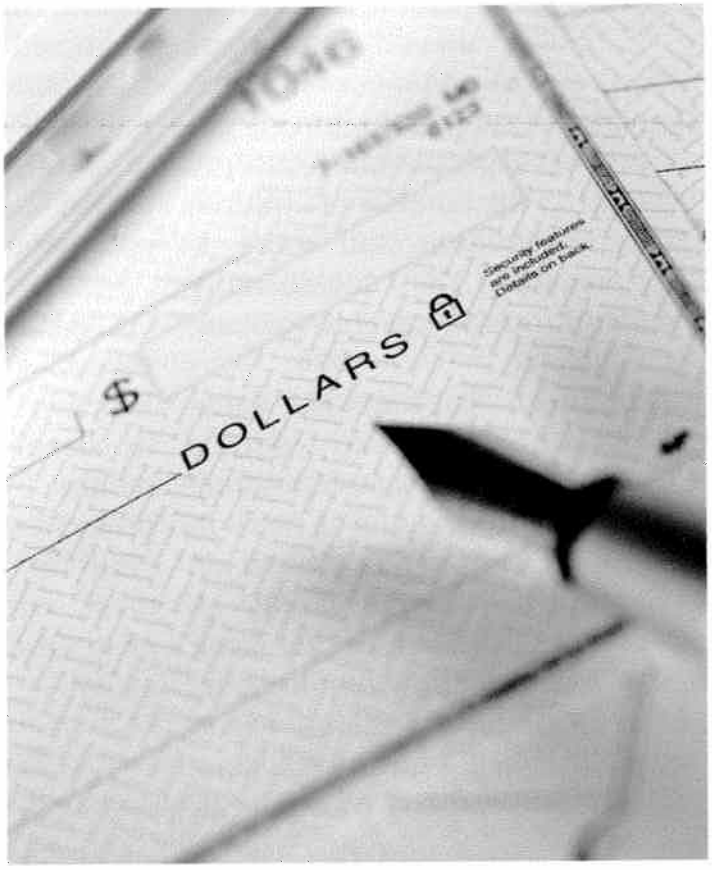
FDIC UPDATES

The lead article in the most recent issue of our newsletter reviewed FDIC limitations. The FDIC (Federal Deposit Insurance Corporation) is an independent agency of the U.S. government that protects against the loss of deposits if an FDIC-insured bank or savings association fails. We were not the only ones who were concerned about the stability of our financial institutions in these tough economic times. As part of the recent legislative enactments, the "government bail-out," FDIC limits have been increased, effective October 3, 2008 through December 31, 2009, as follows:

- Single Accounts - (owned by one person) $250,000 per owner
- Joint Accounts - (two or more persons) $250,000 per co-owner
- IRAs - and Certain Other Retirement Accounts $250,000 per owner
- Trust Accounts - $250,000 per owner/per beneficiary subject to specific limitations and requirements
- Corporation, Partnership and Unincorporated Association Accounts - $250,000 per entity
- Employee Benefit Plan Accounts - $250,000 for the non-contingent, ascertainable interest of each participant
- Government Accounts - $250,000 per official custodian

These refer to the total of all deposits that the accountholder(s) has at each FDIC-insured bank, assuming that all FDIC requirements are met.

FDIC insurance covers funds in deposit accounts, including checking and savings accounts, money market deposit accounts and certificates of deposit (CDs). FDIC insurance does not cover other financial products and services that insured banks may offer, such as stocks, bonds, mutual fund shares, life insurance policies, annuities or municipal securities.



MISTAKES AND MISCONCEPTIONS

Estate planning, whether simple or complex, requires careful attention to details which, if overlooked or misunderstood can undermine the plan's effectiveness. We will devote space in each issue to highlight common estate planning mistakes and misconceptions.

People often confuse the terms "Will," "Living Will" and "Living Trust." A Will, also known as a "Last Will and Testament," is a legal document which directs the disposition of one's property after death. A "Living Will" is a written expression of one's intentions about health/medical care and end-of-life decisions, including whether to receive or refuse life-prolonging treatment when one is incapable of communicating as a result of illness, accident or incapacity. The "Living Will" is sometimes also confused with a "Health Care Proxy" by which one can designate an agent to make health, medical and end-of-life decisions. A "Living Trust" is an entity created during one's lifetime, as an estate planning tool, to provide for the management of trust assets both during the creator's lifetime and after death. Living Trusts are extremely flexible devices and can serve to distribute assets after the creator's death, much like a Will.

PAYABLE-ON-DEATH (POD) BANK ACCOUNTS

One commonly used method of transferring money to another person is to establish a payable-on-death bank account ("POD" account). There should be no extra fees associated with opening such an account at a bank. A POD designation can be added to any new or existing account: checking, savings, money market or certificate of deposit ("CD").

To open such an account, or add a "beneficiary" on an existing account, simply notify the bank. No documents are filed with a court and you need not even notify the intended beneficiary. As long as you are alive, the beneficiary has no right to access the account and you can change the beneficiary at will. After your death, the beneficiary can obtain whatever money remains in the account by presenting proof of identity and a certified copy of your death certificate. Because the beneficiary has no right to the assets in the account until the depositor's death, the establishment of the account does not constitute a gift. Also, POD accounts may be entitled to additional coverage from the Federal Deposit Insurance Corporation ("FDIC"). Each beneficiary's interest in the account is

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WOULD YOU LIKE TO READ ABOUT IT HERE?

We at Berwitz & DiTata LLP are proud of our newsletter and hope that each issue brings our clients and friends insightful and timely information. We endeavor to write articles geared to your interests and concerns. We would be happy to receive your feedback. More importantly, if you have a question or would like us to address a particular topic, please let us know. We will try to include it in one of our next issues. Just call or drop us a line.

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separately insured [See "FDIC Update" in this issue]. Don't be fooled into thinking that a POD is not a part of your estate because it transfers to the beneficiary at your death. These accounts are absolutely part of the estate of the depositor and, if an estate tax return must be filed, they must be accounted for 100%.

When you ask to open a POD account, the bank's representative may give you a form that authorizes the creation of a "Totten Trust." No need to panic: the representative did not misunderstand you or give you the wrong form by accident. A POD account is often called a "Totten Trust" account. This name comes from an old court case which was the first to recognize an account that designated a beneficiary, one who had no right to the account until the depositor died. Before opening a POD account, be sure to give careful consideration to your selection of the beneficiary or beneficiaries. For instance, while one can name a minor child as a POD beneficiary, if he or she is still a minor at your death, a custodian will be appointed to manage and use the money for the benefit of the child until the child reaches the age of majority, 18. If you name more than one beneficiary, each will inherit an equal share of the account unless you specify otherwise. If one of the beneficiaries dies before you do, the account will be divided among the surviving beneficiaries. This may not be what you intended. For all of these reasons, it is best to discuss the utilization of POD accounts with your estate planning counsel before taking this step. Berwitz & DiTata LLP will be happy to answer your questions.

Please note that a "transfer-on-death" registration may now be utilized for securities (stocks, bonds and brokerage accounts). While similar to POD accounts the transfer-on-death designation is somewhat unique. Discussion of this type of account is outside the scope of this article.

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