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The Benefits of Using Your IRA to Make Charitable Contributions

In the last edition of our newsletter, we discussed the anticipated changes relating to IRAs and other qualified retirement accounts. Since that newsletter issued, nothing much has changed. The House of Representatives passed the SECURE Act and the Senate version, RESA, still has not been the subject of a vote. While it is anticipated that RESA will ultimately be passed by the Senate, until that occurs and the differences between the two bills are reconciled, it is not possible to identify what changes will be implemented, other than that the start date for required minimum distributions (RMDs) will be delayed and the ability of beneficiaries to extend the time within which they can take distributions will be significantly curtailed.

In this article, we will discuss a tax savings strategy that can be implemented irrespective of the anticipated changes reflected in the SECURE Act and RESA.

In 2017, Congress passed the Tax Cuts and Job Act (the "Act") which purportedly reduced the tax obligations of middle and lower class taxpayers. Among the changes to the

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A Home for Sunshine

Sunshine is a beautiful, brown and white, 12 year old long-haired Dachshund. She loves people, children and other dogs. Sunshine's owner is a client of ours. Unfortunately, Sunshine's owner can no longer remain at home. Her chief concern was not for herself but for Sunshine, who had always lived in a loving home. Her greatest fear was that Sunshine would be placed in a shelter.

Here, at Berwitz & DiTata LLP, we are all animals lovers — and all of us are "pet parents" to our office dogs Kepler and Copernicus. We fully understood our client's concerns.

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Finding Relatives Through DNA Testing: Sibling Rights

In our last issue we discussed the inheritance rights of adopted children who later found biological family through DNA testing. With the increasing popularity of DNA testing, connecting with lost relatives is becoming easier. These connections can affect your own estate plan but also your obligations if you serve as the fiduciary of another's estate. When someone dies, if they do not have a Last Will and Testament, or other testamentary instrument like a trust, their estate will be divided among their "next of kin," the relatives who are, legally, their closest relations. Even when someone has established a valid Last Will and Testament, after death, their next of kin have a right to be notified about proceedings relating to the Will, regardless of whether they stand to inherit under the Will.

If someone learns of the existence of a sibling or relative, whether through DNA testing or otherwise, does this change their estate planning? The easy answer is that they are still able create an estate plan that reflects their wishes, which may or may not include the later discovered relative. However, if the later discovered relative is among the closest of their relatives, that relative would be

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Tax Code, the Act limited the deduction on mortgage interest to the first \$750,000 of the loan. Interest on home equity lines of credit taken after the enactment of the Act are no longer deductible. A single filer's standard deduction increased from \$6,350 to \$12,000 and the deduction for married and joint filers increased from \$12,700 to \$24,000. Significantly, the Act limited the amount that can be deducted for state and local taxes to \$10,000. As a result of this cap, the vast majority of our clients who took itemized deductions in the past now use the standard deduction. In fact, it is estimated that 94% of taxpayers will take the standard deduction.

Prior to the Act, charitable contributions, together with interest on mortgages and property taxes, could be itemized and deducted from taxable income. Under the Act, it only makes sense to itemize if all of your deductions, including charitable contributions,

exceed the higher standard deduction. However, with proper planning, it may still be possible to utilize charitable donations to reduce your tax liability.

Distributions from a traditional IRA are taxed as ordinary income because the original contributions to the account were made with pre-tax dollars. Account owners must begin taking required minimum distributions (RMDs) at age 70½. However, since 2015, up to \$100,000 can be donated to a qualified charity without it being considered a taxable distribution. To take advantage of this strategy and offset the RMD with charitable donations, it is necessary to adhere to the IRS's rules for qualified charitable distributions (QCDs), also called charitable IRA rollovers. The donation must be made directly from the retirement account. It cannot be made by the account owner after receiving the RMD. The donation must be made to a qualified charity directly from the IRA. Generally, churches, nonprofit charities, educational organizations, nonprofit hospitals and medical research organizations are qualified charities, although it is best to confirm this with the charity you intend to benefit. The charity receiving your donation will not have to pay taxes on your contribution. Abiding by these rules will allow you to

satisfy your RMD by paying the funds directly to the charity. This avoids tax on the RMD and satisfies the charitable intention of the account owner. Each spouse of a married couple can take advantage of this strategy.

If you are itemizing deductions, you must elect whether to report the income and claim the deduction or direct the payment of the charitable donation from the IRA. You cannot claim both for the same distribution. However, if you make other charitable donations that do not use your IRA funds or which exceed the standard deduction together with your other deductions, you can still claim each of the donations as an itemized deduction and realize a tax benefit. If you do not itemize your deductions and take the standard deduction on your return, a charitable IRA rollover will give you a tax break for the donation.

In sum, if you are over 70½, are utilizing the standard deduction and intend to make donations to qualified charities, making those donations directly from your retirement accounts in an amount that is not greater than the smaller of your RMD and \$100,000 will provide a tax benefit and should be utilized. At Berwitz & DiTata LLP we can assist you and explore whether this strategy is beneficial for you.

Finding Relatives Through DNA Testing: Sibling Rights

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entitled to notice if there were a proceeding relating to the Will and would be entitled to share in the estate if no Will exists.

Most people are unaware that, under New York law, half-siblings are treated the same as siblings of the whole blood. This means that if the parent you have in common with your half-sibling dies,

you and your half-sibling have the *same* interest in that parent's estate. Siblings of the whole blood or half blood who are the next of kin to someone who dies all share equally.

Although there are some requirements to establishing proof of the relationship, it generally does not matter whether the relative maintained contact with the deceased or had a relationship before death. If the kinship line can be established, the relative is still entitled to notice of the proceedings and can still inherit. If a fiduciary, the executor, administrator or trustee, is aware of possible relatives, they have an

obligation to be forthcoming with the Court. The fiduciary must provide notice and an opportunity to the possible relative to prove the relationship he or she had to the deceased.

Finding more about ourselves and our family trees can be interesting and exciting. It can be helpful in piecing together our pasts and learning more about our roots and connections to one another. It also has an impact on our estate plans and the obligations fiduciaries have when administering estates. Berwitz & DiTata can help in understanding the rights of our relatives and what to do when we learn of new relatives.

When Should My Estate Plan Be Reviewed?

There is no question but that our best plans are affected by the passage of time. As we move through life's stages, we experience change. We may marry or divorce, move to another state or county, change jobs or careers, have children or grandchildren. Sometimes the people we feel closest to move away or, for other reasons, become less important to us. We may enjoy, or suffer, a significant change in our financial circumstances. We may lose a loved one. Each of these life altering events should trigger a review of an estate plan. Let's consider why:

Getting Married:

Members of a couple who are getting married should create healthcare proxies and powers of attorney empowering their spouse to make major decisions in the event of their own illness or incapacity. They should also take time to consider their individual financial circumstances and whether the assets or liabilities that each brings to the marriage will be shared. Particularly if there is a large disparity between their respective financial circumstances, they should consider the benefits of a prenuptial agreement. They should discuss their wishes as to the disposition of their property if one or both spouses die and incorporate this into their estate planning documents.

Starting a Family:

The decision to have a child comes with the responsibility of planning for that child's care. It is imperative for prospective parents to name a legal guardian. The only way to do this is with a last will and testament which can also establish a trust for assets that will pass to a minor child.



Divorce:

Divorce often provides the impetus to review an estate plan. Divorcing couples rarely want an ex-spouse to serve as executor, healthcare proxy or agent under a power of attorney but have they considered who will take these roles? It is also important to ensure that beneficiary designations on retirement accounts, life insurance and other assets are consistent with the new plan.

Retirement:

Beneficiaries are customarily designated when setting up a pension or retirement account. It is not unusual that the account owner does not review these designations periodically. Before retirement we should undertake a comprehensive review of the plan to ensure that our current wishes are reflected in our documents and that beneficiary designations match our expectations. Retirement is also a good time to consider whether additional gifting or Medicaid planning should be implemented.

Assets Alignment:

Our assets change as values fluctuate, positions are acquired or sold and accounts are opened, closed or consolidated. The value of the estate, the manner in which assets are

titled and whether beneficiaries are designated are among the key factors influencing the administration of an estate. Ensuring that this information is current, is efficiently and accurately conveyed to your successors and that beneficiary designations do not inadvertently undermine your wishes is important.

Often new grandparents think about changing their estate plans upon the birth of a grandchild. But a review of an estate plan should be triggered by more than the introduction of a new family member. An aging parent may no longer be the best candidate to serve as guardian - or in any other fiduciary capacity. A provision leaving assets to an aging loved one should ensure protection against the possibility that the individual may later require long-term care. A new tax law, like the one that passed in 2017, may render certain provisions of an existing plan inapplicable or outdated.

A review may mean just that! Sometimes we review a plan and discover that it still works, just the way it should. Whether a change is necessary or not, Berwitz & DiTata LLP offers a complimentary review to its existing clients every three to five years. We encourage our clients to take advantage of this important benefit.

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A Home for Sunshine

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Through our resources, we were able to connect with a rescue organization for Dachshunds. We communicated with the organization and then connected the dots! Our client was thrilled to learn that Sunshine will be cared for in a loving home for the rest of her days. Better yet, the couple who originally agreed to “foster” Sunshine fell so in love with her that their home has become hers.

Because we helped to find Sunshine a new home, our client was able to refocus her attention on her own move and the things that she would require in her new surroundings. The move our



client has now made is never easy. But we believe that knowing Sunshine will continue to be loved as she deserves will expedite her adjustment. We have even forwarded photos of Sunshine, cuddling in her new home, to our client. Our efforts helped to make a tough situation a little easier.

At Berwitz and DiTata, each of our clients and their family members, even the furry ones, are important. We will take whatever steps are possible to ensure that a life changing transition goes as smoothly as possible.

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 call and 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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