
COCHRAN ✿ ALLAN

December 2016

To our clients and friends,

We hope this letter finds you and your family happy and healthy.

We are so glad to report that it has been another great year at Cochran Allan. As many of you know, we welcomed Aen Walker Webster and Lupe Shartel in late 2015, and Leslie Wood Bradenham joined us in September. Aen, a national leader in estate planning, most recently chaired the Estates and Trusts Group at Buchanan, Ingersoll and Rooney PC. Leslie joined us from BakerHostetler, where she was an associate. We now have seven attorneys and six amazing paralegals and support staff. We are grateful to have such a wonderful team and look forward to our continued work together.

It is hard to believe that just as we were getting used to changes in the federal estate and gift tax regime that were made “permanent” in late 2012, we again face the possibility of more sweeping changes. President-elect Trump and Republican leaders in the House and Senate have proposed repealing the estate tax and perhaps replacing it with some form of capital gains tax. We have attached the current estate and gift tax exemption amounts for 2017, and will alert clients of changes by email throughout the year. Please advise us if your contact information has changed, so we can bring our records current and keep you informed of any updates.

Politics aside, we know that many of you focus on financial matters at year end, so we want to highlight a few recent developments that may be important for your planning. Accordingly, please review the enclosed information and contact us with any questions or concerns you may have.

We look forward to seeing you soon, and wish you the very best for a happy holiday season and prosperous New Year!

ESTATE TAX UPDATES

- **Federal Estate, Gift and GST Taxes.** In 2017, the federal gift tax annual exclusion amount will remain \$14,000. The federal estate, gift and generation-skipping transfer tax exemption amounts will increase to \$5,490,000. Transfers in excess of this amount, during life or upon death, will be taxed at a 40% rate.
- **Virginia Estate Tax.** Virginia continues to have no estate tax.
- **District of Columbia Estate Tax.** The D.C. estate tax exemption amount is set to increase to \$2,000,000 in 2017. Subject to the achievement of certain revenue targets, the exemption amount should increase after 2017 to match the federal exemption amount.
- **Maryland Estate Tax.** Maryland also is increasing its estate tax exemption, with the goal of matching the federal exemption amount within the next few years. In 2017, the Maryland estate tax exemption amount will be \$3,000,000. This amount will increase to \$4,000,000 in 2018 and, in 2019, match the federal exemption amount. Maryland also imposes a 10% inheritance tax, independent of its estate tax, on property passing at death to beneficiaries other than the decedent's spouse or domestic partner, parents, siblings, lineal descendants or their spouses.
- **Portability.** We continue to remind our clients that beneficial changes were made to the federal estate tax laws in late 2012, including a change making the "portability" tax election permanent. Portability allows a surviving spouse to add a deceased spouse's unused federal estate tax exemption to his or her own exemption amount. In order for a surviving spouse to take advantage of portability, the executor of the deceased spouse's estate must elect portability by timely filing a federal estate tax return, even if filing an estate tax return would not otherwise be required. (Note that special rules apply for spouses who are not U.S. citizens, even if the spouse is a permanent resident.)

With portability, traditional estate planning using so-called credit shelter or bypass trusts is not always needed to minimize a family's estate tax exposure. As a result, estate planning for many of our clients can be simplified. We continue to encourage clients who created trusts prior to 2012 to revisit their plans with us. Many considerations must be examined to determine whether a particular trust is still advisable, including state death tax laws, asset protection, generation-skipping transfer tax and income tax issues.

- **What's Next?** While the federal estate tax has been an important political topic for many years, the possibility of a full repeal of the tax (even if just temporary) seems more likely than ever. Even without estate tax concerns, estate planning remains important for many other reasons, such as planning for incapacity, selecting the right trustees and executors, providing for minor children and individuals with special needs, controlling the timing of inheritances, preserving assets for children and grandchildren, protecting assets in the event of divorce or remarriage, managing income tax exposure and business succession planning.

POWERS OF ATTORNEY FOR FAMILY MEMBERS

Please make sure your adult family members have financial powers of attorney and advance medical directives (also known as health care powers of attorney) in place. Children age 18 or older should sign these forms to make sure their parents (or other chosen adults) can care for them in the event they are incapacitated. Most importantly, this includes naming their parents (or others) as agents who can receive medical information in the event of an accident. You also should make sure your parents have these documents in place so someone is properly designated to care for them as they age.

While we tailor our clients' powers of attorney to their specific needs, basic forms are freely available and should be used for children and parents who do not have their own lawyers.

TRANSFERRING ASSETS TO REVOCABLE TRUSTS

As a reminder to our clients who we have not seen in some time (particularly our older clients), please review your holdings to make sure your assets are properly titled and your beneficiary designations for assets such as life insurance and retirement accounts are correct. Our general recommendations are as follows:

- Investment accounts should be titled to your revocable trusts
- Real estate should be titled to your revocable trusts (or LLCs for rental real estate)
- Holdings in business entities (corporations, LLCs and partnerships) should be titled to your revocable trusts
- Traditional stocks and bonds should be titled to your revocable trusts

- Checking or operating accounts should be (i) titled to your revocable trusts, (ii) jointly held, or (iii) payable on death to your revocable trusts or heirs
- Retirement accounts should have updated beneficiary designations and should not be payable to your estate
- Life insurance policies also should have updated beneficiary designations and should not be payable to your estate

If you wish to provide for minor children or individuals who have special needs, or you simply have concerns about protecting your beneficiaries' inherited assets from creditor's claims or divorcing spouses, we continue to recommend providing for your beneficiaries through trusts rather than leaving property to them directly.

With respect to rental real estate, we encourage our clients to title their rental properties in the name of a limited liability company (LLC), which, in turn, should be owned by a revocable trust in order to avoid probate. LLCs often provide significant benefits, such as liability protection against third party claims (from tenants or otherwise) and privacy, and also can streamline property management. It is relatively simple in most cases to form an LLC and transfer a rental property to the entity, but there are several issues to consider before proceeding. For example, it is important to confirm whether a conveyance of property will trigger any transfer or recordation taxes and, if the property is subject to a mortgage, what fees or guarantees the lender may require for consenting to the conveyance.

Lastly, married couples should ensure that their joint assets, which most commonly include personal use real estate and investment accounts, are titled as "tenants by the entirety", which provides the most creditor protection available to property held jointly. This can be achieved in Maryland and Virginia even when assets are held in spouses' revocable trusts.

Please do not hesitate to contact us to schedule a review of your assets and confirm they are titled properly to avoid probate and maximize asset protection.

CHARITABLE IRA ROLLOVERS

In December 2015, the charitable IRA rollover provisions were extended indefinitely. Under the now permanent provisions, certain taxpayers can make tax-free charitable gifts of up to \$100,000 annually directly from their IRAs. To qualify for the charitable IRA rollover, a gift must be: (1) made by a donor age

70½ or older, (2) transferred from the taxpayer's traditional or Roth IRA directly to a permissible public charity (this does not include supporting organizations or donor advised funds), and (3) completed during the applicable tax year. The contribution will be excluded from the taxpayer's income and, importantly, also will count toward the taxpayer's required minimum distribution for the year.

CONSISTENT BASIS REPORTING

In late 2015, Congress enacted new rules requiring consistency between (1) the tax basis reported on a beneficiary's individual income tax return for certain property acquired from a decedent, and (2) the tax basis previously reported for that same property on the decedent's estate tax return. To facilitate this rule, executors of estates that are required to file an estate tax return are required to furnish a statement (IRS Form 8971) to the IRS and provide a related schedule to each beneficiary identifying the value of the estate property.

Forms 8971 are due by the 30th day after the estate tax return is due (with extensions) or the 30th day after the return was filed, whichever is earlier. Failure to file a Form 8971 and provide the related schedules to the beneficiaries as required will trigger penalties. However, Form 8971 is necessary only when a federal estate tax return is required to be filed and is not needed if an estate tax return is filed solely to claim portability of the deceased spouse's unused estate tax exemption or to apply GST tax exemption.

POTENTIAL LOSS OF VALUATION DISCOUNTS FOR GIFTS OF INTERESTS IN FAMILY BUSINESSES

For our clients who have taxable estates and closely-held businesses, including both operating businesses and investment entities, we often explore transfers of non-voting interests in the businesses as a tax-efficient gifting strategy. Transfers of this type historically have been attractive because the gift tax value of the transferred interests, which is equal to the fair market value of those interests, often is discounted for lack of marketability or lack of control. However, in August 2016, the IRS issued proposed treasury regulations under Code Section 2704 which, if enacted, would dramatically change how these business interests would be valued for purposes of intra-family gifts. The regulations are not yet effective and experts predict there is little chance the regulations will be enacted under the new administration. Nevertheless, there remains a possibility that the regulations (or some form of them) may be finalized and take effect. In light of this, clients who are contemplating transfers of business interests should contact us in 2017 to discuss their options.