

*A common sense approach
to the practice of law*

Estate and Gift Tax

On January 1, 2011, wealth transfer taxes changed (yet again) and they are the most favorable wealth transfer planning provisions in modern time. President Obama signed HR 4853, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the Act), into law on December 17, 2010.

For estate planning the big headline to emerge was that the Estate Tax Exemption would be raised in 2011 to \$5 million or \$10 million for married couples. Anything over those thresholds would be subject to a 35 percent tax. That cleared up a good deal of confusion: There was no Estate Tax at all for people who died in 2010, but if Congress hadn't acted, the Estate Tax would have been reinstated this year at a \$1 million threshold — \$2 million for married cou-

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Planning for a Loved One with Special Needs

When planning for a loved one with special needs, here are a few points to consider.

When I speak of a Special Needs Trust, I sometimes use the term 'luxury trust'. My point in using this term is to highlight the fact that Special Needs Trusts are designed to provide the special needs child with a modicum of financial resources over and above the governmental assistance that is available without jeopardizing the governmental assistance. This is not to say that the special needs child will be the beneficiary of 'luxuries' as that term is normally used. However, to have a television, an occasional meal out, a better living situation and the like are luxuries to those living at a subsistence level, and this is the context in which the

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REFERRALS

Referrals constitute a majority of our business. If you have a family member, friend or co-worker that needs our assistance, please feel free to give them our number. Rest assured they will receive the same ingenuity, integrity, and common sense approach that you received. **Referrals are the greatest compliment we can receive.** Thank you!

Special Event for our Maintenance Members

JOIN US IN THE CLOUDS

Wednesday, September 21, 2011

6:00 to 7:30PM

2070 Pioneer Court, San Mateo

McDowall Cotter will roll out our Cloud Storage Program to our Maintenance Program Participants. The Program will allow participants to store all of their estate planning documents and their own important documents in electronic form—in a cloud, so to speak—

free of charge. The rollout will include a short presentation on how the program works and will include delicious hors d'oeuvres and select California wines.



Palo Alto Office

We are sorry to announce that we no longer have a presence at Sherman Ave. in Palo Alto.

Please remember that our San Mateo office is conveniently located between Hwy 101 and Hwy 280 off of Hwy 92.

Estate and Gift Tax

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ples — and with a top rate of 55 percent. The new thresholds are in effect through 2012.

Yet for all the attention given to the Estate Tax, a less widely noticed change in the law could affect more families.

Both the Lifetime Gift Tax Exemption and Generation Skipping Transfer Tax (GST) are now \$5 million — or \$10 million for married couples. While the Estate Tax Exemption gradually rose from \$1 million in 2002 to \$3.5 million in 2009, the Lifetime Gift Tax Exemption had not budged from \$1 million.

Now that the Gift Tax and GST Exemptions are unified with the Estate Tax Exemption, families should rethink how they transfer wealth. When the Gift Tax and GST Exemp-

tions were lower than the Estate Tax Exemption, it made it more advantageous from a tax perspective to give away your money after death. Now for the next two years the incentive is to give during your lifetime.

People who previously used their \$1 million Lifetime Gift Tax Exemption now can shift an additional \$4 million out of their estates. Married couples who had exhausted their combined \$2 million exemption under the old law can now shift an additional \$8 million through Lifetime Gifts.

The \$5 million Lifetime Gift Tax Exemption is separate from the annual Gift-Tax Exclusion and allows anyone to make annual gifts to an unlimited number of people. For 2011, the maximum you can give one person without tax implications is \$13,000.

McDowall Cotter, APC. is recommending everyone whose lifestyle would not be impacted to make gifts now, because it isn't clear what might happen to the exemption in 2013 and beyond. Even if Congress rolls back the Gift Tax Exemption in 2013 to some level below \$5 million and it did not grandfather gifts made in 2011 and 2012, gifts made today would still remove the future appreciated value of the gift from an estate.

For example, if you left \$5 million in your estate and it grew to \$20 million, that \$20 million would be subject to applicable Federal Estate Taxes. But if you were to give \$5 million today, no matter how the gift is eventually treated for estate tax purposes, any future gains on the \$5 million will be left out of your estate.

Firm News

In late April, McDowall Cotter began a luncheon series called *Hot Lunch Tuesdays*. The thought process behind this series was to provide business owners and key decision-makers with a forum to learn about critical issues businesses face in operations. Each participant is asked to think like a business owner, and, thus, when faced with the question "what do you do for living?", the response becomes "I am the owner of the business," not, for instance, "I am a lawyer." First of all, we want to thank all of those who have participated in the series. It has been a grand success with standing room only crowds on most occasions. We encourage you to come, particularly if you have not been. **Please see**

our calendar on the McDowall Cotter website for the remaining topics.

In other news, David Rosenbaum has been on the speaking circuit. In December, at the Association of Defense Counsel, Northern California and Nevada (ADCNC) annual meeting, he presented, along with Marie Trimble from Gordon & Reese and Stephen Schram from Severson & Werson PC, a topic on using social media for investigation in lawsuits titled *Ethically Mining the Web for Evidentiary Gold*. David and Marie were then invited to the Association of Defense Counsel, Southern California annual meeting in March held at the Biltmore Hotel in Los Angeles to

do the presentation again. Now, the 2011 Claims Conference of Northern California has asked them again to do the presentation this September.

In addition to the social media presentation, in March, David presented, along with Seana Thomas, *The Medicare Mystery Uncovered -- Mastering the Language, Process, Risks and Strategies of Working in the Medicare Secondary Payer Context*, to a group of 65 lawyers, in Sacramento, sponsored again by the ADCNC. David and Seana have been invited to present the topic at the 2011 Claims Conference of Northern California in September, and again to the ADCNC at the December annual meeting.

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Upcoming Events and Workshops

MEDI-CAL: PLANNING FOR AND UNDERSTANDING LONG-TERM CARE

Thursday, September 8, 2011

Tuesday, December 6, 2011

9:00 to 11:00AM and 3:00 to 5:00PM

2070 Pioneer Court, San Mateo

This free workshop will provide an overview on Medi-Cal and will highlight issues pertaining to exempt and non-exempt assets, eligibility and planning for the needs of long term care.

ICE CREAM SOCIAL

Wednesday, September 14, 2011

2:00PM to 6:00PM

2070 Pioneer Court, San Mateo

Everyone is welcome!



FOR COLLABORATIVE & FINANCIAL ADVISORS

NEEDS BENEFIT APPROACH TO ESTATE PLANNING

Thursday, October 27, 2011

Friday, October 28, 2011

9:00AM to 5:00PM

2070 Pioneer Court, San Mateo



!!! Reminder—Please feel free to bring clients and friends to our Non-Maintenance Member Events !!!

Planning for a Loved One

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term 'luxury' is used.

If your child receives governmental assistance to meet his or her basic needs, a Special Needs Trust should be considered. Parents of a special needs child will sometimes be advised to disinherit the child to protect the child's public benefits. Remember, however, that public benefits rarely provide more than subsistence and disinheritance does not allow a parent to help the special needs child in the event of the parent's incapacity or death. Sometimes the thinking is to leave the inheritance to siblings with the implicit understanding that they will care for their special needs brother or sister. But, if the well intentioned sibling loses a lawsuit and has to pay a large judgment or dies unexpectedly or has unanticipated financial problems, financial resources for the special needs child could be lost or significantly impaired. The

creation of a Special Needs Trust protects all of the children.

It is important that the trust created for a special needs child be one that will allow the child to maintain essential government benefits. In other words, the trust needs to be designed to promote the child's comfort and happiness without sacrificing eligibility.

Once a Special Needs Trust is established, family and friends can make gifts to the trust or include the trust as a beneficiary in their estate plans. This can be done without endangering eligibility. In addition, parents can consider whether making the trust the beneficiary of a life insurance policy makes sense now, while the parents are healthy and rates will most likely be lower.

In establishing a Special Needs Trust, the selection of the trustee (manager of the trust assets) is impor-

tant. Parents can serve as trustee so long as they are alive and well. Thereafter, the parents will have listed their choice for Successor Trustee. Parents can choose a family member, a team of trusted advisors or a professional trustee such as a bank. It is important that the selected trustee be financially astute, well organized and, most important, ethical and caring.

A Special Needs Trust can be incorporated into the living trust maintained by the parents or it can be a 'stand alone' living trust. Which Special Needs Trust is implemented depends upon the facts and circumstances of the particular family. In either case, the goal of Special Needs Trust planning is to provide clear instructions and a helpful structure in which Successor Trustees can oversee trust assets for the benefit of the special needs child.

Firm News

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Finally, we are proud to announce that David Rosenbaum was asked to join the Board of Directors for a local San Mateo County nonprofit, Youth and Family Enrichment Services. Youth and Family Enrichment Services has changed name and is now known as StarVista. Since joining the board, David has been elevated to the role of Secretary. To learn more about StarVista go to its website, StarVista.org. The organization provides nearly \$10 million in services to those less fortunate. It is highly dependent on state and local funding. Given the current fiscal condition of both local and state governments, private donations are much welcomed.

A Common Sense Approach to the Practice of Law

McDowall Cotter has served clients in the greater San Francisco Bay Area for more than half a century. In that time, we have established a reputation, in the courts and in the community, for ingenuity, integrity, and a common-sense approach to the practice of law.

It has been said that in some ways we are an old-fashioned law firm. We believe in civility, value long-term relationships, cultivate a healthy work environment, and provide the highest quality legal representation in matters large and small. And we agree — we are old-fashioned, but then again we've been old-fashioned for more than fifty years and still somehow we remain ahead of our time.

Our services include:

- Estate and Trust Planning
- Trust Administration
- Probate
- Will Contests
- Trust Contests
- Challenges to Trustees and their actions
- Employer/Employee Relations
- Personal Injury Lawsuits
- Defending Civil Lawsuits
- Partition Actions
- Construction—Mechanic's Liens
- Trademark Applications
- Corporation, LLC Formation

McDowall Cotter

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