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Practice in focus

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Wills, Trusts & Estates

Federal and State Law changes may affect your estate planning

I once heard the quote "inheritance taxes are so high that the happiest mourner at a rich man's funeral is usually Uncle Sam." It might also be said that New Jersey is often just as happy. Current Federal estate tax rates are as high as 45%. While that rate is only imposed upon estates of over \$3,500,000, New Jersey imposes an estate tax on estates of over \$675,000. In calculating the value of an estate for both Federal and New Jersey estate taxes, all of a decedent's worldwide assets are included. For example, if a decedent owns a home worth

\$500,000, a retirement plan valued at \$300,000, an investment account of \$200,000 and a life insurance policy of \$1,000,000, then he has a gross estate of \$2,000,000. While there will not be a Federal estate tax when he leaves this estate to his children, there will be a New Jersey estate tax of almost \$100,000. This must be paid to the state of New Jersey within nine (9) months of the decedent's date of death. Furthermore, under current law, the Federal estate tax exemption is scheduled to drop to \$1,000,000 in 2011. Without a legislative change, this hypothetical estate could likewise be



subject to an even more significant Federal estate tax. Thus, it is important to evaluate your current estate plan to reduce potential estate tax liabilities.

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NJ Inheritance Tax—The Most Misunderstood Tax of All

While many people are familiar with the Federal Estate Tax and the New Jersey Estate Tax, most people are taken by surprise when they learn that certain modest estates in New Jersey are subject to an even more onerous tax—the New Jersey Inheritance Tax.

The New Jersey inheritance tax is imposed upon transfers based upon the relationship of the beneficiary to the decedent and the amount of the property transferred to the beneficiary. There are four classes of transferees for purposes of computing

the inheritance tax: Classes A, C, D, and E. The Inheritance Tax is not imposed on "Class A beneficiaries," which includes a decedent's spouse, children, parents and grandchildren.

Transfers to all other beneficiaries, including a decedent's siblings, nieces and nephews, sons and daughters-in-law, can be subject to an Inheritance Tax of 11% to 17% on inheritances exceeding \$500. Yes, you read that correctly, \$500. This tax is often borne disproportionately by single individuals without children,

but it sometimes affects blended families as well. While this tax often catches people unaware, careful planning can reduce or eliminate this tax.

FAQ

Q. What tax form is required?
A. For A New Jersey estate tax return, Form IT-Estate, must be filed if the decedent's gross estate plus adjusted taxable gifts exceeds \$675,000.

Q. What about Civil Unions?
A. Federal estate tax laws don't have a provision providing a deduction for property passing to a domestic partner. However, under certain conditions, a marital deduction equal to that permitted a surviving spouse is permitted for New Jersey estate tax purposes.

Federal and State Law Changes...

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While our office advises clients on methods to reduce and, sometimes, eliminate estate taxes, we also focus on issues that have nothing to do with taxes. Estate planning, after all, has many goals, which can be broadly stated to include: implementing the client's objectives to use her assets to provide for loved ones and others, anticipating difficulties in the administration of the plan and incorporating methods to reduce or eliminate them.

Many goals are common among families; however, each family is unique. Thus, on a daily basis, we tailor our clients' estate plans to meet their particular concerns, including: dealing with blended families, providing for

children with special needs and transferring a closely-held business to younger generations.

As John Wooden, the hall of fame head coach for the UCLA Bruins, once said, "failing to plan is planning to fail." At Einhorn Harris, we pride ourselves on our ability to help our clients identify their goals, and to formulate and execute a plan



Key Estate Planning Documents:

✓ Last Will and Testament:

A will or testament is a legal declaration by which a person, the testator, names one or more persons to manage his estate and provides for the transfer of his property at death.

✓ Power of Attorney:

This document authorizes an individual to act on someone else's behalf in a legal or business matter.

✓ An Advance Healthcare Directive or Living Will:

This document tells doctors and hospitals your wishes regarding which medical treatments and life-support procedures you do or don't want.

Utilizing Trusts as Part of Your Estate Plan

Trusts come in a variety of forms and serve many different purposes, including: reducing estate taxes, providing for minors until they reach an age at which they are mature enough to manage assets, protecting family assets from non-family members and creditors, and ensuring professional management. The following are several types of trusts, which you may wish to consider when planning your estate:

The Minor's Trusts. Often a client wishes to make lifetime gifts to his children and/or grandchildren. One concern is how the property will be

managed. A client wishing to exercise greater control over his gift to a minor may consider the following options: (i) custodial accounts; (ii) 2503(c) trust and (iii) a Crummey trust.

Life Insurance Trusts. Life insurance, especially term coverage, is a large part of many clients' estates. While life insurance can solve many estate planning problems, e.g., providing liquidity and replacement income, the life insurance itself is subject to estate tax if the insured owns the policy. An irrevocable life insurance trust (ILIT) is one de-

signed to hold life insurance in a manner that provides the insured's spouse and/or children access to the death benefits without estate tax inclusion in either the husband's or wife's estate.

Asset Protection/Special Needs Trusts. A special needs trust is a discretionary trust designed to preserve government benefits for a disabled or elderly beneficiary. Distributions from the trust are intended to supplement public benefits such as Medicaid and Supplemental Social Security Income (SSI), not replace them.

Wills, Trusts & Estates: Who we are and what we do....

The firm's diverse wills, trusts & estates and taxation practice extends beyond ordinary trusts, wills and other common estate planning documents. We also develop business succession plans, representing clients in guardianship matters, and advising clients in their philanthropic and charitable planning. We implement the use of sophisticated wills, trusts and gifting strategies to reach our clients' objectives. When it comes to tax issues, we are uniquely experienced to assist you with tax savings planning as well as tax controversy work on a federal or state level. We also advise on issues of interpretation of tax laws to help you better operate your business.



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Gary chairs the firm's Trusts and Estates/Taxation Group. His career began in the IRS Manhattan District Counsel Office, where he tried civil cases before the

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