

ESTATE PLANNING NOTES

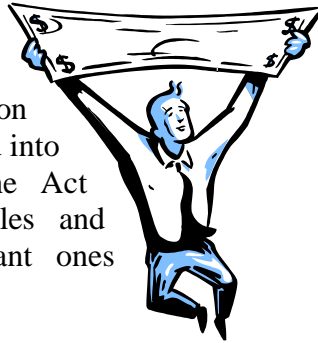
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STRETCHING RETIREMENT BENEFITS

New IRA Laws

The Pension Protection Act of 2006 was signed into law on August 17, 2006. The Act contains new retirement tax rules and planning opportunities. Important ones include:



Non-spouses may transfer 401(k), 403(b) or other company plan assets to an inherited IRA after the death of the plan owner. This change in the law is of great benefit and takes effect December 31 of this year. It allows non-spouse beneficiaries to create a stretch IRA after the death of the company plan owner. Formerly, only spouses could make such transfers without serious income tax consequences. If a non-spouse, say a child, was the beneficiary of a company plan, the child generally had to receive all the plan benefits shortly after the parent's death, and pay up to 40% of the plan amount in income taxes. No stretch of the benefits was possible. Now, any person inheriting a company plan can create a stretch IRA for the plan benefits.

Beginning immediately, IRA owners age 70½ and older can make tax-free IRA distributions of up to \$100,000 per year to a charity, if the funds are transferred

directly from the IRA to the charity. (See next article).

Beginning in 2008, company plan funds can be converted directly to Roth IRAs.

Roth IRAs, Roth 401(k)s and Roth 403(b)s are now permanent. They were slated to be repealed after 2010.

A common theme of the new Act is that Congress has determined to help people make it a little easier to plan for retirement security and to contribute more money to retirement plans.

The new rules offer new flexibility to stretch retirement benefits.

IRA Charitable Rollover

The Pension Protection Act of 2006 allows taxpayers over the age of 70½ to exclude from their gross income up to \$100,000 of distributions they take from a traditional or Roth IRA, if those distributions are made directly to a qualified charity. A qualified charity is any charity that receives an IRA distribution in 2006 and 2007 directly from the IRA trustee. A distribution made to a charitable remainder trust or a charitable gift annuity will not be a qualified distribution, nor will a distribution to a private foundation, a supporting organization or a donor advised fund.

On Retirement

What lies behind us and what lies before us are tiny matters, compared to what lies within us.

Waldo Emerson

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IRA owners who are over the age of 70½ are required to take annual minimum required distributions (“MRDs”) from their IRAs (except for Roth IRAs). Generally, the amount of the MRD is included in the owner’s gross income, and the owner pays income taxes on that amount.

Under the new law, if the owner instead directs the MRD to a qualified charity, the owner does not have to report the MRD on the owner’s income tax return.

The amount that is excluded from gross income of the owner will not also receive a charitable deduction. The end result for most taxpayers will be similar to taking a taxable withdrawal from the IRA, paying the tax on it, making a contribution to charity, and then taking a deduction for that contribution.

The new provision is most helpful for taxpayers who otherwise could not make full use of the charitable deduction because they do not itemize deductions, or because their deductions are reduced in view of their high income, or because they are otherwise subject to the 50% limitation on charitable contributions. However, an added benefit for Indiana residents is the reduction of adjusted gross income by the contribution to charity. So, Indiana taxes are less, despite no charitable deduction.

that allows you to save money for future college and post-graduate expenses for the grandchild. These plans cover both in-state and out-of-state college tuition, including private or public colleges, graduate schools and trade schools.

When it is time to pull money out of the 529 Plan for qualifying education expenses, the expenses can include tuition, room and board, books, supplies, computers and other related fees.

The big benefit to you and the grandchild is that your investment into the 529 Plan grows tax-free, for as long as the money remains in the Plan. When the 529 Plan funds are distributed for the grandchild’s college costs, they come out tax-free. Neither you nor the child pays income tax on the growth in the Plan.

You, as the donor, maintain control of the account and the beneficiary has no rights to the assets unless you allow a distribution for education expenses. You decide what college expenses to pay and when to pay them. If the grandchild who is the beneficiary of the 529 Plan does not go to college or does not need all of the funds in the 529 Plan, you may transfer the funds to a new beneficiary who is a sibling, another family member or yourself, without penalty. You also can withdraw the funds in the Plan, but you will have to pay income taxes on the earnings, as well as a 10% penalty.

Any contribution to the 529 Plan is considered a gift. Consequently, you must stay within the \$12,000 per year limitation. A husband and wife can give \$24,000 per year to a 529 Plan. You can gift up to five years of the annual exclusion amount in one year, or \$60,000 (\$120,000 from husband and wife).

SAVINGS RESULTS	
If your grandchild saves at 8% annual interest, he/she will accumulate . . .
\$25 per month for 15 years	\$ 8,650.96
\$50 per month for 15 years	\$17,301.92
\$100 per month for 15 years	\$34,603.82

Section 529 Education Plans



A great gift for grandparents to provide for grandchildren is to begin a Section 529 Education Plan for each grandchild. A 529 Plan is an investment plan

For more information on 529 Plans, give us a call. We can put you in touch with someone to get you started.

Life Changes and Your Estate Plan

Have you recently married or gone through a divorce? Started a family or lost a loved one? Any of these life events can trigger the need to re-examine your estate plan. Here is what Indiana law provides if you don't update your documents:

Marriage:

When you marry, it is important to update your Will. However, if you fail to do so, your spouse has rights under Indiana law. Surviving spouses may elect to "take against the Will" in case they are not mentioned in your Will or if they are dissatisfied with the share you left them. A surviving spouse (other than a subsequent, childless spouse) is entitled to one-half of your net personal and real estate.

If you die without a Will, but are married, your spouse will split your estate with your children. This is inconvenient if the children are young, because their share of your estate will be held in a guardianship since you did not leave their share in a trust.

*** Interesting Note:** If a husband or wife is living in adultery at the time of his/her spouse's death, or has abandoned his/her spouse without just cause, he/she shall take no part of the estate or trust of the deceased spouse.

Forgotten Children:

If you fail to update your Will after having children, and your Will does not provide for "any children hereinafter born to or adopted by me," they will not be wholly disinherited. Indiana law protects "pretermitted heirs" - or those unintentionally omitted from a testator's Will. Your pretermitted heirs will receive a share of

your estate equal to that which they would have received under the laws of intestacy. The only exception to this is if your Will gives substantially all of your assets to your surviving spouse. In that case, your testamentary intent to benefit solely your spouse will be honored.

Divorce:

If after executing your Last Will and Testament, you later divorce, all provisions in your Will in favor of your former spouse are revoked. An annulment has the same effect as a divorce.

*Remember, however, that your non-probate transfers will not be affected by divorce or annulment. Therefore, although you may not need to rush out for a new Will, you should be sure to update your beneficiary designations on your insurance, retirement accounts, etc.

No Health Insurance?

According to Indiana's Family and Social Services Administration (the "FSSA"), about 561,000 people in Indiana (1 in 10) have no health insurance. From 1999 to 2004, Indiana had the nation's second highest percentage of workers who lost employer-sponsored health insurance. The FSSA has a goal of drafting legislation in 2007 to assist with this serious problem.

Planning for Incapacity

If you think that managing your financial affairs is difficult now . . . imagine how hard it will be when you are 90!

It is likely that in the future most people will experience at least temporary periods during which they will be unable to manage their financial affairs. When this happens, it is often necessary to institute guardianship proceedings.

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Under Indiana law, a guardian may be appointed over the person and/or the estate of an incapacitated person. An “incapacitated person” is defined as an individual who is unable to manage, in whole or in part, the individual's property, to provide self-care, or both – because of mental illness, mental deficiency, physical illness, infirmity, habitual drunkenness, etc.

Guardianship proceedings involve a formal hearing at which evidence of an individual's incapacity is presented to a judge. Most people find guardianships undesirable due to the tedious and public nature of the proceedings. Indiana law requires a guardian to obtain Court approval for most actions, to report to the Court on the ward's physical and mental condition, and to prepare and file periodic accountings. Petitioning the Court and preparing and filing records are time consuming and costly – and guardianship records are open to the public.

Planning ahead can spare you from the necessity of a guardianship. Here are the two most important steps you can take now to avoid having your life and finances put in the hands of the Court:

1. Execute a Healthcare Power of Attorney, and
2. Execute a Durable Power of Attorney.

Having these two documents can avoid the need for a guardianship. If you have not updated these documents recently, let us know. Statutes changed substantially last year.

Please feel free to contact us with any comments, suggestions or questions you may have.

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