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2014 Autumn Lecture Series

Note: All Lectures will be held on Tuesdays, from 8:00 - 9:40 AM in the Conference Room of Suite 265A South, Lake Success, NY 11042. Coffee & Bagels. 2.0 CPE credits for CPAs. Complimentary. Online registration preferred.

September 9 – Importance of Trusts in Estate Planning

Prior to the Statute of Wills, enacted by Parliament in 1540, it was impossible for a landowner to devise title in land to heirs. Moreover, under the harsh common law rules of primogeniture, if a landowner died without living relatives, his land would escheat to the Crown. To illustrate other legal difficulties encountered prior to the Statute of Wills, landowners leaving to fight in the Crusades might convey title in land to another person, expecting that person to reconvey title when the Crusader returned. However, English law did not recognize the claim of the returning Crusader forced to sue if the legal owner refused to revest title in the original owner. Turned away at courts of law, some Crusaders then petitioned the King, who referred cases to the Courts of Chancery. These equitable courts often compelled the legal owner (the "trustee") to reconvey the land back to the Crusader, (the "beneficiary" or *cestui que* trust) who was deemed to be the equitable owner. Equitable remedies first recognized by Chancery Courts exist today in the form of injunctions, temporary restraining orders, and declaratory judgments, which remedies may be sought where there is no remedy at law. The principles of recognition and enforcement of trusts enunciated by Courts of Chancery form the basis of modern trust law. A trust is thus a fiduciary relationship with respect to specific property, to which the trustee holds legal title for the benefit of one or more persons who hold equitable title as beneficiaries. Thus, two forms of ownership — legal and equitable — exist in the same property at the same time. [Restatement of Trusts, §2]. The essence of a trust then, is to separate legal title, which is given to someone to hold in a fiduciary capacity as trustee, from equitable title, which is retained by trust beneficiaries. This Lecture will discuss the importance of trusts today in estate planning.

September 23 – The Decedent's Last Will: A Final Profound Statement

A will is a written declaration providing for the transfer of property at death. Although having legal significance during life, the will is without legal force until it "speaks" at death. Upon the death of the decedent, rights of named beneficiaries vest, and some obligations of named fiduciaries arise. However, the will cannot operate to dispose of estate assets until it has been formally admitted to probate. Historically a "will" referred to the disposition of real property, while a "testament" to referred to a disposition of personal property. Today, that distinction has vanished. The will operates on the estate of the decedent, determining the disposition of all probate assets. However, its sphere of influence does not end there: Under NY Estates, Powers and Trusts law (EPTL), the will can dictate how estate tax is imposed on persons receiving both probate and nonprobate assets. Probate assets are those assets capable of being disposed of by will. Not all assets are capable of being disposed of by will. For example, a devise of the Adirondack Northway to one's heirs — although a nice gesture — would be ineffective. Similarly, one cannot dispose by will of assets held in joint tenancy, such as a jointly held bank account or real property held in joint tenancy, since those assets pass by operation of law, regardless of what a contrary (or even identical) will provision might direct. This Lecture will explore the importance of Wills in estate planning.

October 7 – Emergence of Delaware Statutory Trusts in Like Kind Exchanges

Delaware Statutory Trusts have now eclipsed Tenancy in Common interests as replacement properties in like kind exchanges. Since up to 499 persons may own an interest in a DST, a DST may require a much smaller initial investment than a TIC. In addition, since the DST is a single legal entity, borrowing is facilitated. Whereas in a TIC, loans must be made to each individual owner of a TIC interest, the DST will itself be the only borrower. Individual investors are not borrowers and will not be required to provide financials or income tax returns. This makes financing less difficult, and may increase the range and replacement properties available to the borrower. Owners of certificates of trust in a DST have no voting power, whereas individual TIC owners must be consulted – and must approve – all decisions made by the TIC, except ones permitted by Rev. Proc. 2002-22. This gives dissenting – or recalcitrant – owners of TICs disproportionate influence. The DST is itself a bankruptcy remote entity, and thus provides a great degree of asset protection. Unlike the situation arising with the acquisition of a TIC, there is no need for the individual investor to form a bankruptcy-remote single-member LLC to hold property. When the trustee of a DST sells the property, individual investors may engage in a new like kind exchange (although the trustee of the DST may not engage in a like kind exchange). Since the DST requires less initial investment, the investor may be better able to diversify holdings. This Lecture will discuss the myriad advantages DSTs serve as vehicles for replacement property in exchanges.

October 21 – Post-Mortem Estate & Income Tax Planning

This lecture will provide an overview of income and estate tax considerations involved in post-mortem planning. Some of the topics to be discussed will include (i) the estate tax return; (ii) NYS taxation of nonresidents; (iii) the decedent's final income tax return; (iv) administration expenses; (v) the election treat a trust as part of the estate; (vi) distributions in kind; (vii) preparer and appraiser penalties; (viii) estate tax liens; (ix) fiduciary and beneficiary liability (x) valuing estate assets; (xi) preventing loss of basis; (xii) portability; (xiii) marital deduction; (xiv) disclaimers; (xv) valuation clauses; (xvi) protective claims; (xvii) election to defer payment of tax; and (xviii) income in respect of a decedent.

November 4 – Elder Law Planning: An Introduction

The Social Security program, begun during the Great Depression under President Roosevelt, is the forerunner of Medicare and Medicaid. The largest program under the Social Security Act is that which provides for retirement benefits. The monthly retirement benefit is a function upon two variables: the recipient's earnings record (which is tracked by the Social Security Administration automatically) and the age at which the recipient chooses to begin receiving benefits. The recipient's monthly income benefit is based on the highest 35 years of the recipient's "covered earnings." Covered earnings in any year cannot exceed the Social Security Wage Base, which is also the maximum amount of earnings subject to the FICA payroll tax. In 2014, that amount is $117,000. The earliest time at which Social Security benefits become payable to a covered worker is age 62. A person who chooses to begin receiving benefits at age 62 will receive only about 75 percent of the amount which the person would have received had payments been deferred until age 66. **Medicare** is a federal insurance program that provides health insurance to persons age 65 and over, and to persons under age 65 who are permanently disabled. Medicare and Medicaid were signed into law by President Johnson in 1965 as part of the Social Security Act. Medicare is administered by the federal government. In general, all five-year legal residents of the U.S. over the age of 65 are eligible for Medicare. Medicare consists of four parts, A through D. Without planning, the elderly are at significant risk of losing an entire life's savings in the event of catastrophic illness following the expiration of Medicare hospitalization and nursing care benefits. At that point, the choice for extended care is in general either **Medicaid** or payment out of pocket. Many who opt for private payment of long-term care costs will risk exhausting their resources. This loss will have implications for other family members as well. The principal difference between Medicare and Medicaid is that Medicaid is need-based and Medicare is entitlement based. While Medicare is federally funded and administered, Medicaid is a federal program jointly funded and administered by the states. Financial resources play no role in determining Medicare eligibility. Medicaid eligibility is limited to persons with limited income and limited financial resources. Medicaid covers more health care services than Medicare and unlike Medicare, will cover long-term care for elderly and disabled persons who cannot afford such care. This Lecture will discuss Social Security, Medicare and Medicaid.

November 18 – NYS Tax Penalty Abatement Procedures

20 NYCRR § 536.1(c), entitled "Penalties and interest," provides for waiver of penalties if a taxpayer's failure to pay "was due to reasonable cause and not due to willful neglect. 20 NYCRR § 2392.1(g) provides that a taxpayer has acted with reasonable cause when he has acted in reliance on "professional advice... provided such reliance was reasonable and the taxpayer had no knowledge of circumstances which should have put the taxpayer upon inquiry as to whether such [advice was] erroneous." According to 20 NYCRR § 2392.1(g), circumstances that indicate reasonable cause also include "an honest misunderstanding of fact or law that is reasonable in light of the experience, knowledge and education of the taxpayer. In add ition to the specific examples of reasonable cause provided in 20 NYCRR § 2392.1(g), 20 NYCRR § 2392.1(d)(5) provides a general test. 20 NYCRR § 2392.1(d)(5) provides the following general test for determining whether the failure of a taxpayer to pay sales tax was due to reasonable cause: "Any other ground for delinquency which would appear to a person of ordinary prudence and intelligence as a reasonable cause for delay and which clearly indicates an absence of willful neglect may be determined to be a reasonable cause." Finally, 20 NYCRR § 2392.1(b) provides that a taxpayer's past compliance with the Tax Law is probative of whether his failure to pay a sales tax liability was due to reasonable cause: "In determining whether reasonable cause exists, in addition to an evaluation of [other] facts, the taxpayer's previous compliance record with respect to all of the taxes imposed pursuan t to the Tax Law may be taken into account." This Lecture will discuss the Regulations and explore procedures available to the taxpayer who seeks penalty remission.

December 2 – IRS Private Letter Ruling Requests

A tax opinion letter may state that a transaction "should" result in the tax consequences predicted if it possesses at least an eighty percent chance of success. Disclosure would not be required in this instance. However, if the tax treatment has only a "reasonable possibility of success," disclosure should be made. Some tax advisors consider a forty percent chance of success the threshold below which disclosure should occur. On the other hand, some transactions, although generating clear and favorable conclusions from a tax standpoint, will not have substantial authority, perhaps because IRS never issued guidance. Those transactions would presumably not require disclosure. Private letter rulings are issued by the IRS in response to a taxpayer inquiry concerning the tax consequences of an anticipated transaction where guidance is desirable. The PLR explains whether the IRS will view the transaction as the taxpayer contemplates, or not. In the event the IRS cannot issue a favorable ruling, the taxpayer may withdraw the request. Letter rulings are binding only upon the taxpayer making the request. However, in practice, PLRs are relied upon by tax practitioners routinely, unless revoked or amended. This Lecture will discuss procedural and substantive issues involved in making a private letter ruling request.

December 16 – NYS Trust, Estate & Gift Tax Legislation

Governor Cuomo signed legislation on March 31, 2014 which will gradually increase the New York lifetime estate tax exclusion amount to $5.25 million, which is the current federal exclusion amount. The highest New York rate will remain at 16 percent. Once the $5.25 million threshold is exceeded, the benefit of the $5.25 million exclusion quickly vanishes. Once the $5.25 million threshold is exceed by 5 percent, the entire estate will become subject to estate tax. This "bubble" existed under prior law, but because of the vastly increased exemption amount, the effect will now be magnified. Other changes into law included (i) the inclusion of gifts made within 3 years of death in the decedent's estate; (ii) the repeal of the New York generation-skipping tax; (iii) the implementation of new "throwback" rules which impose income tax on repatriated accumulated income from trusts having no New York trustees, no New York property and no New York source income; and (iv) the deeming by New York of certain non-grantor trusts as grantor trusts, thus avoiding the benefit of so-called "DING" or "NING" trusts, which were established in jurisdictions such as Delaware or Neveda which imposed no state income tax, and were exempt from New York tax by reason of their constituting a non-grantor trust for federal income tax purposes. This lecture will summarize the above changes to New York law.