

February 10, 2011

Dear Clients, Colleagues and Friends:

Every New Year brings changes and new opportunities. The Estate Planning Practice Group at Keane and Beane is writing to advise you of significant estate planning opportunities which have arisen over the past few months. This letter summarizes the new developments and suggests steps you might consider taking in the areas of:

- Estate and Gift Tax Law
- Powers of Attorney

Estate And Gift Tax Law Changes

On December 17, 2010 President Obama signed into law the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 ("Tax Act of 2010").

The Tax Act of 2010 increased the amount which may be exempted from federal estate tax to \$5,000,000 per person (or \$10,000,000 for a married couple) and reduced the federal estate tax rate on the amount over that exemption from 45% to 35%. In addition, for the first time in estate tax history, the Tax Act of 2010 allows the surviving spouse to use any unused portion of the estate tax exemption amount of the predeceased spouse as part of the surviving spouse's exemption when that survivor dies. Thus, for example, if a spouse dies after January 1, 2011 and only uses \$3,000,000 of his or her \$5,000,000 estate tax exemption, the surviving spouse may take advantage of the unused \$2,000,000, thereby allowing such surviving spouse to have a \$7,000,000 exemption.

The Tax Act of 2010 brings another significant change - the \$1,000,000 per person gift tax exemption which existed under the prior law has also been increased to \$5,000,000 per person, making the gift and estate tax exemptions unified for the first time in almost 10 years. As a result each person may now make up to \$5,000,000 of gifts before being subject to tax. Making gifts over \$13,000 per person per annum will result in a dollar for dollar reduction in the donor's estate tax exemption. However, the ability to make larger gifts without paying up front gift tax combined with the ability to continue to do discount planning in a low interest rate environment will result in the ability to transfer large sums of wealth to succeeding generations without being subject to gift or estate tax.

Simply stated, the lower interest rates fall, the better the environment to transfer assets with little or no gift or estate tax consequences. This is true because many techniques rely on assets outperforming the IRS's rates of return. Two common techniques which become significantly

February 10, 2011

Page 2

more valuable in a low interest environment are sales to “defective” grantor trusts (“IDGTs”), and the use of grantor retained annuity trusts (“GRATS”). In addition to IDGTs and GRATs, the IRS low rates present many real opportunities to allow you to assist your family while shifting wealth between generations with little or no gift tax implications.

Please be aware that the Tax Act of 2010 is only effective for calendar years 2011 and 2012. In fact, unless Congress and the President act prior to January 1, 2013, the federal estate tax exemption at that time will return to only \$1,000,000 per person. **Furthermore, New York State has its own separate estate tax which only exempts \$1,000,000 dollars per person from estate tax.** Therefore estate planning documentation must be very flexible to achieve maximum tax efficiency in the context of the estate tax laws prevailing at the time of death and the family’s then current financial situation.

Given that the estate tax laws remain in flux, maintenance of flexibility in estate tax planning should be an ongoing goal. For example, the use of disclaimer planning among spouses would preserve this sort of flexibility.

In light of these changes, we encourage you to take a fresh look at your estate planning documents. You may want to contact us to better structure your objectives while maximizing estate and gift tax savings.

New Power Of Attorney Legislation

The Power of Attorney continues to reign supreme as the single most important estate and financial planning document, as it enables someone to handle the financial affairs of an individual who becomes incapacitated and unable to act for themselves. Did you know that New York State adopted sweeping new Power of Attorney legislation concerning such financial decision making on September 1, 2009, which was further modified in September, 2010? The new legislation drastically changes the existing Power of Attorney law which had been in effect since January 1, 1997.

The new Power of Attorney legislation requires that the Power of Attorney not only be signed by the Principal (i.e., the individual who is granting the authority to act), but for the first time it must also be signed by the Agent (i.e., the individual who has been designated to act) and will have no legal effect until it has been signed by both parties.

Powers of Attorney are an integral part of the estate and financial planning process. They are frequently used to authorize the Agent to make gifts of the Principal’s property, and under the new legislation, the Principal must execute a separate Statutory Gifts Rider to grant such authority to the Agent. The primary purpose behind such gift giving is to allow for

- estate tax reduction (which may be particularly important to New Yorkers where estates bequeathed to an individual other than a spouse are taxable if they exceed \$1,000,000 in value); and

February 10, 2011

Page 3

- protection of assets and allowing the Principal to qualify for government assistance in the event the Principal should encounter an uninsured long term custodial care crisis which requires home care or a nursing home stay, which neither Medicare nor private health insurance cover.

The importance of executing a Power of Attorney cannot be overemphasized. Someone who has not executed a Power of Attorney and who thereafter becomes incapacitated may not be able to access his or her own assets without initiating a court guardianship proceeding. Guardianship proceedings tend to be expensive, time consuming and unpleasant; the person ultimately selected by the Court to serve as Guardian may not be someone who the individual would have selected. Guardianship proceedings can be avoided simply by having a Power of Attorney in place.

Many people incorrectly believe that they do not need a Power of Attorney when assets are owned jointly with another person. Although joint ownership of assets often allows the co-owner to access the assets when the other owner becomes incapacitated, joint ownership has legal and tax ramifications that may not be desired. Similarly, people often incorrectly believe that by designating a beneficiary on their accounts (whether on a retirement account, "in trust for" account, annuity or life insurance policy), the beneficiary can represent them in the event of incapacity. To the contrary, such beneficiary designations only take effect at the time of the death of the account or policy owner and do not provide for access to the assets during lifetime.

The new Power of Attorney legislation gives substantially more protections to the consumer. While Powers of Attorney executed prior to the September 1, 2009 effective date of the new law continue to remain effective, all individuals should contemplate executing the new, more flexible Power of Attorney, which will become the document most recognizable by financial institutions doing business in New York State.

We look forward to hearing from you to discuss your estate plans. Also let us know if you prefer to receive these updates in the future via email.

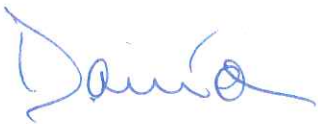
Best wishes for the New Year.

Sincerely yours,

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