Oregon State Bar

Elder Law Newsletter

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Tax issues may be among problems related to declining capacity

By Frederick M. Okamura, Attorney at Law

We elder law attorneys seem to find nearly as many different types of challenging client situations as there are people in the world. For example, we encounter spouses with varying degrees of declining capacity, both individually and often in concert. Reliance on nuclear family-member fiduciaries is usually preferred, but all too often it causes problems. The elder's children may rationalize engaging in elder financial abuse as merely an early entitlement to their inheritance, or as compensation for time served, particularly if there are absent siblings. A number of tax issues can result.

Sometimes we are able to anticipate situations that will lead to problems. Well-heeled clients can surround less-astute family member trustees with professional advisors, trust protectors, and even professional co-trustees. Less-wealthy clients can employ private party caregivers and quasi-professional trustees, usually someone with whom they have some personal connection, such as a friend or distant relative who is willing to be compensated through inheritance or some other unconventional manner. However, this too can assuredly become problematic as the elder's capacity declines, whether through conservatorship or trustee litigation by estranged family members with mixed or questionable financial motives, or through inept financial management by a lay fiduciary, or outright financial abuse.

Many elder law attorneys have probably even seen the circumstance where the elder has selected a highly competent family friend as successor trustee, such as a banker or other professional, only to find that when the elder truly needs help the fiduciary is unwilling to step into the hazards of a family dispute.

Never has a client called my office to tell me that his or her own capacity is in decline and therefore we would need to implement the estate plan. As elder law attorneys, we are most often in the position of either being nearly as reliant upon the efficacy and advocacy of our client's fiduciaries and family members as our clients have been, or being introduced to the story by a player whose incentives, if not intentions, are objectively at odds with the elder's best interests. Anecdotally, it seems to be equally unlikely that an elder will contact an attorney to self-report physical or financial elder abuse. To a person, I find that clients will actively conceal these issues to protect their abuser. As a result, elder law attorneys are often engaged in crisis management.

A number of tax issues can manifest in these crises. The balance of this article focuses on several scenarios to help elder law attorneys spot issues and to provide some insight into available strategies by addressing innocent-spouse relief and the income-tax treatment of elder abuse recoveries.

The most common tax issues that I see are unfiled returns and tax liabilities that are simply overwhelming or unanticipated. Examples

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Declining capacity

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Rick Okamura focuses his civil litigation practice on elder, business, and tax issues, and is a member of the Oregon and Washington bars, as well as the U.S. Tax Court and the U.S. District Court for Oregon.

range from the pedestrian to the truly shocking, including income taxes on retirement account distributions (including early withdrawal penalties assessed against folks under 59 ½), settlement of credit card or other debts resulting in the taxpayer receiving a 1099 from the creditor for discharge-of-indebtedness potential income, taxes on partnership income, particularly for those unwittingly hit with a 39.6 percent rate for IRA holdings[1], and outright tax shelter schemes. So how do we address these issues?

The taxpayer has the obligation to maintain records to support his or her return, which can be an obvious challenge for the declining-capacity client. Fortunately, with a simple telephone call, in most circumstances the IRS is willing to stay collection activity for 60 days to allow for time to prepare and file outstanding returns, depending upon the taxpayer's compliance history. This will also give you time to assess the elder's ability to pay and whether the correct taxes have been assessed. Of course, most elder law practitioners will use the services of a tax professional for this analysis and the necessary return preparation. Often, however, unfiled returns or unpaid liabilities are only symptoms of deeper problems in the elder's life. For elder law practitioners, the next step in the inquiry may lead to fiduciary protection for the client's spouse, separation, or an action for elder abuse.

Elder abuse

Physical and financial elder abuse is actionable in Oregon under ORS 124.100. While the prosecution of these claims is beyond the scope of this article, the tax consequences of the eventual money judgment or settlement ought to be considered at the outset. These recoveries will be taxable as either ordinary income or capital gain based upon the nature of the underlying claims. Furthermore, I.R.C. § 104(a)(2) exempts recoveries for personal physical injuries or physical sickness from taxable income. Therefore, in a universe of finite recoverable assets, it may behoove the practitioner to shape the complaint to afford an opportunity for recovery on grounds of physical abuse and return of capital assets, even where these may not be the strongest aspects of the case, rather than to rely on treble (punitive) damages or an otherwise taxable recovery.

Innocent-spouse relief; equitable relief; separation of liability

Innocent-spouse relief has been one of the top ten most-litigated tax issues each year for the past twelve years, excluding 2014.[2] When elder law attorneys encounter a client who is taking over finances from a formerly dominant spouse, perhaps after some financial misadventure, or a client in an abusive marriage, one ought to include consideration of the tax consequences in our analysis. You may be able to relieve a substantial financial burden that would otherwise compound an already difficult situation for your client.

The fact that some clients are surprised when the IRS seeks to hold them liable for their spouse's tax misdeeds is illustrative of the aspect of fundamental fairness and equity that underlies the innocent-spouse and equitable-relief regimes, as well as the right to separation of liability[3]. As most of us are aware, when married couples file a joint return they are then jointly and severally liable for the income tax arising from that joint return, including interest and penalties.[4] Rather than a recitation of the procedural mechanics of filing and the list of factors considered in an application, which are voluminously outlined in statute, regulations, revenue procedures, IRS publications, case law, and secondary sources, some insight into the relatively recent shifts in the basic landscape may be more useful.

Equitable relief from unpaid taxes and deficiencies on a joint return may be available at any time during the collection statute of limitations period that applies to the underlying tax assessment.[5] This is the broadest available form of relief, but should also be requested in conjunction with innocent-spouse relief or a separation of liability election, whenever possible, and in fact will only be granted where these forms of relief are unavailable. Furthermore, the taxpayer's eligibility for equitable relief will now receive de novo review by the Tax Court.[6]

Innocent-spouse relief may be available where a tax liability results from an erroneous item attributable to the other spouse. For both innocent-spouse relief and separation of liability, the individual must file an application for administrative relief (Form 8857) with the

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Declining capacity

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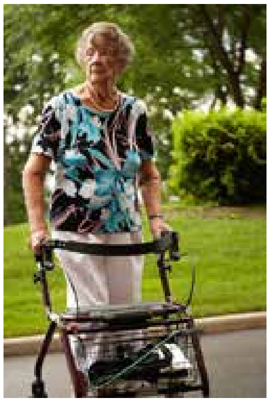

IRS Collection Division within two years after the IRS begins collection activities against that individual.[7]

A successful separation of liability election allows for tax treatment essentially as though the client had filed an individual, rather than a joint return, and may be available in certain circumstances such as divorce, legal separation, the death of a spouse, or where the spouses are no longer members of the same household for a 12-month period. The same administrative relief application requirement and time constraints described for innocent-spouse relief above apply for the separation of liability election.

While the vast majority of innocent-spouse claims are resolved at the administrative level, the IRS success rate in litigation of innocent-spouse cases is surprisingly low. Courts granted innocent spouse relief in 29 percent of the cases decided during the last 12 months of analysis, ending May 31, 2015, and 36 percent of cases during the 2013 period.[8] It remains to be seen what the combined effect will be of an aging population, the Tax Court acting as a trial court of equity, and the expanded availability of such requests to be filed at any time before the collection statute runs, but I would encourage elder law practitioners to take further interest in study of this important tax topic. By definition, elder law practitioners, perhaps more often than any other type of attorney, endeavor to take a holistic approach in addressing their client's best interests, and I hope that this article has been able to further that aspiration for you. ■

Footnotes

1. Laura Saunders, "Thousands Hit WithSurprise Tax Bill on Income in IRAs," *Wall St. J.* (November 14, 2015) **www.wsj.com/articles/thousands-hit-with-surprise-tax-bill-on-income-in-iras-144742743**
2. See Stephanie Hunter McMahon, "What Innocent Spouse Relief Says About Wives and the Rest of Us*,"* 37 Harv. J.L. & Gender 142, 144 (2014); *1 Nat'l Taxpayer Advocate, 2015 Annual Report To Congress*, § 3, at 536 (2015). 6.
3. I.R.C. § 6015 (2015).
4. I.R.C. § 6013(d)(3) (2015).
5. Rev. Proc. 2013-34, 2013-43 I.R.B. 397, § 4.02.
6. *Wilson v. Comm'r*, 705 F.3d 980, 993 (9th Cir. 2013) ("The award of equitable spouse relief often turns on credibility, which is best tested in the crucible of trial rather than in a bureaucratic office in which the officer is unlikely even to meet the claimant.").
7. Innocent spouse relief may also be raised by tax practitioners through collection due process appeals and as a defense in a Tax Court Petition, made available through a statutory notice of deficiency, however the procedural requirements of these options are beyond the scope of this article.
8. See *1 Nat'l Taxpayer Advocate, 2015 Annual Report To Congress*, § 3, at 536 (2015); Stephanie Hoffer & Christopher J. Walker, "The Death of Tax Court Exceptionalism," 99 Minn. L. Rev. 221, 269 (2014).

Insurance Division says automobile insurers must pay before Medicaid

Many Medicaid recipients do not have automobile insurance. When a Medicaid recipient without automobile insurance is a pedestrian struck by a vehicle, he or she therefore does not have personal injury protection (PIP) coverage.

In some cases, drivers' PIP insurers have questioned their obligation to pay the accident-related medical expenses of the Medicaid recipient, resulting in the Medicaid program in Oregon paying some or all related medical expenses.

The Oregon Insurance Division has provided guidance to the industry to clarify this issue. In October 2015, the division concluded that when a pedestrian without automobile insurance is injured in a vehicular accident, the driver's PIP coverage must be exhausted before Medicaid will pay any medical expenses related to the accident.

Any individual may file a complaint with the Insurance Division if an automobile insurer does not comply. Insurance Division advocates can be reached at 888.877.4894. ■

Is remodeling a home for medical purposes tax deductible?

By Elizabeth Jessop, Attorney at Law

Elizabeth Jessop is an attorney with Immix Law Group PC in Portland. Her practice focuses on estate planning, estate administration, elder law, and tax. Elizabeth is the chair of the Public Service Stipend Program of the OSB Taxation Section's New Tax Lawyer Committee.

If you are an elder law or special needs attorney, you have probably encountered clients who wish to remain at home (or keep a disabled loved one in the home), but cannot do so without extensive changes to their home. If the primary purpose of the home improvement is for medical care, the client might be allowed a deduction on his or her personal income-tax return for this significant expense.

You likely already advise clients that their medical expenses may be claimed as a deduction on their personal income-tax return. Internal Revenue Code (IRC) § 213(a) allows a deduction for medical expenses paid by the taxpayer, the taxpayer's spouse, or the taxpayer's dependent, so long as the expense has not been and will not be reimbursed, and to the extent that the expense exceeds 10 percent of the taxpayer's adjusted gross income (AGI). If the taxpayer is sixty-five or older, the expense only must exceed 7.5 percent of AGI. The 7.5 percent exception will expire at the end of the 2016 tax year (see § 9013 of The Patient Protection and Affordable Care Act of 2010).

Generally, a home improvement (called a capital expenditure by the IRC) is not deductible for income tax purposes. IRC § 263(a). However, if the expenditure would otherwise qualify as a medical expense and has medical care as its primary purpose, the deduction may be allowed. Treas. Reg. § 1.213-1(e)(1)(iii). Medical care is defined at IRC § 213(d)(1)(A) as amounts paid for the "diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body." For example, the Ninth Circuit Court held that the expense to install a transportation device to assist a taxpayer with a heart condition reach the lower levels of his property was deductible. *Riach v. Frank*, 302 F.2d 374 (9th Cir. 1962). In *Snellings v. United States,* 149 F. Supp. 825 (D.C.Va. 1956), the court allowed a deduction for the cost of installing an elevator for a taxpayer with severe arthritis. Ask your client if his or her doctor will provide a letter for your file stating that the capital improvement is medically necessary.

Once you have determined that the capital expenditure was for the primary purpose of medical care, the next consideration is whether the improvement increased the value of the real property. If the fair market value of the home is increased by the expenditure, the taxpayer can only deduct the amount of the expense that is greater than the increase in value. Treas. Reg. § 1.213-1(e)(1)(iii). For example, if the installation of an elevator in the home cost $12,000, and the value of the home increased by $9,000 due to the installation, then only $3,000 of the expense is deductible. Also, costs that are attributable to "personal motivation" and not primarily to medical care, such as additional costs to make an improvement more aesthetically pleasing, are not deductible. *Ferris v. Commissioner*, 582 F.2d 1112 (7th Cir. 1978). If the capital improvement is significant and has potentially increased the value of the home, it would be a best practice to have an appraisal performed to document the increase in value.

Not all capital expenditures for medical care increase the value of a home. In Rev. Rul. 87-106, 1987-2 C.B. 67, the IRS provides a list of expenditures that do not improve the value of a home and may be deducted in full (to the extent the expenses exceed the AGI threshold):

- constructing entrance or exit ramps to the residence
- widening doorways at entrances or exits to the residence
- widening or otherwise modifying hallways and interior doorways
- installing railing, support bars, or other modifications to bathrooms
- lowering of or making other modifications to kitchen cabinets and equipment
- altering the location of or otherwise modifying electrical outlets and fixtures
- installing porch lifts and other forms of lifts (except elevators, which may add value to the residence)
- modifying fire alarms, smoke detectors, and other warning systems
- modifying stairs
- adding handrails or grab bars, whether or not in bathrooms
- modifying hardware on doors

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Remodeling a home

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- modifying areas in front of entrance and exit doorways
- grading of ground to provide access to the residence

If there are ongoing costs to the taxpayer due to the remodel, such as operating costs or maintenance expenses, these costs can also be deducted so long as the need for the remodel remains medically necessary. Treas. Reg. § 1.213-1(e)(1)(iii). Ongoing costs can be deducted even if the original medical expenditure was not deductible (for example, if the amount of the expenditure was equal to the increase in the value of the home). Treas. Reg. § 1.213-1(e)(1)(iii).

As mentioned at the beginning of this article, the deduction can be claimed for the taxpayer, the taxpayer's spouse, or a dependent of the taxpayer. The term "dependent" is defined in IRC § 152(a) as either a "qualifying child" or a "qualifying relative." The definition of child under IRC § 152 is quite broad. The "child" can be the child, grandchild, sibling, stepsibling, niece, or nephew of the taxpayer. The "child" must be either under the age of 19 or, if a student, under the age of 24; must reside with the taxpayer for at least half of the year; and must not provide more than one-half of his or her own support. IRC § 152(c)(1). If the qualifying child is permanently and totally disabled, the age requirement does not apply. IRC § 152(c)(3)(B).

Most of a taxpayer's family members could potentially be considered a qualifying relative. The term includes the taxpayer's brother, sister, step-relatives, mother, father, niece, nephew, in-laws, and any person other than the spouse who resided with the taxpayer during the tax year. IRC § 152(d). For the 2015 tax year, the qualifying relative's gross income generally must have been less than $4,000. IRC § 151(d), Rev. Proc. 2014-61. Tax-exempt income of the qualifying relative, such as the portion of that individual's Social Security benefit that is not subject to tax, is not included in this gross income test. See IRS Publication 17 (2015), chapter 3, at page 34. The qualifying relative must also be supported by the taxpayer, which means that the taxpayer must contribute more than 50 percent of that person's support costs, and the qualifying relative cannot be a qualifying child for any other taxpayer. IRC § 151(d).

With the foregoing information, you can discuss with your client the possibility that capital improvements made for medical care may be deducted on the client's tax return. The possibility of a deduction may help tip the scale on the difficult and multi-faceted decision of whether to make improvements in order to age in place or leave the home permanently for a care facility. ■

Important elder law numbers

as of
January 1, 2016

Supplemental Security Income (SSI) Benefit Standards	Eligible individual	$733/month
	Eligible couple	$1,100/month
Medicaid (Oregon)	Asset limit for Medicaid recipient	$2,000/month
	Long term care income cap	$2,199/month
	Community spouse minimum resource standard	$23,844
	Community spouse maximum resource standard	$119,220
	Community spouse minimum and maximum monthly allowance standards	$1,992/month; $2,980.50/month
	Excess shelter allowance	Amount above $598/month
	SNAP (food stamp) utility allowance used to figure excess shelter allowance	$445/month
	Personal needs allowance in nursing home	$60/month
	Personal needs allowance in community-based care	$163/month
	Room & board rate for community-based care facilities	$570/month
	OSIP maintenance standard for person receiving in-home services	$1,233
	Average private pay rate for calculating ineligibility for applications made on or after October 1, 2010	$7,663/month
Medicare	Part B premium	$104.90/month*
	Part B premium for those new to Medicare in 2016	$112.80/month*
	Part D premium	Varies according to plan chosen
	Part B deductible	$166/year
	Part A hospital deductible per spell of illness	$1,288
	Skilled nursing facility co-insurance for days 21–100	$161/day

* Premiums are higher if annual income is more than $85,000 (single filer) or $170,000 (married couple filing jointly).

No good deed goes unpunished: pitfalls to giving away a home

By Jonas J. Hemenway, Attorney at Law

Jonas Hemenway focuses his law practice in the areas of estate planning and elder law, with experience in wills, trusts, estate administration, probate, guardianships and conservatorships, Medicaid, and veterans' benefits.

Why would a client want to give away his or her home? The home often comprises the bulk of a person's estate and manifests the growth and development of a family.

There are a number of reasons people seriously consider making such a gift. Here are some things I've heard from clients:

"If they are going to inherit anyway when I die, why not allow them to enjoy the financial security it provides now while they are younger?"

"Won't my children avoid probate if I put their names on the house now? Won't that be simpler?"

"If I have to go to a nursing home and need Medicaid to pay, won't the state take my home away?"

This article addresses a few potential pitfalls—including tax consequences—that come when a client gives the family home away during his or her lifetime.

Liability exposure

Transferring a residence to another person exposes that property to the transferee's personal liabilities. These liabilities may arise from such things as a lawsuit, a divorce, or a bankruptcy. Consider the example of a father who wanted to continue living in his home but transferred the title to his residence to his son (a small business owner). When the son's business and marriage failed, the son's creditors' judgments became a lien on the house and his ex-wife became an unwelcome owner with an agenda of her own.

Lack of cooperation by new owner

Once your client has deeded an interest to another person she can't unilaterally change her mind and take it back. Consider the example of the client who transfers title to her daughter "so when I die, she can take over quickly without having to go to court for probate." Should your client have a falling out with her daughter, she may want to take back the title, but she would not be able to do so without her daughter's cooperation—and that cooperation may not be forthcoming.

Gift and estate-tax consequences

The current annual exclusion for federal gift tax is $14,000 per person each year. Oregon has no state gift tax. Where the gift on an interest in the client's home exceeds a value of $14,000, the client is required to file a gift tax return (IRS Form 709). However, in most transfers of this type, there will be no gift tax to pay because the threshold for assessment of gift tax is the "unified" lifetime exemption for 2016 of $5.45 million. The excess over the annual exclusion is deducted from the lifetime exemption, so as the value of your client's death estate rises toward the $5.45 million mark, the client who gives away large value in real estate (or other assets for that matter) needs to consider more carefully the potential loss of estate-tax exemption.

Capital gains tax consequences

If your client gives her house to her son, she transfers her own "cost basis" to her son along with it. This means that if her house has appreciated in value, he will have to pay capital gains tax on the difference between her purchase price adjusted for capital improvements (her "cost basis") and his selling price adjusted for costs of sale.

If your client leaves her house to her son in her will, on the other hand, so that he inherits it after her death, the cost basis will be "stepped up" to the value of the house at your client's death. If the new "stepped up" cost basis is equal to or less than the net proceeds of sale (not counting mortgage payoff), then there will be no gain and thus no capital-gain tax.

If, contrary to your wise counsel, your client transfers the house to her son prior to her death, and if there is a gain on the transfer, you might consider advising your client's son that he may legally avoid (not evade) or reduce the capital-gain tax by moving into the house instead of selling it. If he lives there for two years and treats it as his primary residence, he can then sell the property and apply his IRS Section 121 exemption of $250,000 (or $500,000 for a married couple if they are both owners) on the sale.

Medicaid eligibility consequences

Transfer of a home by gift within five years (the current "lookback" period) of application for Medicaid benefits will incur a disqualification period that delays Medicaid benefits.

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Giving away a home

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There are a number of reasons people seriously consider making gifts of their homes. Before making that gift for your client, consider the pitfalls associated with such a transaction.

The disqualification period is a function of the value of the gift divided by the state's determination of the average cost of long term care in Oregon, currently $7,663 per month. So, for example, if your client transfers her home worth $150,000 to her son, the disqualification period will be $150,000/$7,663 = 19.5 months commencing from the date of application for Medicaid. OAR 461-140-0296.

Two notable exceptions to this penalty period are:

- a transfer of the home to (or for the sole benefit of) a blind or disabled child. OAR 461-140-0242.
- a transfer of the home to a child who has lived in the home while serving as the donor's caregiver for a period of two years immediately prior to Medicaid application. OAR 461-140-0242. The child caregiver must provide certain documentation to satisfy the elements of proof set out in the OARs on this topic: basically that the care provided while they were living in the home enabled the parent to avoid living in an assisted living or nursing facility.

Loss of property-tax deferral

Elders over the age of 62 may defer their Oregon property tax if they meet certain financial need, ownership, and residency criteria. If your client with a property-tax deferral desires to transfer title of her home to her son, consider that she may lose her tax deferral, causing the deferred tax to come due at that point.

If, on the other hand, your client retains an interest in the home, and the transferee or a partial interest can independently qualify for the senior property-tax deferral, the deferral may be preserved.

Life estates

If your client desires to transfer her home to her son but wants to keep a life estate, either for her security so she has the right to remain in the home for the rest of her life, or for the purpose of keeping the home in her taxable estate so as to get the "step up" in basis at her death, consider that she will lose her property tax deferral.

For Medicaid eligibility and expanded estate recovery after the client's death, a life estate may be considered a countable asset. OAR 461-145-0310. Oregon will assert a claim against the value of a client's life estate that exists immediately prior to the death of a Medicaid client. This could be a nasty surprise to the remainder-man on a deed where your Medicaid client reserved a life estate.

Transfer on death deeds

In 2012, Oregon enacted the Uniform Real Property Transfer on Death Act (URPTDA). This law is codified in ORS 93.948–93.977. The purpose of this act was to provide an effective, inexpensive way to transfer real estate at death without probate. The result is the Transfer on Death Deed (TODD).

A TODD may be executed by anyone who possesses the same capacity required to make a will. The property in question passes to the designated beneficiaries subject to all of the existing liens, encumbrances, and restrictions.

A TODD has several benefits.

- The property passes outside of probate.
- The property owner maintains all rights and privileges with respect to the property while he or she reamins alive.
- The TODD is revocable.
- The property is not exposed to the beneficiary's personal liabilities.
- No gift tax is incurred.
- The beneficiary receives step-up in property's cost basis at property owner's death.

A TODD also comes with some inherent risks.

- The decedent's creditors have a long window (18 months) in which to assert any claims against the property. In other words, a TODD leaves a cloud on the title for 18 months, which makes the property difficult to sell.
- This is relatively new legislation. It is unclear how existing lenders secured by the property will treat the existing loans. A lender may exercise the due on sale/transfer clause and call the entire amount due after the property is transferred to the TODD beneficiary.

Conclusion

On its face, gifting a client's home may have appealing features. It can avoid costly probate. It is simple and inexpensive to create a gift deed. It may help out a loved one in need. In certain circumstances it may even be advisable.

Before making that gift for your client, consider the pitfalls associated with such a transaction before you take the plunge. ■

The author thanks Thomas A. Pixton for his contributions to this article.

Resources for elder law attorneys

Events

Elder Law Discussion Group
Legal Aid Services; 520 SW Sixth Ave, Portland
Coffee will be provided.

- February 11, 2016/ Noon-1:00 p.m.
  11th floor conference room
  "Elder Abuse Reporting Requirement"
  David Berger, Deputy Long-Term Care Ombudsman State of Oregon
- March 10/Noon-1:00 p.m.
  7th floor conference room
  Sherri Devlin and Carrie Williamson, Multnomah County Aging, Disability and Veteran Services

The Benefits of Multigenerational Planning for Long Term Care, Special Needs, and Tax Situations
ABA webinar
February 11, 2016/10:00–11:30 a.m. PT
www.americanbar.org/groups/senior_lawyers/elder_law.html

Affordable Care Act Update
February 16, 2016/Noon to 1:15 p.m.
Roth's West Salem
Sponsored by the OSB Taxation Section
RSVP: mlentfer@heltzel.com

Special Issues in Small Trusts
OSB audio seminar
February 18, 2016/10–11 a.m. PT
www.osbar.org/cle

Decanting and Otherwise Fixing Broken Trusts
OSB audio seminar
February 23, 2016/10 a.m.–11 a.m. PT
www.osbar.org/cle

Ending Guardianship: Handling Termination of Adult Guardianship Orders and Restoration Rights
ABA webinar
March 1, 2016/10:00–11:30 a.m. PT
www.americanbar.org/groups/senior_lawyers/elder_law

Aging in America Conference
March 20–24, 2016
Washington, D.C.
www.asaging.org/aia

2016 Annual NAELA Conference
April 7-9, 2016
Denver, Colorado
www.naela.org

Elder Law Section unCLE program
May 6, 2016
Valley River Inn; Eugene, Oregon ■

Websites

Elder Law Section website
www.osbar.org/sections/elder/elderlaw.html
The website provides useful links for elder law practitioners, past issues of Elder Law Newsletter, and current elder law numbers.

National Academy of Elder Law Attorneys (NAELA)
www.naela.org
A professional association of attorneys who are dedicated to improving the quality of legal services provided to people as they age and people with special needs.

OregonLawHelp
www.oregonlawhelp.org
Helpful information for low-income Oregonians and their lawyers. Much of the information is useful for clients in any income bracket.

Administration on Aging
www.aoa.gov
This website provides information about resources that connect older persons, caregivers, and professionals to important federal, national, and local programs.

Aging and Disability Resource Connection of Oregon
www.ADRCofOregon.org
Includes downloadable Family Caregiver Handbook, available in English and Spanish versions. Your clients can also call 1.855.673.2372, enter their ZIP codes, and get connected with the nearest ADRC office.

Big Charts
http://bigcharts.marketwatch.com
Provides the price of a stock on a specific date

Nursing Home 411
www.nursinghome411.org
The Long Term Care Community Coalition (LTCCC) is a nonprofit organization dedicated to improving care for the elderly and disabled.

American Bar Association Elder Law Section'
www.americanbar.org/groups/senior_lawyers/elder_law.html

National Elder Law Foundation
http://www.nelf.org
Certifying program for elder law and special-needs attorneys ■

Charitable contributions from IRA made permanent

The Consolidated Appropriations Act of 2016, which was enacted on December 18, 2015, made permanent qualified charitable distributions (QCDs) from individual retirement accounts (IRAs). The provision is part of the legislation known as the Protecting Americans From Tax Hikes (PATH) Act. Previously, the provision was allowed to lapse each year pending Congressional action, and taxpayers did not know until year end if they could make tax-free contributions to charities from their IRAs.

The PATH Act amends Code Section 408(d)(8) by permanently extending the provision that allows taxpayers age 70½ and older to exclude from gross income a charitable distribution of up to $100,000 from an individual retirement account.

A direct QCD contribution offers advantages over taking a taxable IRA distribution and then contributing the proceeds of that distribution to a charity. Ordinarily, taxable IRA distributions must be included in adjusted gross income. Among the effects:

- Income taxes, including taxes on Social Security benefits, can increase.
- Taxpayers who do not itemize deductions realize no tax benefit from their charitable donations.
- Medicare insurance premiums can increase.

QCDs avoid those results. They automatically satisfy required minimum distributions (RMDs) for the year when the QCD is made. That's a real advantage for an IRA owner who doesn't need his or her RMD for living expenses.

Requirements

- Only individuals who've attained age 70 ½ may make QCDs.
- The charitable donee must be "an organization described in section 170(b)(1)(A) (generally, public charities) other than a supporting organization (as described in section 509(a)(3)) or a donor advised fund (as defined in section 4966(d)(2))." *
- The charity that receives the donation must provide the same contribution acknowledgment needed to claim a charitable income tax deduction. Failure to obtain the acknowledgment will quash the QCD.
- "The exclusion applies only if a charitable contribution deduction for the entire distribution otherwise would be allowable (under present law), determined without regard to the generally applicable percentage limitations. Thus, for example, if the deductible amount is reduced because of a benefit received in exchange, or if a deduction is not allowable because the donor did not obtain sufficient substantiation, the exclusion is not available with respect to any part of the IRA distribution." *
- QCDs may be made from any IRA or individual retirement annuity, but not from a simplified employee pension, a simple retirement account, or an inherited IRA.

Making the contribution

To make a contribution, the taxpayer should contact the intended charity to determine the exact payee name for the check. Then, using that name, instruct his or her IRA trustee or custodian to make a transfer from the IRA directly to the charity. It will not qualify if the trustee or custodian makes the mistake of putting IRA money in a taxpayer's non-IRA account as an intermediate step. It will not qualify if the check is made out to the taxpayer. ■

* Staff of the Joint Comm. on Taxation, 114th Cong., *Technical Explanation of the Protecting Americans from Tax Hikes Act of 2015, House Amendment #2 to the Senate Amendment to H.R. 2029, at 16 (Rules Comm. Print 114-40)*, available at https://www.jct.gov/publications.html?func=download&id=4861&chk=4861&no_html=1

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Newsletter Committee

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