

COHEN & BURNETT, PC AND LEGACY ANALYTICS, LLC

Meet Our Staffs

Founding Partner

I. Mark Cohen,
JD, LLM, & CFP™

*Noted Expert in Estate and
Business Planning,
Masters in Tax Law, and
Certified Financial Planner*

Managing Partner

Weston D. Burnett,
JD, LLM, JAG

*Expert in Estate Planning,
Masters in International &
Comparative Law. Invest-
ment Advisor Representative.
Admitted in VA, DC, MD.*

Paralegal

Linda Reyman

Accounting

Diane Tobin

Director of Operations

Jeanne Loving

Receptionist/ Paralegal Assistant

Chelsea Aebi



UNIFORM TRUST CODE

The Uniform Trust Code, sponsored by the Uniform Law Institute of the American Bar Association, is now under consideration for adoption in the Commonwealth of Virginia by the Virginia State Bar Legislative Committee on Estates and Trusts, of which I. Mark Cohen is a member. The Uniform Trust Code is designed to provide a single uniform source that is codified, comprehensive, eliminates guesswork, and is more readily understandable. Major subject areas include: Default and mandatory rules for trust; virtual representation of unborn beneficiaries; trust modification and termination; spendthrift trusts (protection from creditors of beneficiaries); revocable trusts; and trustees powers and duties. For revocable living trusts, it contains safeguards such as a presumption of revocability during the Trustor's lifetime and no right of the beneficiaries to learn of the assets in the trust until the trust become irrevocable. We will keep you posted on this new development which should ensure greater clarity in the law.

TESTAMENTARY GIFT ANNUITY- FUNDED WITH AN IRA

In Private Letter Ruling 200230018, the IRS allowed funding of a testamentary gift annuity with a decedent's IRA account. That decedent had contracted, while he was still alive, with his favorite charity for a charitable gift annuity. That taxpayer listed the charity as his beneficiary on his IRA beneficiary form and the charity contracted to pay an annuity to his named beneficiary. The amount of income the annuitant was to receive was a function of her age at the taxpayer's death, the value of the IRA at the taxpayer's death and the gift annuity rates in effect at that time. The entire value of the IRA still counted in the donor's estate for estate tax purposes but the estate was allowed a charitable deduction equal to the value of the charity's interest in the IRA, after the value of the annuitant's interest had been subtracted from the total IRA value. For those with a large IRA and interested in leaving their favorite charity(ies) some money, this may be an attractive way to ensure a lifetime of income from an IRA to a surviving beneficiary while also getting a charitable deduction on the estate tax return.

Cohen & Burnett, PC and Legacy Analytics, LLC

7601 Lewinsville Road, Suite 460, McLean, VA 22102

Cohen & Burnett, PC (703) 847-8900 Legacy Analytics (703) 847-0965

Fax (703) 847-8902 www.cohenburnett.com

Annual Gifting

With the approach of the end of the year and the holiday season, we frequently get questions from clients interested in making end-of-the-year gifts to their children or beneficiaries. As you know, any gifts this year under the annual exclusion must be completed by December 31. Under a change that took effect on January 1, 2002, you can gift up to \$11,000 from each donor to each donee this year (\$22,000 for each couple to each donee). In the past we have experienced a surge of requests right around the holidays, especially between Christmas and New Years Day, as donors asked us to assist them in completing gifting programs before the end of the year. In an effort to avoid a last minute rush with added stress for you and our holiday staffing, we ask that you contact us early so that we can complete our work for you in advance of the year-end deadline. If you need an appointment, please call and we will schedule you at your convenience.

Great Quotes

*The judge held up his hands.
"Stop this right now before you
folks back into something."*

IRA BENEFICIARIES

The new IRA rules contain some real winning changes for IRA beneficiaries. Many people who inherited years ago under the old rules may now be able to extend the life of their inherited IRA's. There are two groups of beneficiaries affected: those using the five-year rule and those using either their own or someone else's life expectancy.

Under the five-year rule, which only applies if the IRA owner died before the required beginning date (start of distributions), the inherited IRA must be withdrawn by the end of the fifth year following the owner's death. If the beneficiary was named by the IRA owner and was using the five-year method because he did not elect life expectancy by taking his first required distribution in the year after death, he can now switch to the life expectancy method but only if the IRA owner died after 1996. If the IRA owner died in 1996 or earlier, then the five-year method has already expired and the inherited IRA should have been withdrawn.

The 2002 final regulations also aid beneficiaries who were using their own or another's life expectancy. Several scenarios may arise that can affect the identity of the beneficiary and result in a revised distribution schedule: (1) a change in the beneficiary after the required beginning date because the IRA owner changed the beneficiary or the beneficiary predeceased the IRA owner; (2) a division of an account into separate

shares of each beneficiary after the death of the IRA owner; or (3) a change in the beneficiary after the death of the IRA owner due to a disclaimer by the primary beneficiary. There are opportunities in any of these situations to reexamine old inherited IRA's to see if a more favorable distribution plan is possible.

The new rules also make it clear that an estate is not a designated beneficiary. That makes it critical that owners and plan participants name beneficiary and contingent beneficiaries on every retirement account. The new rules give certain trusts that were named as IRA beneficiaries a second chance to have the oldest trust beneficiary qualify as designated beneficiary, even though the trust did not qualify under the old rule. One of the qualification requirements to provide trust documentation to the plan administrator or custodian. The documentation can be either a copy of the trust or a list of trust beneficiaries (including contingent and remainder beneficiaries) and a description of the conditions on their entitlement. The new rules require that the trust documentation be provided by October 31 of the year following the year of the account holder's death. If the trust did not qualify solely because the documentation requirement was not met, the 2002 regulations allow the requirement to be satisfied by providing the trust documentation to the custodian by October 31, 2003.

CHARITABLE SUBSTANTIATION REQUIREMENT

The IRS reports that: “Because of the unique circumstances of the September 11 tragedy, taxpayers who made certain charitable contributions of \$250 or more are being granted partial relief from the “contemporaneous written acknowledgement requirements” of the Internal Revenue Code with respect to those contributions.” The contemporaneous written acknowledgement requirement for contributions after September 10, 2001 and before January 1, 2002 can be satisfied if the taxpayer either obtains the required documentation from the donee organization by October 15, 2002 or has evidence of a good faith effort to obtain it by that date.

JOB CREATION AND WORKER ASSISTANCE ACT OF 2002

Highlights of this Act included some benefits for a widely varied group of taxpayers:

- 1) In the year a participant turns 50, catch-up contributions to IRA's and qualified retirement plans may start at the beginning of the year, rather than waiting for the 50th birthday.
- 2) For those subject to the alternative minimum tax (AMT), the act extends the use of certain nonrefundable personal credits, most notably dependent-care and education credits, against AMT for 2002 and 2003.
- 3) In 2002 and 2003, for teachers, principals, counselors, and aides working at least 900 hours, they can deduct up to \$250 for unreimbursed costs of books, supplies, software, computer equipment and supplementary materials used in the classroom. Some restrictions apply.
- 4) For business owners, there is a bonus depreciation allowance of 30% of the cost of a new asset acquired after September 10, 2001 (not subject to a binding contract before September 11, 2001) that can be deducted in the year it is placed in service in addition to the regular first-year depreciation and any section 179 expensing that is elected. The cap on first-year depreciation for vehicles weighing under 6000 pounds has been raised from \$3060 to \$7660, but the auto must be used more than 50% for business.
- 5) For business owners a provision regarding net operating losses (NOLs) sustained in tax years 2001 or 2002 makes it easier to recoup prior year taxes paid. These NOLs are now carried back 5 years by corporations and individuals, and can be used to offset any AMT that was previously paid.

Great Quotes

“People’s investments would be more intelligent if stocks were quoted once a year.” Warren Buffet

Repeal of Estate Tax Votes in June

By votes of 256-to-171 in the House and 54-to-44 in the Senate, majorities in each house voted in late June 2002 to permanently repeal the estate tax in 2010, instead of the one-year repeal now prescribed for 2010. The reason it was not signed into law was the Senate requirement, under budget rules, that the repeal-vote pass with 60 votes not a simple majority. Of note, the current planned changes to the estate tax that were enacted last year result in decreased federal revenues of \$100 billion for this decade. Passage of a permanent repeal represents an estimated loss of \$740 billion in federal revenues in the next decade.

Great Courtroom Moments

The prosecuting attorney faced the witness. “Isn’t it true the defendant talks to himself when he is alone.”

“Couldn’t say. Never been with him when he was alone.”

EXECUTOR'S FEES

Three recent court decisions point out that the IRS has focused increased scrutiny on estate executors' and trustees' fees and expenses. In these cases, the IRS successfully argued that there are really two tests to be met before administration expenses can be deducted: (1) a state law test in which the expenses must be allowed under state law; and (2) a federal test under which it must be shown the expenses are reasonably necessary for estate administration. For further details and information, you may wish to discuss this with I. Mark Cohen or Weston D. Burnett.

Great Courtroom Moments

The tiresome jury selection process continued, each side hotly contesting and dismissing potential jurors. Don O'Brian was called for his question session.

"Property holder?"

"Yes, I am, Your Honor."

"Married or Single?"

"Married for twenty years, Your Honor."

"Formed or expressed an opinion?"

"Not in twenty years, Your Honor."

BASIC ESTATE PLANNING SEMINARS

We continue to offer our basic estate planning seminars to educate people about the myths and facts of estate planning. If you would like to attend one of our basic estate planning seminars as a refresher, or if you know of anyone else who may be interested in attending a seminar of this nature, please let us know and we will be happy to reserve space(s). Our basic estate planning seminars are scheduled as follows:

Thursday, October 10, 2002 at 12:00 p.m. to 2:30 p.m.

Thursday, November 7, 2002 at 12:00 p.m. to 2:30 p.m.

Thursday, December 5, 2002 at 12:00 p.m. to 2:30 p.m.

Thursday, January 16, 2003 at 12:00 p.m. to 2:30 p.m.

ADVANCED ESTATE PLANNING

Our Advanced Estate Planning Seminars are an interactive, in-depth exploration of sophisticated estate planning tools that address the special needs of affluent clients such as life insurance trusts, charitable remainder trusts, and 529 College Savings Plans.

Thursday, October 24, 2002 at 12:00 p.m. to 2:30 p.m.

Thursday, November 21, 2002 at 12:00 p.m. to 2:30 p.m.

Thursday, December 12, 2002 at 12:00 p.m. to 2:30 p.m.

Thursday, January 30, 2003 at 12:00 p.m. to 2:30 p.m.

All of our estate planning seminars are conducted in our conference facilities at our McLean office. A buffet style catered lunch or dinner will be served at all presentations. Reservations are required. To RSVP for a seminar, please call our office at (703) 847-8900.

OUR NEWSLETTER

We have expanded our mailing of this newsletter at no charge to over 1000 of our clients as a result of clients expressing an interest in being kept current on changes in estate, tax and financial planning. Generally, the topics we write about are changes in the law and issues or problems experienced recently by clients. We appreciate any feedback you may have on this newsletter. You may also consult our website at www.cohenburnett.com.

In an effort to ensure that our estate-, tax- and financial-planning service to you is high quality and focused, we no longer mass market for new clients. A schedule of our ongoing seminars for our existing and prospective clients is shown above. We hope that you will keep us in mind should any one ever ask you for a referral for estate, tax or financial planning.