

COHEN & BURNETT, PC AND LEGACY ANALYTICS, LLC

Meet Our Staffs

Founding Partner

I. Mark Cohen,
JD, LL.M., & CFP™
*Noted Expert in Estate and
Business Planning,
Masters in Tax Law, and
Certified Financial Planner*

Managing Partner

Weston D. Burnett,
JD, LL.M., JAG
*Expert in Estate Planning,
Masters in International &
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Advisor Representative.
Admitted in VA, DC, MD.*

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Patricia A. Guter, CFP™
*Certified Financial Planner
Specializes in Money
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FAMILY PARTNERSHIPS, GIFT TAX RETURNS AND THE IRS

In recent years, Congress has acted to give taxpayers who file gift tax returns more protection from later disputes with the IRS by strengthening the statute of limitations for gifts. A gift that is fully disclosed on a gift tax return cannot be revalued for estate tax purposes once the statute of limitations has run. Neither can the IRS claim that a non-taxable transaction is a taxable gift if the such transaction is adequately disclosed on a gift tax return and the statute of limitations has run.

From a recent IRS legal memorandum, it is clear that the IRS will not go gently into the night. In this case, the IRS insisted that the tax return on a reported gift of an interest in a limited liability company must disclose the number of units in the limited liability company, the class of interest and the percentage of ownership that the gift

represents.

A recent Tax Court decision (Harper, May 15, 2002) also points up the continuing need for partnerships to observe partnership formalities with meetings, minutes of meetings, letterhead, business cards, younger generation partners making real contributions of capital or services, and related matters.

If you have a family partnership or LLC and have not consulted with us recently, we recommend that you make an appointment with I. Mark Cohen or Weston D. Burnett to ensure that your partnership or LLC will work optimally and none of the recent IRS rulings or court decisions will adversely affect your family partnership.

VOTE ON ESTATE TAX REPEAL BY JULY 4, 2002

The House of Representatives voted on June 6, 2002 on President's Bush's proposal to permanently repeal the estate tax in 2011. It is likely that the Senate will vote on it before the July 4 recess. If passed, the repeal bill (H.R. 2143) has been estimated by the Joint Committee on Taxation to cost \$99 billion between now and 2012. Democrats favor raising the exemption limits. The real issue is whether the Democrats be able to block Republicans from leaping the 60 vote

hurdle in the Senate? The staff of one Representative compiled a list of Bush Administration cabinet members, which was published in the Washington Post on June 6, 2002 and concluded some stood to reduce their estate tax by as much as \$120,000,000 if the estate tax were repealed.



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Real Estate In More than One State?

One of the decided advantages to revocable living trusts is to hold title to real estate in more than one state and to pass it to the beneficiary(s) without the necessity of probate in each of the states where the real estate is located. Imagine the potential problems for your beneficiary(s) just tracking down lawyers and paperwork to satisfy the many jurisdictions, if you own land in multiple states. All of that is avoided with a single deed signed by you while you are alive and well that accompanies your trust. Moreover the cost of such deeds \$150-250 is far less than the \$1,000 or more that an ancillary administration might cost in another state.

Great Courtroom Moments

The judge peered down at the disheveled man "I must charge you for murder."

"All right," the man answered brightly, "What do I owe you?"

TEN SHORT TAX THOUGHTS

1. All Income is Not Created Equal
 - Ordinary income (10%-38.6% + state tax)
 - Capital gains income (20%, 25%, 28%)
 - Tax deferred income
 - Tax exempt income (US and/or state)
 - Partially taxed income
 - Rollovers and tax-free exchanges
2. Understand your options
 - Incentive stock options
 - Nonqualified stock options
 - Restricted and unrestricted stock
3. Watch your alternatives
 - Alternative minimum tax
 - AMT Now more significant
4. Taxes 101—the Section 529 plan
 - Tax deferred growth
 - Tax free for qualified college expenses
 - Virginia plan ? Virginia income tax deduction
5. Give away your taxes
 - Use appreciated stock for charitable gifts
 - Give appreciating assets to others
6. Take interest in your interest
 - It's not what you pay but how and why you pay it
 - Interest management affects passive activity loss limits
7. Avoid the death trap
 - I love you wills are not family friendly
 - Estate tax costs can be actively managed
8. Bunch bananas and deductions
 - Certain itemized deductions must exceed a threshold
 - Others should be spread out (e.g. AMT)
9. Company tax planning may cost you
 - C corporations may cause a double tax problem
 - S corporations or LLC's income or losses flow to owners
10. Invest taxwisely
 - Consider available tax benefits
 - Consider total returns (after tax)

FINAL IRS REGS ON IRA REQUIRED MINIMUM DISTRIBUTIONS

Highlights

New mortality tables: the age 70 divisor changes from 26.2 to 27.4 and age 71 from 25.3 to 26.5. The ages for other divisors are adjusted as well. The new mortality tables can also be used when computing pre-59 1/2 substantially equal payments.

Designated beneficiary: The designated beneficiary is determined as of September 30 of the year after the year of the account holder's death rather than December 31 of the year of the account holder's death under the previous regulations.

Revised disclaimer rules: One can still disclaim to move a contingent beneficiary into a designated beneficiary and use the designated beneficiary's lifetime expectancy. The final regulations clarify that beneficiaries can be removed by disclaimer or payout, but they cannot be added.

When a trust is a beneficiary: If a trust is a beneficiary, all beneficiaries of the trust are considered in determining the beneficiary with the shortest life expectancy. An individual whose benefit is contingent upon another beneficiary dying prior to the payout of the entire plan is ignored. However, a beneficiary whose benefit is merely postponed until the death of another beneficiary is not ignored. In order to qualify a beneficiary of a trust as a designated beneficiary, the documentation required by the regulations has to be

provided to the plan administrator or IRA custodian by October 31st of the year after the year of the account holder's death.

When death occurs before the required beginning date, the default is for the designated beneficiary to use his or her life expectancy.

Multiple beneficiaries: Can now be split after death so that each separate account will have one designated beneficiary of that account. This works for trusts too.

Spouses: Can take a distribution and roll that distribution (except for any part that is a minimum required distribution) into his or her own IRA within 60 days.

Marital status determinations: Made as of January 1 of the distribution year. Any change in marital status subsequent to that date will not be reflected until the following year. Similarly, if the beneficiary of the account is changed due to the death of the spouse-beneficiary, that will not be reflected until the following year.

Timing of contributions: Contributions after the end of the year (a prior year's IRA contribution made between 1/1 and 4/15; of the age 70 1/2 year) or a distribution^{or} after the end of the year (the first distribution taken between 1/1 and 4/1 of the year after the account holder attains 70 1/2) will no longer be reflected in the computation of the subsequent year's minimum required distribution.

Supreme Court Rules IRS Can Attach Tenancy By the Entirety

Under Virginia law, property held by spouses as tenants by the entirety is not available to satisfy creditors of an individual spouse's liability. However, in a recent 6-3 decision, the U. S. Supreme Court held that where a tax lien attached to all of a taxpayer's property (but not to his spouse's property), his interest in the entirety property is a property right to which a federal tax lien may attach. This ruling essentially means that no state-created property rights will protect a taxpayer's property interest from levy or seizure by the IRS. Tenancy by the entirety will, nonetheless, continue though to be a useful asset protection strategy against other creditors.

DIVERSIFICATION AND CHISELING STOCK HOLDINGS DOWN TO SIZE

ENRON and the dot.com melt down have pointedly underlined for many individual investors and retirees, the need for diversification in their portfolios. We have had several clients recently with disproportionate holdings in stocks that declined by more than 50%, or even to zero, that they could have sold but also wanted to wait until the stock "bounced" back. You maybe overly attached to a stock because your late spouse loved it, you inherited it from someone,

have a sense of loyalty to a company, or it has ballooned in value. Whatever the reason, the time may be right to reduce your holding in the stock.

The obvious problem with a concentrated position is that the investor takes on substantial risks without the corresponding reward. (Continued on page 4.)

Great Quotes

It takes a whole lot of suits to keep a lawyer well dressed.

BASIC ESTATE PLANNING SEMINARS

We, at Cohen & Burnett, 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).

Thursday, July 11, 2002

Thursday, August 8, 2002

Thursday, September 12, 2002

Thursday, October 10, 2002

ADVANCED ESTATE PLANNING SEMINARS

We also offer our existing clients and their guests advanced estate planning seminars as part of our commitment to keep up with advanced techniques for taking care of your beneficiaries and minimizing estate and related costs. AEP Seminars are an interactive, in-depth exploration of sophisticated estate planning tools for affluent clients interested in discussing, for example, family limited partnerships, life insurance trusts, charitable remainder trusts, and Section 529 College Savings Plans.

Thursday, July 25, 2002

Thursday, August 22, 2002

Thursday, September 26, 2002

Thursday, October 24, 2002

Our seminars take place from 12:00 p.m. to 2:30 p.m. and are conducted in our conference facilities, at our McLean office, with a buffet-style catered lunch. To make a reservation, please call

NEW IMPETUS FOR JOINT REVOCABLE LIVING TRUSTS

An IRS private letter ruling recently gave new impetus to joint revocable living trust for couples whose estates do not exceed \$2,000,000 or have slightly more than that but one large IRA. The key here is a joint trust that is funded upon the first to die by assets from both spouses not just the deceased spouse. The spouses grant each other general powers of appointment so that property in the trust from the surviving spouse is treated as coming from the deceased spouse.

The major advantages are that none of the exemption is wasted upon the first spouse to die regardless of the distribution of assets between the spouses. The major drawback is that property from the surviving spouse that is put into the family credit shelter trust probably will not get a step-up in basis. If the surviving spouse kept the property, it could get a step-up in basis when that spouse dies. If you desire to explore this approach to simplify your trusts from two to one, give us a call.

Diversification and Chiseling (continued)

Regardless of a stock's correlation to its class, the single stock has far more volatility than the "class" for which it is a member. There is no reward for taking on risks that can be diversified away. A portfolio with unrewarded risk is known as "inefficient."

The second, more obscure risk has to do with modeling the portfolio's behavior. When we design a portfolio for an expected risk/return, the modeling software assumes asset classes that are optimized, not inefficient. When a single large holding takes up an asset class, the results of the modeling software become unreliable.

If you have more than 10% of your portfolio in a single stock, we can help with tax-efficient strategies to reduce your risk.

OUR NEWSLETTER

We have expanded our mailing of this newsletter to over 1000 of our clients since many of them expressed an interest in updates on estate, tax and financial planning, all of which have undergone major changes in the past year, with further changes anticipated. Generally, the topics we write about are issues or problems that were raised by clients recently, and the lessons we have learned in working through these concerns. Our goal is to ensure that our estate-, tax- and financial-planning service is focused and of high quality. We appreciate any feedback you may have on this newsletter. Please keep us in mind should anyone ever ask you for a referral for estate, tax or financial planning.