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Look Out Beethoven: The IRS Allows Only ONE IRA Rollover Per Year

Beginning January 1, 2015, the IRS will begin enforcing the Tax Court's holding in *Bobrow v. Commissioner*, which limits taxpayers to one tax-free, 60-day rollover per 12-month period, regardless of the number of IRAs owned.

Before *Bobrow*, the IRS treated each IRA separately and allowed one annual rollover per IRA. Apparently relying on the IRS's long-standing position, as reflected in IRS Publication 590 (quoted below), Mr. Bobrow, a tax attorney, took one distribution and made one repayment to each of his two IRAs within one year. Notwithstanding Publication 590, the IRS served Bobrow with a tax deficiency notice on the grounds that he violated the one-rollover-per-year rule.

IRS Publication 590 states, in relevant part:

"Waiting period between rollovers. Generally, if you make a tax-free rollover of any part of a distribution from a traditional IRA, you cannot, within a 1-year period, make a tax-free rollover of any later distribution from that same IRA. You also cannot make a tax-free rollover of any amount distributed, within the same 1-year period, from the IRA into which you made the tax-free rollover."

The dispute was heard by the Tax Court, which noted that it was not bound by IRS Publication 590 and held for the IRS. The Tax Court relied on Section 408(d)(3)(B) of the Internal Revenue Code ("Code"), which precludes a taxpayer from making more than one nontaxable rollover per year, without regard to source (i.e. multiple IRAs). In Announcement 2014-15, the IRS stated that, effective January 1, 2015, all distributions and rollovers would be treated on an aggregate, not per IRA, basis and that only one nontaxable rollover per year will be allowed.

For the remainder of 2014, all distributions and rollovers completed within 60 days will be allowed under Publication 590. However, note that the one year rule and the 60-day window run from the date of distribution, not rollover. Also note that Section 408(d)(3)(I) of the Code allows the IRS to waive the 60-day deadline. Although the waiver is automatic for financial institution errors, it is best not to rely on an automatic extension and make a formal request.

Finally, the *Bobrow* rule can be avoided by making trustee to trustee transfers, direct wire transfers, or transfers between brokerage firms, provided you (the owner) never have access to the funds. These direct transfers are not subject to the 60-day limitation or one-year rollover rule. However, errors can be costly, so consult your Private Wealth Services attorney at Gunster before making any transfers.

Get Ready To Jump!
The New York "Cliff Tax" Becomes Law

If you have not already moved out of New York, now may be the time. Recently enacted changes to New York trust and estate tax law may be all the motivation you need. Although these changes are expected to provide some tax relief for moderately sized estates, they will negatively affect high net worth taxpayers who will see an increase in estate and income taxes. The following are the nuts and bolts of the changes:

The basic estate tax exclusion amount will now allow the estate of a New York domiciliary to pass $2,062,500 (indexed for inflation?) state estate tax free. By January 1, 2019, the New York basic estate tax exclusion amount will reach $5,250,000. Seemingly a tax benefit for those taxpayers choosing to stay domiciled in New York or owning New York real estate or tangible property at death, this change will negatively impact high net worth estates because no exclusion is allowed for taxable estates whose value exceeds the basic exclusion amount by more than 5%. For example, a taxable estate of $5,250,000 will not be subject to a New York estate tax in 2019, but a slightly larger estate of $5,512,500 (5% above the basic exclusion amount) will be taxed approximately $430,000 (the "Cliff Tax"). Put differently, the larger estate will pay $430,000 of estate taxes on the additional $262,500 of assets– a clearly unfavorable result.

In addition, the gross estate of a New York resident decedent will now include the value of any taxable gifts made within three years of death if made on or after April 1, 2014 and before January 1, 2019. This change effectively eliminates the New York state estate tax benefit of death bed gifts.

More bad news for New Yorkers: Distributions of accumulated income made on or after June 1, 2014 to New York beneficiaries of nontaxable New York resident trusts will be taxable to the New York recipient. This does not include income accumulated before January 1, 2014. Income from trusts established by New York resident beneficiaries in other states will be also taxable to the grantor, unless the trust was liquidated before June 1, 2014.

There is some good news however, The New York generation-skipping transfer tax has also been repealed. This means that there will no longer be a generation-skipping tax imposed on outright gifts to grandchildren, great-grandchildren and so on. This includes distributions from trusts held solely for their benefit. The new law also provides some relief for surviving non-citizen spouses by allowing a marital deduction without the requirement of a qualified domestic trust when a federal estate tax return is not required to be filed.

In light of these changes, now may be the time to leave New York in search of greener pastures. If you have any questions about these or other changes to New York law, or would like to discuss the benefits of transferring your estate to Florida, please contact a Gunster Private Wealth Services attorney.

What One Hand Giveth, The Other Taketh Away—Major Changes to Maryland Estate Tax Law

Maryland has joined the ranks of states that have increased their estate tax exemption to align with the federal estate tax equivalent. The new Maryland estate tax law raises the basic exclusion amount (Maryland's state estate tax exemption amount was previously $1,000,000) incrementally each year from 2014 through 2019, when it will reach $5,340,000 (the current federal exclusion amount), indexed for inflation.

This appears, on its face, to be a major win for Maryland residents. However, Maryland is also one of only two states that still have an inheritance tax. That means that even if your Maryland estate incurs no estate tax, your estate may still get left holding the bag. Under Maryland law, only spouses, children (their spouses and children), parents and siblings are exempt from state inheritance tax. That means that bequests to nieces, nephews, aunts, uncles, cousins and friends will be subject to an inheritance tax (currently 10%).

Maryland also does not have a gift tax. Maryland residents may be tempted to reduce the value of their estates (below the applicable exclusion amount) by making lifetime gifts. While doing so may benefit the taxpayer, there could be income tax consequences to the recipient, who may have fared better if the assets were received through inheritance.

The bottom line is this: If you are contemplating a move south, you may want to keep going. Your Florida attorney at Gunster is here to help you find the right path.

Is There Life After Portability For The Bypass Trust?

The federal estate tax exemption allows property of an individual to pass to beneficiaries without incurring federal gift or estate tax. Historically, a spouse's estate tax exemption was a "use it or lose it" proposition. A well designed estate plan for married couples would take advantage of both spouse's exemptions using an estate planning tool called the "bypass trust." A bypass trust was funded with assets equal to the unused portion of the predeceased spouse's federal estate tax exemption, thereby keeping the value of the decedent's unused exemption amount out of the surviving spouse's federal taxable estate. Often the surviving spouse was named as a beneficiary of the bypass trust.

Today portability allows a surviving spouse to benefit from his or her deceased spouse's unused federal estate tax exemption amount at death without the need for a bypass trust. While no longer required to take advantage of the deceased spouse's federal estate tax exemption, bypass trusts can still be a useful part of your estate plan.

Under portability, inherited assets appreciate within the surviving spouse's estate and such assets, together with appreciation, are subject to estate tax in the surviving spouse's estate. In contrast, under a bypass trust, assets appreciate outside of the surviving spouse's estate and thus avoid estate tax upon death of the surviving spouse.

Assets held in a bypass trust are generally protected from the surviving spouse's creditors. Bypass trusts can also prevent a surviving spouse from redirecting assets away from the couple's intended beneficiaries. This is especially helpful in cases of remarriage where spouses have children from prior marriages. Portability is only available with respect to the "last deceased spouse". Thus, in the event the surviving spouse remarries, the first husband's unused exemption amount may be lost.

Before a surviving spouse can elect portability, a decedent's personal representative is required to file an estate tax return. No filing is required to effectuate a bypass trust. Additionally, the generation-skipping transfer tax ("GST") exemption is not portable, so bypass trust planning is still necessary for those families desiring to create tax efficient generational trusts.

Bypass trusts do have their disadvantages, such as the inability to obtain a step-up in basis on bypass trust assets at the second death. There are also costs associated with bypass trusts, including trustee fees, and reporting requirements.

Since a decision whether to create a bypass trust should be deferred to the death of the first spouse, flexibility in drafting is the desired goal.

Consult your Gunster estate planning attorney to find out which option is best for you.

Trust Me?

Trusts can play an important role in estate planning, both for high net worth and more moderate estates. Trusts can be used to minimize the impact of income and estate taxes and for non-tax related purposes.

For example, trusts can be used to reduce the tax burden in states with gift, inheritance and estate taxes. This is especially useful in states with low exemption amounts and high tax rates. Family foundation trusts or charitable remainder trusts can be used as tax shelters as part of a charitable giving plan to reduce estate taxes or to receive a current income tax deduction. Naming a trust as the beneficiary of an IRA or 401(k) distributions after death increases flexibility, may reduce income taxes and provides a mechanism to control how assets pass to a beneficiary.

There are also non-tax planning benefits to trusts. Revocable living trusts can be used to manage assets in the event of incapacity. Funded revocable living trusts also eliminate the need for probate in states, other than your state of domicile, in which you own real estate or tangible personal property. Trusts can also be used to control the distribution of wealth for multiple generations. This is especially important in cases involving second or later marriages and step-children. A trust can be used to limit a spouse's or child's access to or use of trust funds. Depending on state law and the trust terms, trusts can also be used to protect assets against the claims of some creditors, including a divorcing spouse. Because not all children are willing or able to manage family businesses or other investments, it is sometimes necessary or desirable to set up a trust for the post mortem management of family business interests or investments to be held by the trust. Finally, trusts can be used to provide oversight and asset protection for special needs children or adults.

Always consult with your estate planning attorney before using any of these trust vehicles. Gunster's attorneys are here to help identify and set up the best trust vehicles for you.

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1. All references to available/allowable estate tax exemptions and credits relate only to persons who are U.S. citizens; references to gift tax exemptions/exclusions generally apply to U.S. citizens and U.S. Lawful Permanent Residents (i.e., "green card" holders). While most transfer tax savings techniques discussed can be fine-tuned to benefit non-U.S. citizens, the results will differ and must be addressed on a case-by-case basis.

2. **The 2014 Annual Exclusion** is an aggregate of $14,000 per donee, from each donor; or $28,000 per couple, if a husband and wife file a "split gift" Gift Tax Return on gifts made from either of their assets this year. **Medical/Tuition ["ed/med"] Exclusion Gifts** allow a donor to pay an unlimited amount for anyone's medical or tuition expenses (including health insurance premiums), if paid directly to the service provider, without incurring any gift tax or use of their unified credit; and, if properly structured, ed/med gifts should not reduce the $14,000 amount available to be given to the same person by a donor each year.

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