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2024 NEWSLETTER

We hope that you are having a great start to 2024. This newsletter is to provide updates about estate planning matters.

We are excited to announce the addition of John H. Fredrick, Jr., our of-counsel attorney who joined our team in 2021. His main areas of practice are trust and probate administration, court appearances and estate planning matters. John is licensed in both Missouri and Illinois.

We have also recently added two new paralegals to the team: Chelsea Kuhn and Melissa Day.

ESTATE AND BUSINESS PLANNING

Based on numerous changes to both federal and state laws, as well as changing family dynamics, all clients should review their trust agreements and beneficiary designations. Gifts to family members and charities should also be reviewed and analyzed. All gifts and financial transactions must be made in conjunction and coordination with one's estate and business plans. It is paramount that correct values be ascertained in order to ensure the amount of a gift or transaction is verified for both tax and personal reasons. All business owners who are using an LLC, corporation, or administering such an entity in a trust must comply with the new Corporate Transparency Act (the "CTA") that is discussed below.

PLANNING POINTS

1. With regard to **estate planning**, the following are some points to consider:

    a. All LLCs, corporations, and trusts need to comply with the CTA.

    b. As a result of the applicable credit remaining at a high level (e.g., $13,610,000) and the portability of the estate tax credit being available to U.S. spouses, it is important to focus on capital gains planning. Accordingly, rather than maximizing the residuary trust planning that would shelter a decedent's estate tax basic exclusion amount (and not include that amount in the surviving spouse's taxable estate), the use of a marital QTIP trust or general powers of appointment should be considered. In this manner, the entire estate, or as much as is estate tax free, should be included in the surviving spouse's taxable estate in order to gain a capital gains step-up in tax basis at the second spouse's death.

    Under Missouri law, if spouses own property jointly, each spouse will receive a one-half step-up in tax basis at each death with the surviving spouse receiving a full step-up in

basis if all the assets are included in the surviving spouse's estate. A full step-up in basis at the second death should occur if a simple joint revocable trust is used. Accordingly, in this scenario, if one spouse dies and property is sold, it will receive a step-up in cost basis for one-half of its value based on the date of the deceased spouse's death. Therefore, it may be beneficial to plan for assets to be includible in the surviving spouse's taxable estate. This could be accomplished by simply transferring assets directly to the surviving spouse, but such a strategy could expose those assets to creditors and predators. In many cases, the better strategy would be to transfer assets to a spouse in trust, which would provide the surviving spouse with the beneficial enjoyment of the assets while protecting those assets from future spouses and creditors. This could be accomplished through the use of a residuary trust or marital QTIP trust.

c. As a result of the current estate tax provisions, some people may wish to transfer all or a majority of their assets to a spouse through the use of an outright bequest, a marital QTIP trust, by granting a general power of appointment, or by establishing and funding a SLAT thereby allowing the spouse the use of the assets during the spouse's life but also gaining a step-up in basis for capital gains purposes at the surviving spouse's death. A QTIP trust will require all of the income be distributed annually to the spouse and may allow for encroachments of principal to be made for the surviving spouse's health, education, maintenance, support, and comfort (since the assets are includible in the surviving spouse's estate).

d. In the event the surviving spouse does not want all of the deceased spouse's assets in his or her taxable estate and desired to shelter all or part of the estate from estate tax inclusion, a marital trust could provide the surviving spouse with the power to disclaim all or part of the marital trust. The disclaimer could allow for an outright distribution or a distribution to a standard residuary trust (credit shelter trust). In order for this strategy to work, the surviving spouse must legally and timely elect to disclaim a certain amount from the marital trust and allow the assets disclaimed to be distributed under the terms of the trust instrument without the surviving spouse's direction. This planning technique should be considered after analyzing and comparing other techniques such as using a pecuniary or fractional formula, for leaving all or part of the estate to the surviving spouse.

   A qualified disclaimer must be made by the beneficiary no later than nine months after the decedent's death (or after a trust becomes irrevocable) in order to avoid any gift tax consequences to the beneficiary.

2. With regard to the **administration of decedent estates**, remember that there are specific timelines and procedures that must be followed regardless of an estate passing through the probate process. For example:

   a. Whenever a person becomes incapacitated or dies, the estate must be reviewed as soon as practical, and an inventory of assets should be made.

b. If necessary, a 706 estate tax return, including a portability return, must be filed or extended within 9 months of a decedent's death.

c. A Last Will and Testament must be admitted to the probate court within one year of the decedent's death in order to be valid. It is necessary to have the original will for this purpose in order to avoid a court hearing, so please confirm that you are in possession of your original will.

d. Pursuant to Missouri law, trustees must give a formal notice to certain beneficiaries within 120 days of the settlor's death or in the event that a trust becomes irrevocable. Inventories with date od death values must be compiled for family and tax purposes. Timelines with regard to creditors must be adhered to. Disbursements, taxes, and settlement must be calculated and reported to the beneficiaries. Finally, receipts and final payments, must be made in order to relieve the trustee of liability and wrap up the administration.

NOTABLE LEGAL CHANGES

1. The Corporate Transparency Act ("CTA") was passed on January 1, 2021, by the U.S. Congress. It is a component of the National Defense Authorization Act for Fiscal Year 2021 and is intended to combat the use of shell companies in the commission of money laundering, terrorist financing, financial and tax fraud, and other domestic and international illicit activity and corrupt practices, as well as to protect U.S. national security. FinCEN estimates that 32.6 million "reporting companies" will exist as of January 1, 2024.

   The CTA requires reporting of Personal Identifying Information ("PII") of direct and indirect beneficial ownership and control information pertaining to many businesses operating in the U.S. The PII to be reported includes legal names, dates of birth, residential addresses, and an acceptable identifying number (e.g., driver's license or FinCEN identifier). This vast influx of PII will be received, stored, and managed by FinCEN. The CTA contemplates that an individual may provide his or her PII to FinCEN and may thereby obtain a FinCEN Identifier.

   PII must be reported for persons owning, directly or indirectly, 25% or more of the business or who have "substantial control" over the business (each a "beneficial owner"). Every reporting company will have at least one person to report, regardless of its ownership or control structure. Once the initial report is filed, this information must be updated within 30 days of any subsequent event that causes such information to no longer be accurate. Attribution of ownership and what constitutes substantial control will vary from business to business and will require analysis and advice.

   A "reporting company" is a corporation, limited liability company, or "similar entity" that is created by the filing of a document ("domestic reporting company") or registered to do business in the US by the filing of a document ("foreign reporting company") with a secretary of state.

Some businesses are excluded from the CTA requirements, which generally include already-regulated business entities, such as charities that are already regulated by the government and charities.

Businesses in existence on January 1, 2024, will have a one-year grace period to file their initial report with FinCEN, but they must file an initial report. Any change to the status quo of a business in existence on January 1, 2024, will need to be reported as a separate amendment filing. There is no grandfathering of previously formed entities, and the CTA will sweep in all business entities in existence on January 1, 2024.

Businesses formed on or after January 1, 2024, will have a shorter, 30-day grace period after formation to file their initial report. Businesses will need to compile, maintain, and update their reportable PII for their beneficial owners on an ongoing basis. After January 1, 2024, all businesses will have 30 days to file any correction or change to their previously reported information.

Reporting company information and associated PII of such business entity's beneficial owners and company applicants may be accessed for national security, intelligence, or law enforcement activity and will ultimately be accessible by financial institutions.

There are large, escalating fines ($500/day up to $10,000/violation) and possible jail time (up to two years) for those failing to comply with the CTA's requirements in a timely manner. Accordingly, if you own a business, it is important that you timely comply with these rules.

2. The Secure Act and Secure II Act (collectively the "Act") still controls the administration of retirement laws, especially regarding beneficiary distributions. The Act must be reviewed and coordinated with retirement plan distributions, integrated with estate planning documents, and coordinated with family desires. In lieu of the life expectancy rule for inherited IRAs, the ten-year distribution rule will apply where the IRA/plan is left to an individual or to a trust that qualifies as a conduit trust or an accumulation trust. The ten-year rule requires that all assets be distributed from the IRA/plan no later than December 31st following the tenth calendar year of the plan participant's death. Exceptions to the ten-year rule include IRA/plans that are made payable to eligible designated beneficiaries or to conduit trusts for the sole benefit of eligible designated beneficiaries. The Secure Act created a new category of beneficiaries, the "eligible designated beneficiaries", for whom the old stretch rules generally still apply. In light of these changes, you should review your beneficiary designations to ensure they comport with your estate planning goals.

3. Roth IRA and Roth 401(k) plans still pay out tax-free and follow the same minimum distribution rules that apply to taxable plans.

   Roth IRA conversions from traditional IRAs and Roth accounts within qualified plans will likely become much more popular. The conversions will occur in years when the account owner has lower income than usual and can afford a large taxable conversion, in years where there are nonrecurring deductions that can offset the conversion or, more likely, on a systematic basis each year using either a stated sum or an amount that will keep the account owner in the same tax bracket.

4. For a retirement account owner who has substantial benefits and is charitably inclined, the account owner may want to make charities the beneficiaries of the retirement accounts.

5. With regard to 529 plans, they can be used to pay for (1) certain apprenticeship programs including fees, books, supplies, and equipment, and (2) student loan repayments of up to $10,000.

6. Life insurance will become more popular among those who no longer felt the need for life insurance due to the high estate tax exemption based on the sunset, or expiration, of the current estate tax law on December 31, 2025. Second-to-die policies may become good income replacements for those account owners who have smaller estates but will need to provide a cash infusion when the retirement benefits are no longer available as planned for their children. Younger families may want to insure both spouses in single-life policies which are more flexible than a second-to-die policy, although they may be more expensive if they are permanent. Older individuals or medically compromised individuals may no longer be insurable for a reasonable cost.

7. "Clawback" is the name frequently applied to the concern that lifetime gifts made while the estate and gift tax basic exclusion amount ("BEA") is $13,610,000 (with inflation adjustments) will be subjected to tax when the exclusion snaps back to $5 million (which is slated to occur after 2025 when this provision sunsets). The IRS issued final regulations in 2019 but issued proposed regulations in 2022 that would provide an exception to the anti-clawback rules. It has not yet been made final as of this time.

8. The law has not changed regarding a surviving spouse's ability to use his or her deceased spouse's unused exemption amount (DSUE), which is commonly referred to as a "portability election". This strategy allows a surviving spouse to carry over, or "port", the unused basic exclusion amount that the deceased spouse did not use. In this way, the surviving spouse may use both his or her and the deceased spouse's unused estate tax credit at the time of the surviving spouse's death. A portability election must be made on the deceased spouse's 706 estate tax return. For example, if both spouses died in 2024, this strategy will ensure that a married couple may use both basic exclusion amounts and be able to pass $27,220,000 at the surviving spouse's death. It should be noted that the portability election does not apply to the generation-skipping transfer tax exemption; accordingly, specific planning for the transfer of assets to skip persons (e.g., grandchildren) must be reviewed and analyzed.

   Regarding portability of a deceased spouse's unused exclusion (DSUE) amount, any "decrease in the BEA (basic exclusion amount) after 2025 will reduce the surviving spouse's [exclusion amount] only to the extent that it is based upon the BEA but not to the extent that it is based on the DSUE amount". The period by which a portability return may be filed has been extended to 5 years after the decedent's death, although it is always preferable to file within the standard 9 month period if possible.

   A surviving spouse's BEA is used only after use of any DSUE amount that was received via a portability election. Thus, "any DSUE amount available [to a surviving spouse] is deemed to be applied to [the surviving spouse's] gifts before any of [the spouse's own] BEA is applied to those

gifts." But, a spouse seeking to use the spouse's own BEA before the sunset provision causes the spouse's exclusion amount to snap back to pre-2018 levels would be required to fully use the DSUE amount first.

SPOUSAL LIFETIME ACCESS TRUSTS ("SLATs")

In addition to annual exclusion gifts, you can make gifts over that amount that will be shielded by your lifetime gift tax exemption ($13,610,000 in 2024). Gifts that are shielded by your exemption have the additional benefit of removing the gifted asset's future appreciation from your estate. Such a gift would be sheltered by the anti-clawback regulations and would not be brought back into the donor's estate.

A SLAT is an irrevocable trust created and funded by one spouse (the donor-spouse) for the current benefit of the other spouse (the donee-spouse). The transfer to the trust is irrevocable and it is a completed gift for gift tax purposes, but assets can possibly be distributed to the donee-spouse if needed, making the assets held inside the SLAT indirectly available to the donor-spouse as long as the donee-spouse is alive and married to the donor-spouse. Of course, any distributions from the SLAT could undo the intended federal gift or estate tax savings. Other family members (such as children and grandchildren) may also be beneficiaries of a SLAT. The donor-spouse, however, cannot be a beneficiary as that could cause the trust assets to be included in the donor-spouse's estate, negating the tax planning that is the reason to create the SLAT in the first place.

Generally, a gift to one's spouse in trust qualifies for the gift tax marital deduction. The result is that there is no gift tax resulting from the transfer; and, therefore, there is no need to use your lifetime gift tax exemption to shelter the gift. The corollary is that the gifted asset is now the donee-spouse's asset for gift and estate tax purposes. Thus, the asset's future appreciation will not have been removed from both spouses' estates. Please note that the donee-spouse's basis in the SLAT will be a carryover basis.

However, the funding of a SLAT is intended not to qualify for the gift tax marital deduction; it is intended to be a completed gift that will be shielded by the donor-spouse's lifetime gift tax exemption. A SLAT may be structured as a grantor trust for income tax purposes.

One of the common powers that a donor may retain in order to create grantor trust status is the power to substitute trust property with other property of an equivalent value. Retaining this power can create valuable tax planning opportunities based on the step-up in basis for assets owned by the donor-spouse at his or her death. That is, the donor-spouse can exchange an asset that has a high cost basis (e.g., cash) with an asset held in the SLAT that has a low-cost basis, which would result in the low-basis asset being in the donor-spouse's estate and thereby receiving a step up in basis at death.

Assets contributed to a SLAT must be the donor-spouse's separate property.

ESTATE, GIFT, AND GST TAXES

We are happy to report that the federal estate tax, gift tax, and generation-skipping tax laws have remained stable and only reflected small adjustments for 2024. Accordingly, the general federal exclusions, deductions, and rates are as follows:

Under the 2017 Tax Cut and Jobs Act ("TCJA"), the previous law was doubled and adjusted in consideration of the CPI (Consumer Price Index) resulting in the current estate, gift, and generation-skipping transfer tax exclusions each being **$13,610,000 in 2024**. Accordingly, each married couple may transfer **$27,220,000** at their death or during their life in 2024. These transfers may be to their descendants or other "skip" persons for generation-skipping purposes.

Therefore, any lifetime or death transfers that do not exceed these amounts in 2024 will not incur federal transfer taxes. By way of example, if a person transferred $13,610,000 through their estate in 2024, the estate tax basic exclusion, i.e., "credit", and generation-skipping transfer tax exclusion would offset any estate tax obligation. In addition, the **annual gift tax exclusion is adjusted to $18,000 per individual** recipient (subject to CPI increases in the future). Therefore, any combination of gifts under this amount per calendar year, per individual, does not need to be reported. If an individual is gifted more than the annual exclusion amount in a calendar year, the donor is still required to report the gift on a 709 gift tax return for the taxable year in which the gift was made. This reporting enables the IRS to keep track of all taxable gifts that will need to be incorporated into an individual's taxable estate at his or her death. By way of example, if a person made a gift in 2024 of $118,000 to an individual, a 709 gift tax return should be filed for the taxable year showing a $100,000 gift in excess of the annual gift tax exclusion of $18,000. There is still an unlimited deduction for transfers to citizen spouses. However, if your spouses is not a U.S. citizen, special rules apply and should be reviewed before gifting.

Additionally, the TCJA maintained the basis requirement that the executor/trustee of an estate that is taxable is required to file a 706 estate tax return and must report the basis of all assets transferred to the beneficiaries. This basis reporting requirement is satisfied by the executor filing Form 8971 so that the IRS may track the capital gains step up or carry over attributable to the beneficiaries on the assets received at the decedent's death.

Any person who is administering an estate or trust must remember that fiduciary income tax rates are compressed (reaching the highest rate after $15,200 of income in 2024) and plan distributions accordingly. Under the TCJA, Congress lowered the marginal income tax rates for most taxpayers, thereby reducing the top marginal rate to 37%. The new rates are applicable to the taxation of irrevocable trusts, such as marital and residuary trusts, as well as probate estates. If a trust accumulates income and does not distribute it to the beneficiaries in any taxable year, the trust must file a 1041 fiduciary tax return and report the income that the trust generated which would be taxed at the top marginal rate of 37% on all income over $15,200.

MISSOURI TRUST & PROBATE LAW

Missouri trust and probate laws have largely remained the same.

1. The Missouri Trust and Probate Committee, with the approval of the Missouri Bar Board of Governors, has re-submitted two proposals to the legislature to be passed this session:

a. The Qualified Spousal Trust ("QST") statute is to be amended in order to grant bankruptcy exemption to the assets titled under the trust name. The proposal also addressed how an asset in a QST can be titled in order to designate the share in which the asset is to be held (e.g., husband's, wife's, spouses', or joint). For all married couples in Missouri, the use of a QST is still recommended based on the creditor protection granted from an individual spouse's creditor. This protection is derived from the tenancy by the entirety concept under Missouri law. A joint revocable living trust can be drafted to allow the surviving spouse to maintain complete control of the estate after the first spouse's death, or it can provide for separate shares between the spouses for particular planning objectives (e.g., distribution to differing family members, allocating tax exemptions, or sheltering the decedent's share from the surviving spouse's creditors). Separate shares may also be established in order to allocate each spouse's generation-skipping transfer tax exemption rather than relying on traditional joint ownership allocation rules.

b. The Uniform Income and Principal Act is scheduled to be amended and restated. The Uniform Fiduciary Income and Principal Act ("UFIPA") is a 2018 revision of the former Uniform Principal and Income Act that Missouri originally adopted in 2001 after its introduction as a Missouri Bar-initiated legislative proposal. UFIPA provides updated, flexible accounting rules for modern trusts. Current trends in estate planning allow for very long-term trusts that give trustees broad discretion to adapt to future events. UFIPA recognizes these trends and updates the laws accordingly. The purpose of UFIPA is to provide procedures by which trustees administering trusts allocated receipts and payments to principal and income. While older trusts often had clear delineation between income and principal interests, modern trust accounting requires greater flexibility. Trustees now tend to invest for the greatest total return and then adjust between interest and principal to produce a fair result for all the beneficiaries. UFIPA recognizes this trend toward total-return investing and includes unitrust conversion rules to allow even older trusts to take advantage of modern investment trends. UFIPA gives estate planning attorneys additional flexibility to tailor a trust for each client's needs and includes a new governing law section to help avoid jurisdictional disputes.Modern portfolio theory advocates investing for the greatest possible total return, regardless of whether the return is in the form of income or growth of principal. Outdated laws make this more difficult because of historic legal distinctions between income and principal. UFIPA updates the law and allows trustees to invest for the greatest possible return.The development of modern portfolio theory popularized the use of unitrusts – an easy-to-administer form of trust that helps maximize investment returns and minimize administrative expenses. UFIPA provides the first uniform rules for converting older trusts into unitrusts with more flexibility than any current state statute but still in accordance with federal tax regulations. Under UFIPA's flexible rules for trust administration, estate planners can tailor the terms of a trust to fit each client's current needs and allow adaptation for unforeseen future events. UFIPA includes a default rule stating the law governing a trust is the law of the state where the trustee has its principal place of administration. This rule conforms to current practice and will help ensure courts apply the correct law and prevent multistate jurisdictional disputes.

SUMMARY

Whenever there is a change in the family dynamics or estate assets, a review of all of the estate planning documents, titling and beneficiaries of assets, and ownership of business interests should be conducted.

Life is always evolving, and a person's estate plan governs the control and management of his or her estate as a whole. It is prudent and necessary to periodically review the current and future manager(s) of the estate as well as to whom and how the assets will be distributed. Older documents must be updated in order to satisfy financial institutions and health care agencies, for example a Durable powers of attorney or health care/medical directive.

It is impossible to know what is right for every person's estate without reviewing the exact facts and circumstances of that person's life. Every plan is different and should be customized to accommodate the wishes and desires of the individual. Each estate plan must also take into consideration the changes made under federal law and the Missouri Trust Code. It is imperative that everyone take responsibility to review their estate plans on a regular basis to ascertain if the existing plan still meets their needs and fulfills their wishes.

Please feel free to contact us any time with questions or concerns.

Respectfully yours,

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