

FENSTER & LAZENSKI, LLC

ATTORNEYS AT LAW

3284 WALDEN AVENUE

DEPEW, NY 14043-2300

DAVID D. FENSTER

(716) 685-4167

OF COUNSEL

DAVID P. LAZENSKI*

FAX: 685-2664

DOUGLAS R. TRUMPLER

ESTATE TAX PLANNING UNCERTAIN UNDER NEW TAX LAW

As the result of recently-enacted legislation, we face a “moving target” when giving estate and gift tax planning advice to our clients.

Higher Exemptions, Lower Rates. The federal estate tax exemption and highest tax rate is scheduled to change as follows:

<u>Year</u>	<u>Exemption</u>	<u>Max Rate</u>
2001	\$ 675,000	55%
2002	1,000,000	50%
2003	1,000,000	49%
2004	1,500,000	48%
2005	1,500,000	47%
2006	2,000,000	46%
2007	2,000,000	45%
2008	2,000,000	45%
2009	3,500,000	45%
2010	<i>TAX REPEALED</i>	0%
AFTER 2010	1,000,000	55%

2011 and Beyond? As shown in the chart above, the federal estate tax will be repealed for 2010 only. After 2010, the estate tax will return and the exemption will revert to \$1,000,000. This “repeal of the repeal” was necessary to conform to revenue neutrality constraints. It appears certain that Congress will revisit this tax law well before all these changes become effective. Most commentators feel, however, that an extension of the federal estate tax repeal beyond 2010 is unlikely.

Gift Taxes Frozen. The gift tax exemption will rise to \$1,000,000 in 2002, but remain frozen at that level. A gift tax threshold that is below the estate tax threshold (from 2004 to 2010) will discourage lifetime gifts (*i.e.*, it will provide an incentive to *hold* assets until death).

Stepped-Up Basis Repealed. A little-publicized aspect to the new estate tax law is the repeal (in 2010) of the so-called “stepped-up basis” rule. A stepped-up basis allows inherited assets to be sold without capital gain. Under the new law, a decedent’s cost basis (on assets over an exemption threshold) can “carry-over” to the beneficiary, resulting in capital gain on a sale.

NEW MINIMUM DISTRIBUTION RULES ENHANCE PLANNING

Over the years, one of the most confusing areas of planning involved making elections concerning the minimum distributions from a retirement plan (e.g., I.R.A., 401(k), etc.). Earlier this year, the I.R.S. issued new rules for determining required minimum distributions.

The new rules greatly simplified the calculation of the minimum distribution by replacing the multiple reference tables with one “uniform” table. Of greater interest (at least to us tax lawyers) was that the rules have made it easier to extend the tax-deferral of payments to children (or grandchildren). Such “stretch” I.R.A.s have long been an important goal for taxpayers with large retirement plan balances. The new rules are a welcome safe path through the minefield that existed under the old rules.

The goal of stretching I.R.A. payments to children can conflict with estate tax shelter goals. For example, paying an I.R.A. to a credit shelter trust for the benefit of a spouse will generally reduce the time over which the I.R.A. can be stretched.

PLANNING CONSIDERATIONS

Married clients who have Wills which include a “credit shelter trust” should review their estate plan. The typical formula clause in a Will transfers the exemption amount to a “credit shelter trust” for the benefit of the surviving spouse. As the exemption amount increases, a larger proportion of the estate will be transferred to, and sheltered by, this trust. For some clients, more assets may be transferred to the trust than are necessary to avoid estate taxes.

In light of the new minimum distribution rules, we strongly recommend that the beneficiary designations on all retirement plans be carefully reviewed. This is especially true if the beneficiary is either a “Credit Shelter Trust” or “Estate.”

Please call us if you have questions.

ORGAN DONATION CONSENT MADE EASIER

A organ donor has the potential to improve the quality of life for more than 50 people who suffer from organ failure, congenital defects, bone cancer, orthopedic injuries, burns or blindness. Consent to organ donation has traditionally been given by signing organ donation cards or by so designating on a driver's license. New York State now allows consent for organ donation to be included as part of a Health Care Proxy. Please call us if you would like to update your Proxy to include a consent for organ donation.

NURSING HOME COSTS

Despite an aging population, our elected officials have determined that government should fund long-term health care for only the most financially destitute among us. Nursing home costs have been increasing faster than the rate of inflation. In Western New York, it is not uncommon to see daily rates in excess of \$200 (an annual cost of \$73,000).

If your savings are inadequate and/or long-term care insurance unavailable, we can use our elder law experience to recommend asset transfer strategies which can avoid complete depletion of your estate. The sooner these issues are addressed, the better your chances of protecting assets.

"LIFE TRANSITIONS"

One of the most difficult issues that our clients face is a move from their home due to failing health. In years past, that move was usually to a nursing home. Today, there may be an alternate level of care: Independent Housing, Enriched Living or Assisted Living. Compounding the difficulty of the *housing* decision are the many related issues: How to protect assets from the high cost of care, selling investments to provide liquidity, planning and implementing an appropriate care plan.

David Fenster and several other professionals in Western New York have formed the "Life Transitions" group to educate and advise clients on these and other related issues. The *Life Transitions* group includes representatives from Elderwood Senior Care, Hunt Real Estate and Lumsden & McCormick, so we have the knowledge and experience to assist at every step of the "transition."

If you would like more information on *Life Transitions*, please call David Fenster.

PRIVACY POLICY

Attorneys, like all providers of financial services, are required by law to inform their clients of policies regarding privacy of client information. Attorneys are bound by professional standards of confidentiality that are more stringent than those required by law. We have *always* protected your privacy.

Personal Information: For our clients, we do not disclose any personal information unless you have authorized us to do so.

Records: We maintain records relating to professional services that we provide so that we are better able to assist you with your professional needs and, in some cases, to comply with professional guidelines. In order to protect your personal information, we maintain physical, electronic, and procedural safeguards that comply with our professional standards.

Please call if you have any questions, because your privacy, our professional ethics, and the ability to provide you with quality services are very important to us.

FENSTER & LAZENSKI, LLC

Staff

MaryAnn Morrissey has been with the firm for over six years. She now devotes all of her time to estate and trust administration.

Monica Venditti, who started in 1998, assists MaryAnn with estate administration and David Lazenski with corporate matters.

Denise Kraft has been with the firm since 1998. Denise coordinates all activities in the estate planning department.

Melissa Ledebzinski recently started as our receptionist. Melissa also provides clerical support to the rest of the office.

Office Space

In a move that should give us all a little *less* exercise, we recently moved our estate administration department from the third floor to newly-renovated space on the second floor. (We now occupy the entire second floor.) Our reception area and conference room are still conveniently located on the first floor.

