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DESCHUTES DISCOVERY

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IN THIS ISSUE

Is it time to revisit your estate plan?.....Page 1

The "repeal" and "sunset" of the federal estate tax.... Page 1

Oregon death tax system on the rise.....Page 2

Oregon trust law changes "Who gets what".....Page 2

Changes in your life.....Page 3

Don't forget to fund your trust.....Page 3

Meet our new associatePage 4

IS IT TIME TO REVISIT YOUR ESTATE PLAN?

If you currently have an estate plan, it may need to be reviewed, even if it is not particularly complex. If you do not have an estate plan, it may be time for you to do one. As a general rule, the older your estate plan is, the more likely it needs to be revisited. In addition to likely changes in your personal circumstances, over the past few years there have been quite a few federal and state law changes.

THE "REPEAL" AND "SUNSET" OF THE FEDERAL ESTATE TAX

The most significant federal death tax law change that has occurred in the last few years involves the Economic Growth and Tax Reconciliation Act of 2001 ("EGTRA"). EGTRA caused a complete overhaul of the federal estate tax system. As you may already know, under EGTRA, the entire federal estate tax system is scheduled for repeal in the year 2010. If Congress does nothing, in the year 2011 the EGTRA federal estate tax system "sunset" and goes back to the pre-EGTRA system.

Although you may hear talk about the "repeal" of the estate tax system, using the word repeal is very misleading. You should not find comfort in this term. The estate tax system is not going anywhere if Congress does nothing, but rather the system is repealed for a single tax year (i.e., the year 2010) and then comes back in full force in the year 2011 with extremely high rates of up to 55% and a mere \$1 million that each individual can pass death tax free.

Until the year 2010, the estate tax system phases out and the amount that you can pass estate tax free under the federal system gradually increases from \$1.5 million this year to \$2 million for the years 2006, 2007 and

continued on page 2



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continued from page 1

2008 and \$3.5 million for the year 2009. In addition, the highest federal estate tax rates decrease from 47% this year to 46% next year. The problem, however, as previously stated, is the entire system goes back to the less generous pre-EGTRA system on the stroke of midnight on December 31, 2010, if Congress does nothing.

What does this mean regarding your estate plan? This means that if your estate plan was completed pre-EGTRA (i.e., pre 2001), your plan did not take into consideration the repeal and sunset of the federal estate tax system. Therefore, your plan may not be flexible enough to accommodate this uncertainty and your plan thereby may need to be revised to create more flexibility.

OREGON DEATH TAX SYSTEM ON THE RISE

Certainly you have heard of the repeal and sunset of the federal estate tax. Now the State of Oregon has created uncertainty in its own death tax system. The new Oregon death tax system, which was passed in 2003 allows you to pass death tax free \$950,000 this year and \$1 million thereafter. Notice, however, that this is a different amount than the amount that you can pass death tax free under the federal system (i.e. you currently can pass \$1.5 million under the federal system). What this means is that many residents of Oregon who may not have federal estate tax exposure may very well have some Oregon death tax liability. If your estate plan was drafted before 2003, there are certain amendments that can be added to your estate plan to mitigate or defer the Oregon estate tax burden.

OREGON TRUST LAW CHANGES “WHO GETS WHAT”

As the state law governing revocable living trusts changes, amending your trust may be necessary depending on the legislative changes. There have been recent changes in Oregon's anti-lapse statutes regarding “who gets what.” That may require amending your estate plan. In particular, there was a provision enacted in 2003 under the Oregon statutes that changes what happens if you give a particular item (jewelry, artwork, real property) in a revocable living trust to a certain person and that person passes away before you. Unless your revocable trust specifies exactly who gets the item if the person you named dies, whatever was devised to that specific person passes to that person's descendents (i.e., his or her children), unless the trust specifically has language indicating what happens in such an event.

There also have been changes in the law regarding revocable trusts and divorce. Under the new law, a divorce after the formation of a trust will result in a revocation of any gift to the trustor's spouse, unless otherwise provided for in the instrument.

continued on page 3

continued from page 2

The new law also provides that if you make a specific bequest to someone in a trust of a particular piece of property and that property is subject to an encumbrance (i.e., a debt), the encumbrance passes to the donee with the property devised.

The bottom line is these new legislative changes, to name a few, may impact the disposition scheme in your estate plan depending on when your particular plan was drafted. If you do not want those results, you will need to amend your estate plan.

CHANGES IN YOUR LIFE

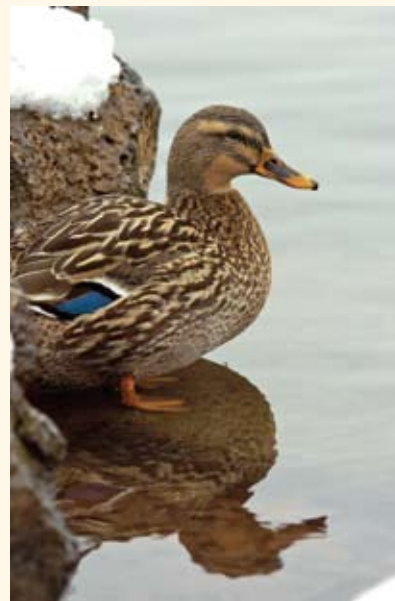
An estate plan is a series of documents that should always be reviewed and reworked to account for life changes, family changes, economic changes, and changes in the law; otherwise, they may result in unintended consequences.

The family dynamics that existed when you prepared your original estate plan may have changed. As a result, your estate plan may need some altering to account for those changed circumstances.

Merrill O'Sullivan, LLP encourages you to take your estate plan out of the safe or filing cabinet, dust it off and review it for old matters, beneficiaries or fiduciaries that may have changed, any other revisions that you may have in mind, and whether you have any tax exposure if your estate has grown significantly in value or if your plan was prior to the significant changes in the state and federal estate tax systems, which took place in 2001 and 2003.

DON'T FORGET TO FUND YOUR TRUST

If you established a revocable living trust that is still in existence, please remember that you have to keep your trust funded with all of your property if you want to avoid probate. The exception to this general rule includes certain life insurance policies and IRAs. If you have since changed your personal residence or your brokerage account that was previously in the trust, then you need to put it back in. Do not just assume that when you sell (or refinance) your personal residence or change your brokerage account, the new property will automatically be in the trust. If you have any questions regarding the funding of your trust, please do not hesitate to contact us so that we can assist you in ensuring the proper funding of your trust.



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MEET OUR NEW ASSOCIATE (RODNEY P. MOCK, J.D. LL.M.)

We are pleased to introduce Rodney P. Mock, our new associate at Merrill O'Sullivan, LLP. Rodney's primary practice areas are estate planning and taxation. Before joining the firm of Merrill O'Sullivan, LLP, Rodney worked for a number of attorneys and law firms in Eugene, Oregon, including a former Oregon congressman and member of the Kennedy administration. His prior employment experience includes everything from writing a Bill to the United States House of Representatives to working on sophisticated tax and business transactions. Outside of practicing law, Rodney has an employment history that ranges from working as an Italian chef preparing exquisite Italian cuisine in northwest restaurants and hotels, including the Hilton; to employment with Nickelodeon Television and the film and television industry in Los Angeles, California.



Rodney's educational background is just as diverse as his employment background. He has a Bachelor of Arts from the University of California Davis, where he majored in Theatre; a Juris Doctorate degree from the University of Oregon School of Law, and an LL.M. (masters in law) in taxation degree from the University of Washington School of Law.

Rodney has resided in Oregon for over ten years and likes to spend his free time with his beautiful wife, Marie and lovely daughter, Elektra. He also likes to go snowboarding on the "Snowy Mountain" as his daughter refers to it, a.k.a. Mount Bachelor.

At the present time, Rodney is taking new estate planning and taxation clients and would be more than happy to answer any and all questions that you may have.

For more information regarding our legal services, please contact our office at (541) 389-1770 or visit <http://www.merrill-osullivan.com>.

Patricia L. Heatherman is the Editor of Deschutes Discovery. If you have questions regarding this issue, please contact Ms. Heatherman at (541) 389-1770 or e-mail feedback to lawfirm@merrill-osullivan.com.

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