

WADE ASH WOODS HILL & FARLEY, P.C.  
ATTORNEYS AND COUNSELORS AT LAW  
CHERRY CREEK CENTRE  
360 SOUTH MONROE STREET, SUITE 400  
DENVER, COLORADO 80209-3709  
TELEPHONE (303) 322-8943 FAX (303) 320-7501  
WWW.WADEASH.COM

November 2002

To Our Clients, Professional Colleagues, and Friends:

We wanted to provide news of our firm and some commentary on developments in the area of estate planning and estate and trust administration which may be of interest.

As we reported in our letter of June, 2001 regarding the Economic Growth and Tax Relief Reconciliation Act (the "Act"), we continue to be in a time of uncertainty regarding the federal estate tax.

Under the Act, which is still on the books, the federal estate tax is scheduled to be repealed entirely in the year 2010, but the matter is confused by the fact that the law which repeals the federal estate tax is, itself, repealed in 2011 unless the law is re-enacted.

In the interim the exemption from the federal estate tax is presently at \$1,000,000 per taxpayer. The exemption is scheduled to increase thereafter as follows:

2004	\$1,500,000
2006	\$2,000,000
2009	\$3,500,000

The generation skipping tax exemption is currently \$1,100,000, and it is scheduled to increase to \$1,500,000 effective January 1, 2004 and will be equivalent to the amount of the estate tax exemption in future years.

Until January 1, 2004, the estate and gift tax laws are a part of a single, coordinated, transfer tax with the result that the exemption from tax described above can be used either during your lifetime, or at death, or in combination. After January 1,

November 2002

Page 2

2004, the estate tax exemption will be \$1,500,000, but the gift tax exemption will remain fixed at \$1,000,000. In addition, there is an annual exclusion from the transfer tax which presently amounts to \$11,000 per donee per year. There is no limit as to the number of donees which you may benefit. In addition, there is an exemption from gift tax for certain kinds of medical and educational expenses which are paid directly to the provider.

There were efforts in Congress within the last year to eliminate some of the uncertainties in connection with the estate tax by either making the estate tax repeal permanent or by retaining the estate tax but raising the exemption per taxpayer to the \$2.5 Million range. Neither was successful, however, with the results of the election earlier this month there has been some discussion about the possibility of making permanent the outright repeal of the estate tax, although the fiscal impacts of that will be an issue in light of current federal budget deficits at the federal level.

Two aspects of the estate tax "repeal" which have not been widely publicized are the facts that, in order to compensate for potential lost federal estate tax revenue, the present law is phasing out the amount of the federal estate tax collected which had previously been diverted to the states. This will contribute to the State of Colorado's budget short fall. Also there is a feature of the Act if the estate tax is repealed in 2010 which, effective January 1, 2011, will cause some carry over of historic income tax basis in connection with inherited assets, thus creating a much larger potential for capital gain taxation of inherited assets upon sale.

All of this means that, unfortunately, that the transfer tax situation remains uncertain. We have not tried to modify our estate planning forms to try to deal with the various alternatives which are possible. Rather, we, our clients and professional colleagues, must continue to monitor any changes in Washington.

As we advised earlier, there should be no downside for clients continuing to make their annual exclusion gifts, so long as they can afford the loss of income from the gifted assets. Also, some wills contain several trusts (one is often called a Marital Trust and another often is called the Family or By-Pass Trust or Exemption Equivalent Trust), the balance between which is determined by a formula based upon the amount of the available federal estate tax exemption. As the estate tax exemption increases over time the formula will tend to allocate more assets to the so-called Family Trust and less to the Marital Trust. This can cause some unintended consequences where the beneficiaries under the Family Trust do not include the surviving spouse or in plans which provide for

November 2002

Page 3

distributions to the surviving spouse from the Family Trust to a more limited degree which is frequently the case with blended families.

There have been some state law changes of interest. Colorado recently adopted a revised version of the Uniform Principal and Income Act which provides some more modern rules in connection with the allocation of trust receipts and disbursements among the current income beneficiaries and the remainder beneficiaries. A statutory time period has passed under which trustees could opt out of the new statute and most old trusts are subject to the new rules. Of particular interest are new rules regarding principal and income allocation for oil and gas revenues and also a provision which allows a trustee to make adjustments in connection with the receipt of income, in effect allowing a portion of capital gains to be allocated to the income beneficiary where appropriate.

Jim Wade authored an article for *The Colorado Lawyer* in connection with this Act and presented a program on it to the last meeting of the Colorado Bar Association Convention.

The Uniform Trust Code is under consideration in Colorado. This is a comprehensive Act on trust law which fills a lot of gaps in law and procedure which exist in states like Colorado which do not have a highly developed case law on trusts. Marc Darling has had responsibilities for this in his prior capacity as Chair of the Statutory Revisions Committee of the Probate and Trust Section of the Colorado Bar Association. Herb Tucker also sits on the subcommittee which studied the new Trust Code and presented the Code to the Colorado Legislature last Spring.

In addition, the Colorado law on the "Dead Man Statute" has been modernized and simplified. The dead man statute is an evidentiary rule which deals with the question of what persons can testify to after death in will contests, contested creditor claims, and the like. The small drafting committee for this project included Jim Hill, Herb Tucker, and Marc Darling, all of whom recently authored a *Colorado Lawyer* article on the new statute.

In the elder law area, Colorado continues gradually to tighten regulations and make it more difficult to obtain Medicaid assistance for the purpose of nursing home room, board, and care charges. Many of the programs touted in the past no longer are viable. They are closely monitored by county and state Medicaid departments. It is still possible to make gifts within the three-year look-back period and still qualify for Medicaid if the gift timing is done correctly. Ineligibility is determined by a figure based

November 2002

Page 4

on the average cost of nursing home care in Colorado. Properly drafted durable financial and health care power of attorneys remain a necessity. Under Colorado law, if gifting is to be accomplished by an agent, the power must be specifically enumerated in the power. Several years ago Colorado enacted a new guardianship and conservatorship code which generally made it more difficult and expensive to initiate protective proceedings. Powers of attorney can avoid many of these proceedings. We are available to counsel and assist you concerning planning for Medicaid or disability.

News of the Firm: Jim Hill has changed his status with the firm to "Of Counsel" and will limit his practice to mediation and arbitration of probate related disputes.

Jim Wade continues to serve as liaison from the American Bar Association both to the National College of Probate Judges and to the American Bar Association Commission on Aging and the Law. He also serves as Secretary of the National Joint Editorial Board for Probate and Trust Law.

Marc Darling is serving as Chair as the Colorado Bar Association Probate and Trust Law Section and was Chair of the recent Colorado Bar Association Estate Planning Retreat where he, Jim Wade, and Herb Tucker presented programs.

Herb Tucker, Dave Swank, and Tom Hill have recently completed a two part article to be published in *The Colorado Lawyer* regarding holographic wills and probate litigation.

Steve Warden, the firm's elder law attorney, continues to be active in NAELA (The National Association of Elder Law Attorneys).

The firm presently utilizes four paralegals, Faye Spaulding, JoAnn Weaver, Kimberly Rutherford, and Laura Nelson, each of whom has many years of experience, to provide support in estate administration and probate litigation.

The firm's office administrator, Freda Wilson, is active in the Colorado Association of Legal Administrators.

The firm continues to be available to assist individuals, families, charitable organizations, and individual and corporate fiduciaries (personal representatives, trustees,

WADE ASH WOODS HILL & FARLEY, P.C.

November 2002

Page 5

guardians, and conservators) in matters of estate and trust planning, fiduciary administration, elder law, and probate litigation.