HMF Update

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Disaster Relief for Arkansans

by Jane F. Strike

Both the Internal Revenue Service and the Department of Finance and Administration have announced tax relief provisions to benefit taxpayers affected by tornadoes, severe storms, or flooding. Residents of Faulkner, Pulaski, Randolph, and White Counties qualify for the relief.

IRS Relief

Deadlines Extended. For most returns and payments due between April 27 and October 15, the due date is postponed to October 15, 2014. This includes income taxes for individuals, corporations, estates, trusts, partnerships, and S corps. Transfer tax returns such as estate, gift, or generation-skipping tax returns are also included, as well as payroll and excise tax returns. The June 16 and September 15 deadlines for making estimated payments are extended to October 15.

Quarterly payroll and excise return dates are also postponed from April 30 and July 31 until October 15. Deposit dates for employment and excise taxes were only extended through May 12. The due dates for certain informational returns (W-2, 1099) were not extended.

For taxpayers already in audit or collection with the IRS, there is not an automatic extension of deadlines. However, you should make the IRS examiner or revenue officer aware of how the storms have affected you. These factors will be considered for possible extension of deadlines and reduction in penalties charged.

If you receive notice that a penalty has been assessed, you should contact the IRS and request abatement of the penalty. In some cases there may be an automatic abatement, or you may request abatement for "reasonable cause" based on the severe weather.

Loss Claims. The IRS will allow taxpayers within the affected areas to claim casualty losses on their return for 2014 or on their 2013 return. You may deduct losses of personal property, not paid by insurance or otherwise reimbursed to you. Filing an amended return for 2013 may allow you to receive an earlier refund, but you should also consider the option of claiming the loss on this year's return, as this may result in larger tax savings. If you write the disaster designation, "Arkansas/Severe Storms, Tornadoes, and Flooding," at the top of your return, the IRS will speed up the refund process.

Copies of Returns. IRS will not charge fees for copies of returns and will rush these requests.

DFA Relief

Deadlines Extended. The DFA has not issued a blanket extension for returns. However, the DFA will work with taxpayers in the affected counties to provide extensions as needed for filing or paying sales and use taxes, withholding taxes, corporate income tax, or any other state tax. You are directed to

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Little Rock (501) 376-8222 | Conway (501) 336-8822 | Hot Springs Village (501) 984-6366 | Toll Free (800) 467-8297

Recent Developments in Estate Planning Law

by Lori Holzwarth

The Arkansas Supreme Court has changed the landscape of estate planning in Arkansas with a decision issued on May 22, 2014.

In re Estate of Thompson, 2014 Ark. 237, a claim was made by the surviving spouse against her deceased husband's estate and trust. Under existing Arkansas law, absent a premarital agreement a surviving spouse who was not provided a certain level of assets by the Last Will and Testament of the predeceased spouse could claim against the Last Will and Testament.

By claiming against the Last Will and Testament, the spouse would be entitled to receive from the predeceased spouse the amount the surviving spouse would have received if there was no Last Will and Testament. Depending on if the decedent had children and what type of property the decedent owned, the surviving spouse's share after election could be one-third (1/3) to one-half (1/2) of the estate.

Such provisions were not included in the Arkansas Trust Code, so many estate planners may have believed that a surviving spouse could not elect his or her intestate share against the predeceased spouse's trust. But in this case the Court found in certain situations the wife would be entitled to elect against the trust. In the *Thompson* case, the Arkansas Supreme Court identified the central issues as "whether the Circuit Court erred in finding that the Decedent intended to deprive Appellee (wife) of her elective-spousal share and whether the assets of the inter vivos revocable trust should therefore be included in the Decedent's Estate for purposes of calculating Appellee's (wife's) elective spousal share."

> The landscape of estate planning in Arkansas has changed. You should consult with your attorney if you and your spouse are maintaining separate plans of distribution.

The Court went on to say "once a circuit court determines that a settlor had the intent of depriving his or her spouse of marital-property rights when creating or amending an inter vivos revocable trust, the effect of that intent is to have the trust assets included in the settlor's estate for the limited purpose of calculating the surviving spouse's elective share."

In *Thompson*, the husband made no provisions for his wife under his Last Will and Testament or trust. The wife would have been entitled to approximately $100,000 if she were only allowed to elect against the Last Will and Testament of the decedent. By allowing the widow to elect against the trust as well, the widow was entitled to receive almost $3,000,000 from her husband's estate and trust.

This case points out several estate planning areas of concern. While the *Thompson* case applies specifically to trusts, the same logic seems to extend to beneficiary designations and joint ownership with someone other than your spouse. The takeaway should be if you and your spouse are maintaining separate assets, separate trusts, and separate plans of distribution, both spouses should consent to the arrangement. Consent may be given by a premarital agreement, postmarital agreement, or other methods that would negate the element of fraud found in the *Thompson* case. If the spouse does not consent, then some level of provisions should be made for the surviving spouse in your estate planning documents. A trust continuing for the benefit of the surviving spouse but ultimately distributing to the predeceased spouse's heirs may be appropriate in this situation.

If you have questions about your particular situation, please call one of the attorneys at Hyden, Miron & Foster, PLLC to discuss.

The Truth About Tax Liens

by Jane F. Strike

What exactly is a tax lien? A tax lien is a legal claim by the government when you do not pay a tax debt. The lien impacts **ALL** of your property, including both real and personal property. The purpose of the lien is to protect the government's interest.

When does a tax lien arise?

A tax lien arises after tax is assessed, you receive notice of the assessment, and then fail to pay the tax. A Notice of Federal Tax Lien is filed in the public record to make other creditors aware of the government's claim on your property. The IRS will file a Notice of Tax Lien if the tax liability owed is greater than $10,000.

Who has the authority to file tax liens?

Both the Internal Revenue Service (IRS) and the Department of Finance and Administration (DFA) have the authority to file tax liens. Other state agencies, such as the Department of Workforce Security (DWS), are also authorized to file liens. Liens may be filed for failure to pay or collect a wide variety of taxes, including individual or corporate income tax, employment taxes, sales and use tax, or excise tax.

Where are lien notices filed?

Liens are a matter of public record. In Pulaski County, IRS liens are filed with deeds and other real estate records, but DFA liens (Certificates of Indebtedness) are filed with court records. In other areas, liens may be filed with the Secretary of State.

What affect does a lien have?

The lien attaches to all assets including your home and other real estate, bank and securities accounts, and vehicles. Any future assets obtained while the lien is in place are also impacted. For a business, all property owned by the business, including accounts receivables, are affected. **The filing of a lien also greatly reduces the availability of credit for the individual or business.**

How long does a lien last?

Once filed, the lien remains effective for ten (10) years. A lien can be refiled during the ten-year period, with the life of the lien being extended for an additional period of ten (10) years.

How can a lien be removed?

The lien may be removed by **release, discharge, subordination,** or **withdrawal.**

- If you pay the tax debt owed, the IRS is required to file a **release** for the lien within thirty (30) days after payment.
- A **discharge** may be available where significant additional property remains to secure the IRS debt, there is partial satisfaction of the tax debt, or the government's interest has no value due to other mortgages. A discharge would allow sale of the property without the encumbrance of the lien.
- **Subordination** may be permitted when the taxpayer is refinancing the property. To qualify for subordination, the taxpayer must demonstrate that the IRS will receive payment, or that the amount the IRS will receive is increased, or that collection of the tax liability is made easier. If the IRS agrees to subordination, then the taxpayer will have the freedom to refinance the property.
- A **withdrawal** removes the notice of lien from the public record. The IRS will withdraw a lien if the IRS did not follow proper procedure in filing the lien, if the withdrawal "facilitates" collection, or if the withdrawal is in the best interest of both the taxpayer and the IRS. Certain taxpayers with tax debt less than $25,000 may qualify for withdrawal of a lien where they are in a direct debit installment agreement and remain current in payments and tax filings.

Please contact the tax professionals at Hyden, Miron & Foster, PLLC, for assistance in working with the IRS to release, discharge, subordinate, or withdraw a tax lien.

Don't Miss the Portability Election Deadline

by Tiffany Parker Nutt

The IRS and tax professionals use various acronyms to simplify discussion of complex tax issues. DSUE is one of the latest acronyms to take the tax world by storm. DSUE stands for "Deceased Spouse Unused Exclusion."

At the end of 2010 Congress enacted the Tax Relief Unemployment Insurance Reauthorization and Job Creation Act which amended IRC § 2010 Unified Credit Against Estate Tax. Under the new and improved IRC § 2010, a deceased spouse's unused exemption (DSUE) is portable to a surviving spouse. Portability was scheduled to "sunset" on December 31, 2012; instead it became permanent.

DSUE is the unused portion of a decedent's applicable exclusion amount as determined under IRC § 2010(c)(4). The DSUE amount is the lesser of 1) the basic exclusion amount or 2) the excess of the applicable exclusion amount of the last such deceased spouse of such survivor, over the amount with respect to which the tentative tax is determined under IRC § 2001(b)(1) on the estate of such deceased spouse.

Portability of DSUE allows the DSUE amount to be transferred to a surviving spouse. Therefore, the surviving spouse's exclusion would be equal to the sum of his or her own exclusion plus the deceased spouse's transferred DSUE amount.

Example 1: Y and Z are both U.S. citizens and married to each other. Y dies in 2014 with an estate value of $4 million. Assuming Y did not make any gifts during lifetime, the DSUE amount that can be transferred to Z is $1,340,000.00 [$5,340,000.00 - $4,000,000.00].

Important Rules and Restrictions

Election. Portability of DSUE is only available to a surviving spouse of a decedent who died on or after January 1, 2011. DSUE is not automatically transferred to the surviving spouse. Both spouses must be U.S. citizens. Note, special rules do apply when the donor spouse is a U.S. Citizen and the donee spouse is not. The DSUE can only be transferred to the surviving spouse if the executor of the estate of the deceased spouse files a "complete and properly-prepared" estate tax return Form 706. The DSUE amount must be computed on the return and the executor must elect on the return for the DSUE to pass from the deceased to the surviving spouse. Once the election is made it shall be irrevocable. No election can be made if the return is filed after the time prescribed by law (including extensions) for filing such return. The executor of the decedent's estate is responsible for filing the estate tax return and making the portability election.

The portability election must be made by filing Form 706 Estate Tax Return. The return must be timely filed with the Internal Revenue Service. Form 706 it is due 9 months from the date of death. The IRS will allow an additional 6 months extension if properly requested on Form 4768.

Complete & Properly-Prepared. The estate tax return must be "complete and properly-prepared" for the portability election to be valid. *Temporary* regulations provide that an estate that is otherwise not required to file an estate tax return under IRC § 6018(a), does not have to report the value of certain property that qualifies for the charitable or marital deduction. However, the executor must make a good faith estimate of the value of the property.

Statute of Limitations. The statute of limitation is extended if the estate tax return includes an election. Instead of the normal three year statute of limitations the first-to-die spouse's estate tax return now has a statute of limitations tied to the survivor's estate. This means that the IRS can review the first-to-die spouse's return until the three year statute of limitations runs on the surviving spouse's estate tax return.

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Duties of a Successor Trustee

by Laura G. Wiltshire

Assuming the duties of a deceased or incapacitated trustee may seem like a daunting task, but it does not have to be overwhelming. The key is knowing:

- What to do when the initial trustee dies or becomes incapacitated;
- How to manage the trust property; and
- How to make distributions and terminate the trust.

What is a successor trustee?

A successor trustee is a person, bank or trust company that takes over as trustee in the event of the initial trustee's death, incapacity, or resignation. The successor trustee is usually named in the trust agreement, but may be appointed by the court or by a majority of the adult beneficiaries if not specifically named in the trust agreement.

What should the successor trustee do when the initial trustee dies or is incapacitated?

Obtain a copy of the trust agreement and review it. It will provide the specific duties and instructions for the trustee. Consult with an attorney who is experienced in estate planning, trust administration, and tax law to advise and assist the trustee in connection with the trust administration.

You will likely need to obtain a copy of the death certificate of the initial trustee, if the initial trustee has died; or obtain one or more medical opinions in accordance with the terms of the trust agreement (if any) confirming the initial trustee's incapacity.

With the help of your attorney, provide notice of the change in trustee and the successor trustee's contact information to the attorney who drafted the trust agreement, everyone that holds trust property (i.e., banks, government entities, pension administrators, and insurance companies), and the grantors and trust beneficiaries.

If the initial trustee was also the grantor and he or she has died, it may be necessary for the successor trustee to send statutory notices of the grantor's death, the trust's provisions, the trustee's contact information, and copies of the trust agreement to the trust beneficiaries. Your attorney can assist you with these duties.

What should you do to complete the administration of the trust?

Every trust situation is different, and your attorney will provide specific instructions for you; however, the following are some basic duties and responsibilities of a successor trustee upon assumption of the trusteeship.

- If the trust property includes the grantor's residence and its contents, you should immediately secure and inventory the residence and its contents, arrange for safe storage and insurance of valuables such as jewelry, silver, art and antiques, make sure the residence and contents are properly insured and, if appropriate, the locks changed.
- Immediately inventory the trust property and make sure that it is secure and insured.
- Obtain appraisals of trust property. Professionals such as real estate appraisers, art, jewelry or antiques appraisers, and financial advisors, can be very helpful in this process, and their fees may be payable from the trust.
- Take care of any business transactions that the initial trustee may have been involved in at the time of his or her death or incapacity.
- Collect monies due to the trust and pay the trust's outstanding bills and taxes.
- Review the initial trustee's records, if any, and start your own accounts of money paid out and income received.
- Obtain a new Employer Identification Number for the trust (unless one has previously been obtained).
- File fiduciary tax returns (IRS Form 1041 and applicable state fiduciary tax returns) on behalf of the trust. It may be helpful to hire an accountant to prepare the necessary tax returns for the trust.
- Provide accountings to the grantor and all beneficiaries of the trust from time to time, but at least quarter-annually.

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Disaster Relief

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call (501) 682-7924 to discuss the need for extensions. The state will also abate penalties and interest for failure to file returns or pay taxes are a result of the severe weather.

Loss Claims. The DFA is providing the same relief as the IRS. Taxpayers may claim casualty losses on their 2013 or 2014 state income tax return.

Please contact the tax professionals at HYDEN, MIRON & FOSTER, PLLC to disucss your disaster relief needs.

Successor Trustee

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It may be helpful to hire an attorney to assist with distribution of trust property, if distribution is directed by the trust agreement, and with tax issues. Review the trust agreement to make sure that the distribution of property is correct (i.e. the correct property to the correct beneficiary). All beneficiaries who receive a distribution should sign a receipt. The receipts serve as a record of what happened to the property and will be helpful in preparing the final accounting.

When all distributions are made according to the trust agreement, you should prepare a final accounting of all transactions and send a copy to each beneficiary.

The attorneys of HYDEN, MIRON & FOSTER, PLLC can help you fulfill your duties as successor trustee.

Talking to Your Family About Your Estate Plans

by Carrie E. Bumgardner

In many families, finances and estate talk are taboo. Other families laugh and make jokes like, "Guess who just lost their inheritance!"

No matter what kind of family dynamics exist in your life, talking about what happens after you die can be a scary discussion. However, it is a necessary one. It is very important to talk with your loved ones about what you want, what they want, and what is laid out in your estate plan.

Keep it light. Having this discussion can bring up a lot of emotions for your loved ones; thinking about losing someone you love so dearly is painful. So keeping the conversation light but to the point can help keep the conversation on track and productive.

Talk openly and honestly. A decision you have made may hurt someone's feelings, or there may be things you do not want to tell people about, but it is crucial to be open and honest with your beneficiaries.

Discuss values, not just valuables. When you die, how do you want people to remember you? What parts of you do you want to live on? This may include traditions, values, family names, rituals, religious beliefs, and so on. This is an important matter to bring up during this discussion with your family. Think back on times that have meant a great deal to your family or traditions that have brought you great joy. Maybe it is very important to you to have your grandmother's name passed on from generation to generation. Talk about these things with your family to share how you feel and to see how they feel.

Have a professional present. Having your estate planner present can be very helpful and, in some cases, necessary. In many cases, a professional has a better understanding of how estate planning works and can assist by answering any questions your loved ones may have. You might have a family-only conversation first and then a second conversation with your family and the estate planning professional.

The attorneys at HYDEN, MIRON & FOSTER, PLLC can lead this discussion with your family and you.

Portability Election

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Example 2: Using the facts from Example 1, Y dies on January 1, 2015. The estate tax return for Y is due October 1, 2015 (without extension). If portability is elected Y's statute of limitations is tied to the death of Z. Z dies January 2, 2020, with an estate tax return due date of October 2, 2020, then three year statute of limitations for Z would be October 2, 2023. Therefore Y's statute of limitations would also be October 2, 2023.

Last Deceased Spouse. A surviving spouse is entitled to any DSUE amount available from the *last* deceased spouse. The keyword "last" is very important when the surviving spouse remarries.

Example 3: Surviving spouse marries spouse #1. Spouse #1 is extremely wealthy and does not have any DSUE at his passing. Surviving Spouse remarries spouse #2. Spouse #2 dies. The surviving spouse will be entitled to Spouse #2's DSUE, if any, as Spouse #2 is the Surviving Spouse's last deceased spouse. However, if the Surviving Spouse died before Spouse #2, then Spouse #1 would be the Surviving Spouse's last *deceased* spouse. The Surviving Spouse had another spouse, but that second spouse was not deceased and therefore does not meet the definition of last deceased spouse.

REV. PROC. 2014-18 – TIME IS RUNNING OUT

Rev. Proc. 2014-18 extends the portability election time period for decedents who died between January 1, 2011 and December 31, 2013. As stated above, the portability election period is the filing deadline for the estate tax return, Form 706. However, Rev. Proc. 2014-18 allows for an extension of time if certain requirements are met.

Rev. Proc. 2014-18 only applies to estates of decedents that meet the following requirements: (1) has a surviving spouse; (2) decedent died between January 1, 2011 and December 31, 2013; (3) was a citizen or resident of the United States on the date of death; (4) the executor is not required to file an estate tax return for the decedent as determined under IRC § 6018(a); and (5) the executor did not file an estate tax return within the time prescribed by Treas. Reg. § 20.2010-2T(a)(1) for filing an estate tax return (see above).

Rev. Proc. 2014-18 provides that the portability election must be filed by **DECEMBER 31, 2014**. As stated above, the Form 706 must be completed and properly-prepared. The person filing the return must state at the top of Form 706 that the return is **"FILED PURSUANT TO REV. PROC. 2014-18 TO ELECT PORTABILITY UNDER § 2010(c)(5)(A)."**

If all of the requirements are met, the then portability election will be considered to have been timely filed.

Contact the attorneys at HYDEN, MIRON & FOSTER, PLLC to ensure you do not miss the portability election deadline.

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