

HALES & GEORGE

ATTORNEYS AT LAW

N E W S L E T T E R

Devoted to Estate and Business Planning Law and Trust Administration Since 1972

CURRENT STATUS OF FEDERAL ESTATE TAX LAW

by William P. George

The U.S. Senate recently failed again to permanently repeal the Federal Estate Tax. Voting 57 to 41, the Senate fell three votes short of the sixty needed to cut off debate and move to consider a Republican proposal that would have eliminat-



ed the Federal Estate Tax. Under the proposed estate tax and minimum wage legislation, the estate tax exemption would have been

increased to five million dollars (\$5,000,000.00) per person or ten million dollars (\$10,000,000.00) per couple by 2015. Estates worth up to twenty-five million dollars (\$25,000,000.00) would pay the capital gains tax rate (currently 15%) for values above the exemption level. Estate values of

more than twenty-five million dollars (\$25,000,000.00) would face a thirty percent (30%) tax rate.

Therefore, we are still stuck with the Federal Estate Tax as mandated under the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). Under this Act, in the years 2006, 2007 and 2008, any net assets of a decedent which exceed two million dollars (\$2,000,000.00) are subject to a Federal Estate Tax at almost a fifty percent (50%) bracket. (See chart below). In 2009 any of a decedent's assets which exceed three million five hundred thousand dollars (\$3,500,000.00) will be subject to a Federal Estate Tax of forty-five percent (45%). 2010 is still the best year to die as no Federal Estate Tax is imposed for that one year. However, if EGTRRA expires as scheduled at the beginning of 2011, the Federal Estate tax will be reinstated that year, at rates ranging from forty-one percent (41%)

Maximum Estate and Gift Tax Rates	
Year	Maximum Tax Rate
2003	49%
2004	48%
2005	47%
2006	46%
2007, 2008 and 2009	45%
2010	repealed

to sixty percent (60%) on net assets of more than one million dollars (\$1,000,000.00).

Applicable Exclusion Amounts	
Year	Exclusion Amount
2003	\$1,000,000
2004 and 2005	\$1,500,000
2006, 2007, and 2008	\$2,000,000
2009	\$3,500,000
2010	repealed

THERE'S MORE INSIDE

Important Changes
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PERIODIC REVIEW OF LIVING TRUST IS NECESSARY

A periodic review of your estate plan with an attorney in our office is necessary especially when major changes occur in your life. We have detailed some of the examples of occurrences that necessitate a review of your estate plan below. Of course, regardless of

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PERIODIC REVIEW OF LIVING TRUST IS NECESSARY

whether any of the below changes have happened, you should still make an appointment to visit our offices if a substantial amount of time has elapsed since our last meeting, or if you have any questions about your estate plan.

Divorce

If you have obtained a divorce since you executed your Living Trust, you should contact us. A revocation of your Living Trust and the execution of a new Trust may be necessary.

Marriage or Remarriage

A new spouse must be specifically mentioned in your estate plan regardless of whether or not you wish to distribute assets to that spouse at death.

New Children/Grandchildren Born, Children Have Attained Adulthood

Children born to you after the execution of your estate plan must be added to your documents. Also, if children are now adults, you may wish to change the distribution of your assets to the children or you may want to consider the children as Successor Trustees. Additionally, with the birth of new grandchildren, many of our clients consider a bequest of a percentage of their assets to their grandchildren, for example, for their education.

Death of a Settlor, Trustee, and/or Beneficiary

If your spouse has died since you both created your Living Trust, you should contact our office. At the death of a spouse, a process called Trust Administration is necessary to administer your Living Trust and take full tax advantage of the laws. Please call us if a death has occurred because we initially planned your estate and we best know how to administer it after a death. Additionally, if a Trustee or a beneficiary of your trust is deceased, we should discuss replacements and the distribution of your estate.

Change in Financial Net Worth

Large fluctuations in the value of your estate create opportunities to take advantage of income tax and federal estate tax laws. If your estate is worth substantially more (or less) than when you executed your estate plan, please call us.

Execution of Living Trust Prior to 1982

Major tax law revisions that occurred in 1982 have had a huge impact on your estate plan. If your estate plan was executed prior to 1982, please contact us at your earliest convenience so we can review your estate plan as soon as possible.

Purchase of Life Insurance

Any life insurance you own at your death is subject to the Federal Estate Tax laws. We should discuss the possibilities of changing the ownership and beneficiary designations on your insurance and the creation of irrevocable trusts so no Federal Estate Tax is imposed on the proceeds of your insurance.

The Emergence of the Limited Liability Company (LLC)

If you own any investment real estate either alone or with a partner and want to limit your liability, the LLC is a unique business entity that is becoming increasingly popular in California. An LLC provides owners with the limited liability protection of a corporation and, if properly structured, the flow-through federal income taxation benefits of a partnership. However, unlike a corporation, an LLC eliminates the requirements of strict adherence to corporate formalities. And, unlike a limited partnership, all members are extended limited liability protection. Thus, in essence an LLC combines only the best aspects of a corporation and a partnership.

An LLC may also be used to gift assets to children, thus shifting appreciating assets out of the donor's taxable estate.

Other Reasons to Review Estate Plans

One of the most often asked questions by our clients is when should they make an appointment to discuss their estate plans. In addition to the above considerations in this letter, generally, clients should make an appointment with our office if you have questions about your documents or Exhibit A, or anytime something major occurs in your life. We have listed other examples of when you should make an appointment with us below:

- Purchase of new real property
- Children with drug/alcohol/special need issues
- You desire Generation Skipping advantages
- Inheritance anticipated or received
- Retirement

HALES & GEORGE NEW WEBSITE AND E-MAIL ADDRESS

Hales & George has a new Website at www.halesgeorge.com
Please visit our site for interesting articles and more information about our law firm. Or e-mail us at postmaster@halesgeorge.com

Important Changes in the Law

Important changes in the law have occurred. Many clients have requested information about how the current federal and state tax laws affect their estate plans. Good news does exist but a careful review of individual estates is necessary to take advantage of new laws. **We continually observe the unneeded expense and unnecessary time consumed at clients' death on estate plans which are incomplete or not updated.** Often the survivors tell us how the decedent intended to see us for a review but never scheduled a meeting. In this article we want to mention some of the important changes in the law. However, because it is impossible in this newsletter to adequately educate you on all of the changes that affect you, **another purpose of this newsletter is to encourage you, if appropriate, to schedule an appointment with us.**

CHANGES IN LAW AFFECTING YOUR IRA'S AND RETIREMENT PLANS

The beneficiaries you designate on your IRA'S and retirement plans are crucial to the taxation implications at your death. Clients are unsure what beneficiary designations achieve their estate planning goals and keep the maximum income tax deferral. Again, this subject depends on your specific situation and is too complicated for purposes of this letter.

CAPITAL GAINS TAX

Clients are asking about the legislative changes in capital gains tax. Briefly, currently with proper plan-

ning, at the first death a new basis is obtained on your real property, stocks and other appreciated assets which eliminates capital gains tax. **The stepped-up basis is a huge benefit to the surviving spouse and surviving children.** At the second death, another stepped-up basis is obtained on the second deceased spouse's appreciated property. In 2010 the "stepped-up basis" is replaced with the "carryover basis and limited stepped-up basis". We are concerned that your estate is in order and your heirs receive the appropriate stepped-up basis.

CHANGES IN CALIFORNIA LAW

Clients are asking if any changes in California law affect their estate plan. The major change in California law is the adoption of a new document used for appointing your agents for health care if you become incapacitated. The new document is called an **Advance Health Care Directive** which not only allows you to designate the people you would like to make health care decisions if you are incapacitated but also has several pages of instructions which you complete regarding your own health care wishes or concerns. **If you have Durable Powers of Attorney signed prior to the year 2000, we need to meet.**

REDUCTION OF ESTATE TAXES AND LIMITING LIABILITY

We are finding many of our clients who own real estate or a business have failed to meet with us on a periodic basis to review their estate plan. This frequently results in the beneficiary paying estate taxes that could have been minimized or eliminated. In addition, with updated planning, **newer techniques can also limit liability** to you during your lifetime and to your

intended beneficiaries. If you own real estate or a business, we urge you to make an appointment with us.

NEW ATTORNEY AT HALES & GEORGE

Christine E. Akutagawa is a new attorney at Hales & George. She earned her Juris Doctor from the University of San Francisco School of Law in 2005 and is a member of the State Bar of California; Estate Planning, Trust and Probate Section, Santa Clara County Bar Association, Silicon Valley Bar Association, American Bar Association as well as other Professional Affiliations. Please see our Website at halesgeorge.com for more information about Ms. Akutagawa.

CAN WE TALK?

Do you have a business, club or group who would like to hear a presentation on estate and business planning? Bill George and Jan Hales give interesting and humorous seminars to audiences of 10 to 500 or more. Please call or write our main office for further information or to schedule a seminar.

HALES & GEORGE

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HALES & GEORGE, a family-owned law firm with offices in Saratoga and San Francisco, California, specializes in Estate and Business Planning as well as Probate and Trust Administration. Each partner of Hales & George is a member of the State Bar of California, the Santa Clara Bar Association, Silicon Valley Bar Association and the Santa Clara County Estate Planning Council. This issue of the Hales & George Newsletter was written & edited by attorneys William P. George and Jan Marie Hales. Any questions raised by these articles can be addressed by simply writing the law firm at 19040 Cox Avenue, Suite 3, Saratoga, CA 95070 attention: H&G Newsletter. This newsletter is intended to be a source of information for our clients and associates and should not be considered personal legal advice. Laws can change frequently and rapidly. Please consult your attorney before relying on any information contained in this publication. (408) 255-6292, Fax - (408) 865-1904, e-mail: postmaster@halesgeorge.com

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Estate Plan Up-Date Certificate

As a service to our existing clients who have received this NEWSLETTER, this certificate entitles you to a meeting with an attorney from HALES & GEORGE to review your estate plan and the impact of current tax laws for a fee of \$200 per year. This meeting will be a review of all your estate planning documents including your Exhibit "A". If any additional documents or changes to existing documents are required, an additional fee will be quoted during your scheduled appointment.

Please complete the information below and return this certificate with a check for \$200 payable to HALES & GEORGE. Upon receipt, we will call you to arrange a convenient time to meet with you or please feel free to call us at (408) 255-6292 to schedule an appointment.

NAME: _____

ADDRESS: _____

DAYTIME PHONE: _____ HOME PHONE: _____

