

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

THE FUTURE OF THE FEDERAL ESTATE TAX AND THE OBAMA ADMINISTRATION

President Obama proposed during his campaign to change the Federal Estate Tax law. Currently, under the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), in 2009 no federal estate tax is paid on a deceased person's assets until they exceed \$3.5 million and any assets over \$3.5 million will be taxed at a top bracket of 45%. In 2010, sometimes referred to as the "throw momma from the train year", no federal estate tax will be imposed for people dying in this one year. However, if EGTRRA expires as scheduled in 2011, the tax will be reinstated that year on net assets of more than \$1 million at rates ranging from 41% to 60%.

During the campaign, then Senator Obama proposed retaining the \$3.5 million exclusion amount and the 45% top rate in coming years. Leading experts tend to think that President Obama has two choices regarding federal estate tax legislation. He will simply put forth legislation that will eliminate the disappearance of the federal estate tax in 2010, propose an exclusion and tax rate for 2010 and then submit year by year proposals depending on the status of the budget. Or, he will try to reinstate some exclusion amount and

tax rate for 2010 and attempt to enact a permanent estate tax. Obviously, any proposal submitted by President Obama must also pass the House and the Senate.

This is not the first time a president has tinkered with the federal estate tax law. Since the enactment of the Federal Estate Tax in 1916, when it had a marginal top bracket of 10%, many administrations have tried to change the estate tax law. President Bush at the beginning of his first term, attempted to eliminate the estate tax when the environment for change was very ripe; In January 2001, a surplus existed in the budget of the Federal Government, no wars raged in Iraq or Afghanistan, September 11 had not occurred and the House and Senate had Republican majorities. Unfortunately, EGTRRA was the best they could do which eliminated the tax for one year (2010).

Some experts who have studied Capitol Hill for many years are not optimistic that a permanent federal estate tax solution will ever be achieved because too much money is raised by politicians around the issue. The two sides of the estate tax debate are dogmatic in their views, and when estate tax bills are introduced, lobbyists are plentiful and much money changes hands; one study tracked 19 families who gave over \$500 million in congressional donations over a six year period to encourage the elimination of the estate tax.

As changes occur in the tax law that affect estate planning, we will notify all of our clients of Hales & George and keep you informed.

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
2011 and beyond	\$1,000,000

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
2011 and beyond	41%-60%

DOES YOUR ESTATE PLAN STILL WORK?

One of the most often asked questions by our clients is when should they make an appointment to review and discuss their estate plans. We think you should call us and schedule an appointment if a substantial amount of time has elapsed since our last meeting or if you are contemplating changes in your documents.

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DOES YOUR ESTATE PLAN STILL WORK??

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We also encourage you to schedule an appointment if you have any questions or concerns about your documents or just wish to review your estate plan. We have detailed below some of the examples of occurrences that necessitate a review of your estate plan.

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 know best 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.

Separated/Divorce

If you have separated or 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 your death.

New Children/Grandchildren, Children Have Attained Adulthood

Children born to you after the execution of your estate plan must be add-

ed 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.

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.

Switch to 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. We form LLC's and other business entities and would be happy to discuss this with you.

Other Reasons to Review Estate Plans

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
- Changes in Financial net worth

HALES & GEORGE WEBSITE AND E-MAIL ADDRESS

Hales & George Website is 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

Bill George at bgeorge@halesgeorge.com

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No Contest Clause

California has recently adopted new language that can be added to your Living Trust which puts additional "teeth" in the "No Contest Clause". The No Contest Clause paragraph disinherits any beneficiary who challenges the provisions of your estate plan.

DO YOU OWN A BUSINESS OR ASSET WITH FAMILY OR PARTNER?

One of the biggest reasons for the failure of a business to transition to the next generation or for the disintegration of a family relationship or a friendship is the lack of a plan for distribution when someone dies, becomes incapacitated or wishes to sell their interest. We have time tested ideas of how to be sure that when your business Partner dies, you are not in business with their spouse (or worse with their children) or when an unfortunate event occurs in your business you have developed a plan. Please see our website at www.halesgeorge.com for articles discussing some of the above issues or call our office for a meeting.

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 newsletter 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 planning, 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

An important change in California law is the Advance Health Care Directive (AHCD) and Health Insurance Portability and Accountability Act (HIPAA) statement. The AHCD allows you to designate the people you would like to make health care decisions if you are incapacitated and also has several pages of instructions which you can complete regarding your own health care wishes or concerns. The HIPAA statement allows your agent if you are incapacitated to review your medical condition and file with your physician. Without the HIPAA statement, your physician cannot discuss your prognosis with your agent because of doctor/patient confidentiality. If you do not have an AHCD with a wallet card or you do not have an AHCD with a HIPAA statement, please call for an appointment.

NEW ATTORNEY AT HALES & GEORGE

Judith Douglass is a new attorney at Hales & George. She earned her Juris Doctor from the University of the Pacific McGeorge School of Law in 1989 where she won the American Jurisprudence Award for Income Tax. Judy is a member of the State Bar of California; Estate Planning, Trust and Probate Section, Santa Clara County Bar Association, and Silicon Valley Bar Association, as well as other Professional Affiliations. Please see our Website at halesgeorge.com for more information about Ms. Douglass.

CONSULTING ATTORNEY AT HALES & GEORGE

Founding Partner of Hales, Hales & George, **Robert E. Hales**, has agreed to come out of retirement and meet on a limited basis with some of his clients who have sophisticated estate or business planning issues. Please call the office to schedule a meeting with Bob.

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 Marie 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

Newsletter

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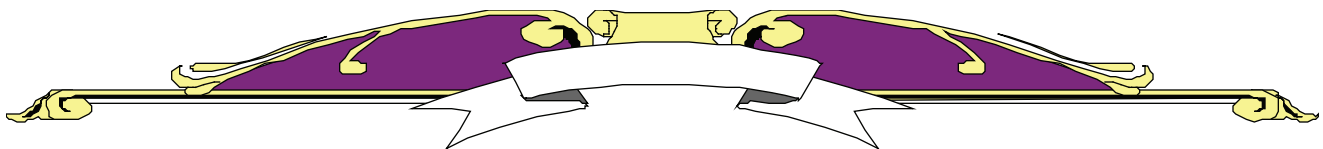
(408) 255-6292

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, and the Silicon Valley Bar Association. 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 \$250 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 \$250 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: _____

