ATTORNEYS AT LAW
THE ANDERSEN FIRM
A PROFESSIONAL CORPORATION

New York Office
110 E. 37th Street
New York, NY 10016

Washington DC Office
601 Pennsylvania Avenue NW
Suite 900 South Building
Washington, DC 20004

South Florida Office
500 East Broward Boulevard
Suite 1600
Fort Lauderdale, FL 33394

West Florida Office
7273 Bee Ridge Road
Sarasota, FL 34241

Tennessee Office
862 Med Tech Parkway
Suite 200
Johnson City, TN 37604

Florida Keys Office
422 Fleming Street
Key West, FL 33040

E-MAIL:
clientservice@
TheAndersenFirm.com

TOLL FREE:
866.230.2206

Financial Advisor Current Events Update
July/August 2014

ATTORNEYS AT LAW
THE ANDERSEN FIRM
A PROFESSIONAL CORPORATION

I. Reflection of the Month

"Anger is an acid that can do more harm to the vessel in which it is stored than to anything on which it is poured" - Mark Twain

Anger is most of the time pretty pointless. It can cause situations to get out of hand. And from a selfish perspective it often is more hurtful for the one being angry than the person she/he is angry at.

So even if you fell angry at someone for days recognize that you are mostly hurting yourself. The other person may not even be aware you are angry at him or her. So either talking to the person and resolving the conflict or letting go of anger as quickly as possible are pretty good tips to make your life more pleasurable.

II. On the Lighter Side

"One of my clients, 89 year old widower Mr. Jones, came to my office the other day with news about which he was very excited. He is marrying his 23 year old secretary. I congratulated him, of course, and then thought seriously about my role as his lawyer. Should I? Or shouldn't I? So I ventured cautiously. "You know, Mr. Jones. At your age, having sex could be fatal." His response: "If she dies, she dies."

III. U.S. Supreme Court Rules Inherited IRAs Are Not Retirement Funds

The United States Supreme Court unanimously ruled on June 12, 2014 in the *Clark* decision that inherited IRAs are NOT "retirement funds" and therefore are not protected in bankruptcy.

It is clear that IRAs are exempt for the creator of the IRA and their spouse.

Now the Supreme Court has confirmed what we have cautioned clients for years: INHERITED IRAS ARE NOT PROTECTED WHEN LEFT DIRECTLY TO A NON-SPOUSE BENEFICIARY.

This decision is precisely why you should counsel your clients to create an IRA Inheritance Trust and name it the beneficiary of all qualified assets.

We strongly urge you to counsel with your clients on the use of the IRA Inheritance Trust.

On June 12, 2014, the United States Supreme Court ruled that funds held in an "inherited IRA" are not *retirement funds* within the meaning of Section 522(b)(3)(C) of the Bankruptcy Code. As such, these funds are not exempt from the IRA holder's bankruptcy estate and are subject to the claims of creditors in bankruptcy.

The facts of the case (*Clark et ux v. Rameker, Trustee, et al*) are relatively simple. Ruth Heffron established a traditional IRA and named her daughter, Heidi Heffron-Clark, as the sole beneficiary. Upon Ruth's death, the IRA became an inherited IRA. Some years later, Heidi and her husband filed a Chapter 7 bankruptcy petition and claimed that the inherited IRA was excluded from the bankruptcy estate as a retirement fund. The

Bankruptcy Court sided with the bankruptcy trustee holding that an inherited IRA is not a retirement fund and, as such, is not exempt from the bankruptcy estate. In reversing that decision, the District Court ruled that the exemption covers any account containing funds originally accumulated for retirement. On appeal, however, the Seventh Circuit agreed with the Bankruptcy Court and reversed the District Court's ruling, thereby creating a split among the circuits, which now has been resolved by the Supreme Court.

In a unanimous decision written by Justice Sonia Sotomayor, the Supreme Court, noting that the Bankruptcy Code does not define "retirement funds," looked to the ordinary meaning of the term and, after consulting the American Heritage Dictionary, concluded that retirement funds are "sums of money set aside for the day an individual stops working." The Court then identified three characteristics of inherited IRAs, which compel the finding that funds held in such accounts are not set aside for retirement:

1. The holder of an inherited IRA may never invest additional money in the account.
2. Holders of inherited IRAs are required to withdraw money from such accounts, regardless of their ages and regardless of how many years they are from retirement.
3. The holder of an inherited IRA may withdraw the entire balance of the account at any time, and for any purpose, without penalty, while a withdrawal from a traditional or Roth IRA prior to age 59-1/2 triggers a 10 percent penalty, unless an exception applies.

Overall, the Court found that funds held in an inherited IRA constitute "a pot of money that can be freely used for current consumption" rather than funds "objectively set aside for one's retirement." Accordingly, the Court concluded, a balancing of the interests of creditors and debtors must favor the creditors insofar as inherited IRAs are concerned.

By way of background, prior to the Pension Protection Act of 2006, the Internal Revenue Code permitted no one other than the participant and the participant's surviving spouse to roll money from one retirement plan to another. The Pension Protection Act added Section 402(c)(11) to the Internal Revenue Code to permit rollover to an individual retirement account by a nonspouse beneficiary.

The Internal Revenue Code does not define "inherited IRA." Rather, Section 408(d)(3), which deals with rollover contributions, says that an IRA "shall be treated as inherited if — (I) the individual for whose benefit the account or annuity is maintained acquired such account by reason of the death of another individual and (II) such individual was not the surviving spouse of such other individual."

The availability of nonspouse beneficiary rollover means the distributions from that inherited IRA can be extended over the beneficiary's life expectancy, if the original IRA owner dies before he or she was required to begin distributions, or over the balance of the IRA owner's distribution period, if distributions already commenced. However, it means that those assets will be vulnerable to bankruptcy creditors.

It is important to note that the laws of each state also provide individual protections from creditors that apply in bankruptcy situations when the debtor elects to utilize the state law exemptions, in lieu of the exclusions available under federal bankruptcy law. State law also controls in situations of nonbankruptcy judgment creditors. Some states provide special exemption for retirement funds and accounts, and it remains to be seen whether any of these state exemptions will be redefined in light of the Supreme Court decision.

While rollover IRAs can be used effectively to reduce income tax liability by spreading distribution over several years, other strategies may be preferable, particularly when the beneficiary is vulnerable to creditors. Certain trusts can qualify as designated beneficiaries for retirement plans and IRAs, and these trusts can incorporate spendthrift provisions, which provide full asset protection. Moreover, the trust vehicle can ensure ongoing management and control over ultimate disposition, while allowing flexibility in distributing assets among individual beneficiaries.

The Supreme Court decision is an emphatic reminder that care must be taken to maintain appropriate beneficiary designations for all retirement plan accounts, that special attention must be paid to retirement funds when planning one's estate and that estate plans must be reassessed periodically as financial and familial circumstances change.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

IV. New Yorkers Face Grueling State Estate Taxes – **By Darla Mercado**

Changes have some considering switching states – but be warned that that takes careful planning.

Suddenly, for the wealthiest clients in the Empire State, leaving New York to avoid a new wrinkle in state estate taxes doesn't seem like such a bad idea.

Tax geeks may remember a story ran from March, detailing a possible overhaul of New York state's estate tax rules as a result of the state's budget. The new reality is here, and that estate tax tweak is here to stay. For those who missed the memo, on April 1 the Empire State raised its estate tax exemption from $1 million to $2.062 million per person. The state estate tax exemption will rise each year until Jan. 1, 2019, when it will be on par with the inflation-adjusted federal estate tax exemption that's effective at that point.

Here's the problem: The exemption is phased out completely for those with a New York taxable estate whose value exceeds the New York estate exemption by 5%. This means the whole estate is subject to state estate taxes. For example, if a client dies between April 1, 2014 and March 31, 2015, there are no state estate taxes if the estate falls under the $2.062 million exemption limit. But if the estate is $2.165 million – 5% more than the $2.062 million exemption – then estate taxes are due on the entirety of the estate.

Those tax levels are fairly steep. New York's estate tax rates have a top marginal rate of 16% for estates that are over $10.04 million.

Hank Leibowitz, a partner in Proskauer Rose's personal planning department, notes that there was a "cliff effect" back when the exemption was $1 million. Back then, estates over $1.093 million were subject to New York estate tax. Rather, this new law creates an extension of the previous cliff. "For the wealthy, it's no worse than the old law," Mr. Leibowitz said. "It's always existed, at least for the last 15 years, but now it's calculated in a different way."

To complicate things further, the law creates a three-year lookback period for federal taxable gifts that are made during the five-year period between April 1, 2014 and Jan. 1, 2019. Estates that are subject to that three-year lookback period are going to be included in the New York taxable estate and will face state estate taxes.

Back in March, advisers and accountants were merely warning clients to be aware of upcoming potential change. Attorneys had come across experts who advised clients to make gifts prior to April 1 in order to get those assets out of their estate. Primarily, it's the wealthiest of the wealthy who have something to worry about. "For the moderate to low-level of high net worth, there's less of a tax burden if you make it through the next few years – those who are staying under the federal exemption amount," said Kate Cassidy, an advanced markets specialist with Barnum Financial Group's wealth strategies division. "It's the people who exceed that number who have a more serious problem now," she added. Indeed, someone worth tens of millions would face not just the federal estate tax, but also the New York estate tax.

As far as mitigating the effects of the "cliff", people with estates whose value is just over the New York estate exemption can add a formula clause that will donate the difference to charity at death, said Mr. Leibowitz. "If you can come up with a formula clause in your will – give to charity this amount that will lower your exemption and cause less taxes to be paid – then do so," he said. But others are willing to take more dramatic steps. For instance, Ted Sarenski, a CPA, personal financial specialist and CEO of Blue Ocean Strategic Capital, has encountered clients who are entertaining the idea of skipping town. "For the wealthier clients, it's still 'Get out of New York before you die,'" he said. Recently, Mr. Sarenski spoke with a group of physicians who are earning a sizable amount of money and socking away cash in their pension plans. Those physicians are now considering relocating to locations like Texas, Florida and Washington – jurisdictions that have no state income or estate taxes. Moving is particularly appealing for those who want to retire. You collect your retirement income free of taxes. And when you pass away, your estate won't be subject to estate taxes.

Be warned, however. Pulling up roots in the Empire State is easier said than done. Mr. Sarenski noted that clients need to establish residence elsewhere by staying put in one place for more than 180 days. They have to change their address, driver's license and affiliations with religious organizations, plus other changes to show that they truly do live in the new place.

Those who own a business in New York will have a hard time fending off the state's attempt to collect its taxes. Business owners may have to consider selling their New York-based business and then move in order to show they've broken away from the Empire State. “It's almost impossible to work here and establish yourself elsewhere,” said Mr. Sarenski. “New York will say that you're getting paid by a New York business, so you are a New York resident for tax purposes.” “You really have to break ties,” he added.

Date of Death	NY (1) Exemption	Phase Out (2) Exemption
4/1/14 to 3/31/15	$2,062,500	$2,165,625
4/1/15 to 3/31/16	$3,125,000	$3,281,250
4/1/16 to 3/31/17	$4,187,500	$4,396,875
4/1/17 to 12/31/18	$5,250,000	$5,512,500

1/1/2019 and Thereafter Federal Exemption Federal Exemption - Plus 5%

Note: (1) No New York estate tax due (2) New York estate tax due from first dollar

FUNDING THE NEW YORK ESTATE TAX

When the New York estate exemption is fully phased-in (on January 1, 2019), New York estates that do not exceed the federal exemption will pay no Federal or New York estate tax. This will reduce the amount of state estate tax payable for the majority of New Yorkers. Until the exemption is fully phased-in, however, life insurance owned by an irrevocable trust can be used to fund the New York estate tax by those who wish to use the maximum federal exemption at the first death. For married couples who wish to take full advantage of the New York estate exemption at the first death, given that New York does not recognize “Portability,” it will be important to establish a Credit Shelter Trust at the first death.

New York estates that exceed the federal exemption by more than 5% will pay New York estate tax on the first dollar of estate value. This is because the New York exemption will be phased out. This tax may also be funded with life insurance owned by an irrevocable trust.

And finally, New Yorkers whose estates may or may not exceed the federal exemption at death have the most difficult decision because the risk of doing so by more than 5% is the complete elimination of the New York exemption and the taxation of the entire New York estate from dollar one. This also can be insured.

ACTIONS TO TAKE

The New York estate tax is not a small issue and it’s important to understand its impact. However, it’s more important to first establish overall legacy and financial goals. Only then can you determine what the federal and state transfer costs may be. Depending on the assets owned these costs may also include income taxes. In preparation, it is important to consider (1) overall net worth, (2) future estate value, (3) the amount of New York property owned, (4) the amount of New York gifts intended to be made in the next 5 years, (5) the provisions in the last will and testament, and (6) who the heirs are. Only then, can you plan to minimize future estate transfer costs.

The Break Down – by Bill Andersen

As of April 1, 2014, the estate tax exemption limit has been raised from $1,000,000 to $2,062,500. This amount will continue to rise at a rate of roughly $1.1 million per year until it equals the federal estate tax exemption estimated to be at $5.9 million in 2019.

Once a person's estate has reached 100% of the exemption amount, any assets over that amount up to 105% will be taxed, but the original $2,062,500 will not be taxed.

Here comes the important part: **If a person's estate goes over 105% of the exemption amount, the exemption is thrown out and you will be taxed on the entire value of the estate.**

When a person's estate goes above the aforementioned 105%, the tax rate will be between 5% and 16% depending on the size of the estate, with 5% being applicable at the bottom of the scale, and 16% with estates valued at $10,040,000 or above.

V. How to Handle IRS Notices by Robert Hoberman

Is this your situation? Just when you thought tax season was over, you receive a notice from the IRS. Don't panic -- you're not alone. The IRS sends millions of notices and letters out each year. Many are computer-generated, because these days, the IRS relies less on employees to get directly involved in issues including collections. Many state and local governments are following suit and sending out more notices to taxpayers.

Some IRS notices inform taxpayers about an impending audit. In 2013, the IRS sent 1.4 million audit notices. The chances that you'll be audited vary, depending on the types of income and deductions reported, as well as your income level. For example, the IRS audited less than 1 percent of personal tax returns with income under $200,000, compared to more than 10 percent of personal returns with income of more than $1 million.

In most cases, you can address the audit issue with relative ease, especially if you rely on a tax professional to represent your position. Although the IRS still conducts audits and face-to-face audits, its compliance strategy has shifted. Today, the IRS conducts more "correspondence" audits than "field" audits. In fiscal 2013, there were 1,060,779 correspondence audits and 344,152 field audits. By comparison, the IRS conducted 625,021 correspondence audits and 567,759 field audits in fiscal 1998.

In other words, you're much more likely to get a letter in the mail than meet with an IRS auditor. Typically, a correspondence audit is limited to one or two items on a return. These matters can often be resolved by mailing the IRS copies of receipts, checks or other records requested.

Note: Tax notices are sent to mailboxes through the U.S. Postal Service. The IRS never contacts taxpayers via telephone, e-mail, text message or social media to ask for personal or financial information. An IRS solicitation in any format other than a letter sent through the U.S. Postal Service could be a ploy to steal your personal information or access your financial records.

Making IRS notices clear and efficient is one of the agency's top priorities. Starting in 2010, the IRS began redesigning notices to look less like legal documents. The language is generally easier to understand than in the past, but it's natural to worry when you receive a notice. If you receive a notice and want more information about how to respond, contact your tax adviser right away.

More Notices, Fewer Agents

The IRS ramped up its collection efforts after a 2001 study revealed that a $345 billion "tax gap" existed between the amount owed by taxpayers and the amount the IRS actually collected. The study pinpointed a complex and ever-changing tax code that is ripe for abuse.

IRS enforcement staffing levels have decreased in recent years. In 2013, there were roughly 14 percent fewer enforcement officers and agents than in 2010. Many IRS notices are computer-generated. In fact, when you open a notice from the IRS, you might be the first human being to read it.

Many notices are routine and can be resolved with a few simple steps. For example, you may need to file an additional tax form. The IRS may have been unable to make a direct deposit for your refund and, instead, is sending a refund check. Or you might have missed a small amount of interest from a bank account. With more than 100 types of federal tax notices (see "Common IRS Notices," below), the possibilities for IRS inquiry are endless.

Case in Point: CP2000 Notices

One of the most common IRS notices is CP2000, a notice of proposed adjustment for underpayment or overpayment. Receiving one isn't always bad news -- some of these notices even propose a refund.

Here's what happens behind the scenes. IRS computers compare information reported by employers, banks, businesses and other payers on Forms W-2, 1098, and 1099 with personal information, income and deductions you report on your income tax return. If you fail to report any income, payments, or credits (or if you overstate certain deductions) on an income tax return, you may receive a CP2000 notice. It is not a bill. It informs you of the proposed adjustments to income, payments, credits or deductions. This may result in additional tax owed or a refund of taxes paid.

The IRS also compares personal information, such as the names, addresses and Social Security numbers of you, your spouse and your dependents. Inconsistencies between personal information on Forms W-2, 1098, and 1099, and your personal tax return also could result in an IRS notice.

A CP2000 notice will show the amounts you reported on your original or amended return, the amounts reported to the IRS by the payer, and the proposed adjustments by the IRS. The notice also provides the name of the payer, the payer's ID number, the type of document that was issued (such as a W-2 or 1099), and the tax identification number of the person to whom the document was issued. Based on payer documentation, the notice proposes either an increase or decrease in your tax liability. Be sure that you review this information carefully to verify its accuracy.

These notices are typically computer-generated and may be erroneous. For example, one client received a CP2000 notice because her 1099-INT didn't match up with information reported on her tax return. The 1099-INT used the bank's full name. The tax return used an abbreviated variation of the bank's name. The IRS computer didn't know the banks were one in the same.

If you end up owing additional federal taxes after receiving a CP2000, consider the possibility that you may also owe additional state and local taxes.

Handling Your Notice

The IRS recently issued tips on how to handle notices. Here are some important points to bear in mind:

- **Follow directions.** Each notice relates to a specific issue and instructs you about what to do. If the notice requires a response, only address the specific questions the letter asks. If you have other tax issues you'd like to discuss with the IRS, send a separate letter.

If you agree with the notice, you usually don't need to reply unless it gives you other instructions or you need to make a payment. Pay close attention to the proper mailing address for your response and deadlines. Always keep copies of any correspondence with the IRS. You may need to refer to it later.

Ignoring an IRS response will not make it go away. Generally, if you receive a notice that you owe additional taxes, the IRS perceives failure to respond as admission of underpayment, starting the collections process.

- **Pay promptly to minimize interest charges and penalties.** You will be sent a bill from the IRS, if you owe additional taxes. Pay balances due to the IRS promptly, because interest and penalties quickly add up. Interest will be charged on any unpaid tax from the due date of the return until the date of payment. The interest rate is determined quarterly and equals the federal short-term rate plus 3 percent. Interest compounds daily.

If you file a return but don't pay all amounts shown as due on time, you will generally have to pay a late payment penalty of 0.5 percent for each month (or part of a month) up to a maximum of 25 percent, on the amount of tax that remains unpaid from the due date of the return until the tax is paid in full. The 0.5 percent rate increases to 1 percent if the tax remains unpaid 10 days after the IRS issues a notice of intent to levy. For individuals who file by the return due date, the 0.5 percent rate decreases to 0.25 percent for any month in which an installment agreement is in effect.

If you owe tax and don't file on time, the total failure to file penalty is usually 5 percent of the tax owed for each month (or part of a month) that your return is late, up to five months. If your return is more than 60 days late, the minimum penalty for late filing is the lesser of $135 or 100 percent of the tax owed.

The penalties for filing and paying late may be abated if you have reasonable cause and the failure was not due to willful neglect. In addition, making a late payment as soon as you are able may help to establish that your initial failure to pay was due to reasonable cause and not willful neglect. Generally, interest charges are not abated; they continue to accrue until all assessed tax, penalties, and interest are paid in full.

- **Consult with your tax professional.** Taxpayers may be able to rectify minor IRS issues, such as an inaccurate address, account number or Social Security number. But other notices are better left to a tax professional. Response forms typically allow you to authorize someone other than yourself to contact the IRS concerning notices. Never hesitate to contact your tax adviser if you're uncertain about how to handle a letter from the IRS.

VI. New York and New Jersey Real Estate Transfer Tax

To transfer real estate into a Revocable Living trust:

All real estate is exempt regardless of whether there is a mortgage.

To transfer real estate into an LLC:

Equity in the property passes free of tax.

The balance of any mortgages are subject to 1) transfer tax and 2) mansion tax.

The transfer tax is $2 per $500.

The mansion tax is 1% of the mortgage balance, but only applies if the mortgage balance is greater than $1 million.

VII. Insurance: 3 Minute Course on Small Captives by Larry Kendzior

Small captives are an extremely complex area. This "short course" is designed to assess whether you might want to explore this area further.

What seems to be the main benefit of a small captive insurance company?
The IRS rules let a business get a $1.2 million tax deduction EACH YEAR for insurance premiums paid to a small captive. This $ is tax free to the small captive (a "C" Corporation).

Which businesses may benefit from a captive?
$20 million of gross receipts
$ 2 million of taxable income
Positive cash flow

In addition to tax write offs, what are the main benefits of a small captive?
Improve existing insurance coverage
Owner gets to keep the insurance company's profits.
Save money on insurance premiums. Perhaps up to $300,000 a year.

You said the captive is a "C" corporation. How does an owner get at the money "trapped" in the captive?
Dividends
Loan it out
Gift it (estate and gift tax planning)

VIII. Q & A Corner

Joint Tenants Property / Step Up in Basis:

If husband, for example, dies owning property jointly or TBE with spouse, ½ of that property gets a step up to date of death value. This is for a *separate property* jurisdiction like Florida. The only twist to recall on this is that if a spouse dies in one of the ten *community property* states, the asset gets a FULL step up to date of death value, both halves.

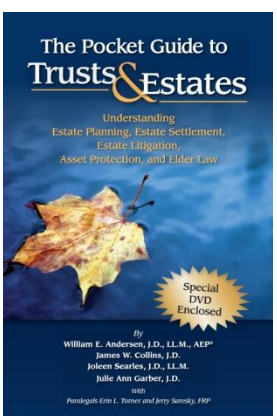
ATTORNEYS AT LAW
THE ANDERSEN FIRM
A PROFESSIONAL CORPORATION

Common Law Marriage in New York:

New York does not allow common law marriages to be formed. However, they will recognizes common law marriages that were validly formed in another state.

VIV. The Pocket Guide to Trusts and Estates

Bill Andersen, Joleen Searles, Julie Ann Garber and Jim Collins with Erin Turner and Jerry Saresky have released their collaborative book ***The Pocket Guide to Trusts & Estates: Understanding Estate Planning, Estate Settlement, Estate Litigation, Asset Protection and Elder Law***. If you have not already received your complimentary copy, call Pat Bowman today at 866.230.2206 and she will send you your personal copy. Books can be purchased on Amazon.com as well.



X. Estate Planning With a Non-Citizen Spouse - By Bill Bischoff

These days, it is not uncommon for U.S. citizens who live in this country to be married to non-citizen spouses who also live here. Or two non-citizens may get married while living here. In tax lingo, non-citizens who are permanent U.S. residents are termed resident aliens. Unfortunately, standard estate tax planning advice that works for most married couples will not necessarily work when one or both spouses are resident aliens. Here's what you need to know if this is your situation.

Federal estate tax basics: In general, American citizens and resident aliens alike are covered by the same set of federal estate tax rules. If you die in 2014 with a taxable estate worth over $5.34 million, the IRS wants 40% of the excess.

Thankfully, the federal estate tax can often be minimized or avoided with advance planning. The most common drill is to bequeath (give away at death) some of your assets to your children and grandchildren (either directly or via trust arrangements) while bequeathing the remainder to your surviving spouse.

For example, say you are a married American citizen or a resident alien with an estate worth $7 million. You can completely avoid the federal estate tax by bequeathing $5.34 million to your children and bequeathing the remaining $1.66 million to your surviving spouse—as long as your spouse is a U.S. citizen. In fact, you can bequeath an unlimited amount to your spouse federal-estate-tax-free if he or she is a citizen.

Alternatively, you can gift away an unlimited amount to your spouse before you die—provided he or she is a U.S. citizen—without any federal gift tax bill.

This privilege of being able to make these unlimited tax-free wealth transfers to your spouse is called the unlimited marital deduction. Taking advantage of this privilege is the key element of most estate and gift tax planning strategies.

The potential problem with a non-citizen spouse: Unfortunately when your spouse is not a U.S. citizen, the unlimited marital deduction privilege is unavailable. That is true regardless of whether or not you yourself are an American citizen. Going back to the preceding example, let's say that you pass away this year and bequeath $5.34 million to your children and the remaining $1.66 million to your non-citizen spouse. The amount going to your kids is federal-estate-tax-free thanks to your $5.34 million federal estate tax exemption. But there's no shelter for the amount going to your non-citizen spouse. So the federal estate tax hit is $664,000 (40% x $1.66 million). Ouch! If you bequeath your entire $7 million estate to your non-citizen spouse, the federal estate tax bill is the same $664,000, because the first $5.34 million is sheltered by your federal estate tax exemption while the remaining $1.66 million is unsheltered and taxed at 40%. Ouch again! This is bad news if you've been (wrongly) assuming that you qualify for the unlimited marital deduction privilege.

What to do: There are several ways to get around the non-citizen spouse estate-tax dilemma. Here are some tax-saving moves to consider.

First, you can make sure you marry an American citizen. This is a potential solution if you are currently single, but obviously not very practical if you are already married to a non-citizen.

Second, your spouse can become a citizen. That can take place after you've died but by no later than the due date for filing the federal estate tax return for your estate (the deadline is generally nine months after your death). As long as your spouse attains citizen status before the deadline, the unlimited marital deduction deal is available, which means your spouse can be left an unlimited amount free of any federal estate tax hit. However, your spouse may not want to become a U.S. citizen for various reasons. For example becoming an American citizen might require renouncing one's home country citizenship, which could affect the right to own property in that country.

Another idea is to gradually reduce your taxable estate by making substantial gifts to your non-citizen spouse while you are still alive. Such gifts are eligible for a larger-than-normal annual exclusion. For example, the exclusion for 2014 is $145,000 (compared with the standard $14,000 exclusion for 2014 gifts to other folks). By taking advantage of the larger-than-normal annual exclusion, you can gradually transfer wealth to your non-citizen spouse without incurring any federal gift tax and at the same time whittle your taxable estate down to the point where it will be sheltered by your federal estate tax exclusion ($5.34 million for 2014).

A fourth potential solution involves setting up a qualified domestic trust (QDOT). The QDOT can be formed under the terms of your will, by the executor of your estate after you have passed on, or by your surviving spouse. Basically the assets inherited by your spouse go into the QDOT. Then the federal estate tax on the value of those assets is deferred until your spouse takes money out of the QDOT or dies. At that point, the QDOT assets are added back to your estate for tax purposes, and the deferred federal estate tax bill comes due. In other words, the QDOT arrangement only defers the federal estate tax hit. It doesn't reduce the amount that ultimately must be paid to the U.S. Treasury. However, if your surviving spouse becomes a citizen, he or she can then take all the assets in the QDOT, and the deferred tax bill will go up in smoke. In effect, your spouse is treated as if he or she had been a citizen all along.

The bottom line: The non-citizen spouse estate tax threat can potentially affect many well-off couples. Thankfully, the threat can often be mostly or completely disarmed with advance planning. You may need assistance from an experienced estate planning pro to get the job done right.

COMMENTS: The Andersen Firm is available to assist clients, Financial Advisors and other financial professionals in comprehensive estate planning. Call Angela Christian or Sherry McCall at 866.230.2206 to organize a time that works for your schedule.

XI. Maryland Changes Estate Tax Exemption

Maryland recently enacted the first increase in its estate tax exemption since 2002. The prior law provides that estates of decedents owning $1 million or less are exempt from Maryland estate tax, and larger estates are taxed on wealth in excess of $1 million (at an initial rate of 16 percent). The new law increases that $1 million exemption amount in 2015 and future years, as follows:

Year of Death	Exemption Amount
2015	$1.5 million
2016	$2 million
2017	$3 million
2018	$4 million
2019	[Federal Exemption]

In 2019 and later years, the Maryland estate tax exemption will equal the federal estate exemption, which is currently $5.34 million. It increases for inflation annually.

The newly-enacted schedule of increases in the Maryland estate tax exemption heralds a sharp decrease in the number of clients in Maryland who will need estate tax planning. Many of these clients currently have wills containing tax-planning provisions that are destined to become unnecessary at some point over the next five years. The prospect of simplifying all those estate plans is likely to look attractive to attorneys and clients alike.

Pick-Up Tax

The Maryland estate tax is a “pick-up” tax, meaning that it relies primarily on federal estate tax law to define the taxable estate, with certain minor exceptions. The federal deduction for payments of state death taxes is disallowed for Maryland purposes, as is any deduction for an expense that's also deducted on any income tax return. Maryland also gives special, favorable treatment to the first $5 million worth of "qualified agricultural property," provided the land continues to be farmed over the ensuing 10 years.

Prior Law Created Complications

The disparity since 2002 between the Maryland and federal exemption amounts made it more complicated to create a tax-efficient estate plan for a married couple. The typical plan requires limiting the size of the credit shelter trust created on the first spouse's death to just $1 million, which is the most that can pass free of both state and federal estate taxes.

Next, an amount not exceeding the difference between the two exemptions is allocated to a traditional qualified terminable interest property (QTIP) trust, with the expectation that the personal representative will make a QTIP election on the Maryland estate tax return but not on the federal return. In effect, this second trust is a credit shelter trust for federal purposes and a marital deduction trust for state purposes. Any additional assets may be left to the spouse or to another QTIP trust. This 3-tiered approach allows maximum use of both exemptions while still deferring all tax until the surviving spouse's death.

Alternatively, since 2010, it's possible to accomplish the same result by leaving everything in excess of the $1 million credit shelter amount to the surviving spouse and electing portability on a federal estate tax return. This approach doesn't work as well for wealthier clients, due to the fact that portability doesn't apply to the generation-skipping transfer tax exemption.

Inheritance Tax

Maryland also has a 10 percent inheritance tax, but its effects are limited. The tax doesn't apply to most immediate family members, so its most common application is to nieces, nephews and unmarried partners. The tax used to fall heavily on same-sex couples, but not since Maryland recognized same-sex marriage by statute last year. Also, inheritance tax payments operate as credits against any Maryland estate tax liability.

XII. Flowcharts – Explaining Estate Planning to Your Clients

Many of our financial advisors have requested flowcharts to explain Estate Planning to their clients. They are available for you to download directly from our website at TheAndersenFirm.com. Call us if you have questions or need our assistance in working with you and your clients.

1. Foundational Planning: The Basics

2. IRA Inheritance Trust: Planning For Qualified Money

3. Qualified Personal Residence Trust: Getting The Value of Your Homes Out of Your Estate

4. Irrevocable Life Insurance Trust: How To Hold Insurance

5. Build Up Equity Retirement Trust: Spousal Gifting Trust

6. Legacy Trusts: Gifting To Children and Grandchildren and Others

7. Grantor Deemed Owner Trust: How To Hold Large Insurance Policies

8. Wyoming Close LLC: For Asset Protection and Gifting

9. Wyoming Domestic Asset Protection Trust: The Best Domestic Asset Protection Available

10. Florida Domicile Checklist

11. Multigenerational Planning

XIII. Treasury and IRS Announce That All Legal Same-Sex Marriages Will Be Recognized For Federal Tax Purposes; Ruling Provides Certainty, Benefits and Protections Under Federal Tax Law for Same-Sex Married Couples - Forbes

The U.S. Department of the Treasury and the Internal Revenue Service (IRS) ruled that same-sex couples, legally married in jurisdictions that recognize their marriages, will be treated as married for federal tax purposes. The ruling applies regardless of whether the couple lives in a jurisdiction that recognizes same-sex marriage or a jurisdiction that does not recognize same-sex marriage.

The ruling implements federal tax aspects of the June 26 Supreme Court decision invalidating a key provision of the 1996 Defense of Marriage Act.

Under the ruling, same-sex couples will be treated as married for all federal tax purposes, including income and gift and estate taxes. The ruling applies to all federal tax provisions where marriage is a factor, including filing status, claiming personal and dependency exemptions, taking the standard deduction, employee benefits, contributing to an IRA and claiming the earned income tax credit or child tax credit.

Any same-sex marriage legally entered into in one of the 50 states, the District of Columbia, a U.S. territory or a foreign country will be covered by the ruling. However, the ruling does not apply to registered domestic partnerships, civil unions or similar formal relationships recognized under state law.

Legally-married same-sex couples generally must file their 2013 federal income tax return using either the married filing jointly or married filing separately filing status.

Individuals who were in same-sex marriages may, but are not required to, file original or amended returns choosing to be treated as married for federal tax purposes for one or more prior tax years still open under the statute of limitations.

Generally, the statute of limitations for filing a refund claim is three years from the date the return was filed or two years from the date the tax was paid, whichever is later. As a result, refund claims can still be filed for tax years 2010, 2011 and 2012. Some taxpayers may have special circumstances, such as signing an agreement with the IRS to keep the statute of limitations open, that permit them to file refund claims for tax years 2009 and earlier.

Additionally, employees who purchased same-sex spouse health insurance coverage from their employers on an after-tax basis may treat the amounts paid for that coverage as pre-tax and excludable from income.

How to File a Claim for Refund - Taxpayers who wish to file a refund claim for income taxes should use Form 1040X, Amended U.S. Individual Income Tax Return.

Taxpayers who wish to file a refund claim for gift or estate taxes should file Form 843, Claim for Refund and Request for Abatement. For information on filing an amended return, see Tax Topic 308, Amended Returns, available on IRS.gov, or the Instructions to Forms 1040X and 843. Information on where to file your amended returns is available in the instructions to the form.

Future Guidance - Treasury and the IRS intend to issue streamlined procedures for employers who wish to file refund claims for payroll taxes paid on previously-taxed health insurance and fringe benefits provided to same-sex spouses. Treasury and IRS also intend to issue further guidance on cafeteria plans and on how qualified retirement plans and other tax-favored arrangements should treat same-sex spouses for periods before the effective date of this Revenue Ruling.

XIV. Another Do it Yourself Will Disaster Makes It All the Way to Florida Supreme Court By- Julie Ann Garber

If the recent decision handed down by the Florida Supreme Court in *Aldrich vs. Basile* isn't enough to dissuade you from making your own Last Will and Testament, then I don't know what will convince you not to do it. Here are the facts of the case:

1. In April 2004, Ann Dunn Aldrich used an "E-Z Legal Form" to make her Last Will and Testament. In Article III of the form entitled "Bequests," just after the form's pre-printed language directing payment of debts, Ms. Aldrich hand wrote instructions stating that all of her "possessions listed" go to her sister, Mary Jane Eaton - this included Ms. Aldrich's house, contents, and lot; a Fidelity Rollover IRA; a United Defense Life Insurance policy; an automobile; and bank accounts.
2. Ms. Aldrich also wrote that if her sister died before she did, then she left all listed property to her brother, James Michael Aldrich.
3. The will contained no other provisions.
4. Ms. Aldrich signed the will in front of two witnesses on April 5, 2004.
5. Mary Jane Eaton died on November 10, 2007. As a result, Ms. Aldrich inherited her sister's real estate located in Putnam County, Florida, along with some cash which Ms. Aldrich deposited into a new Fidelity account that she opened in July 2008.
6. In November 2008, on a sheet of paper with the pre-printed title "Just a Note," Ms. Aldrich hand wrote the following: "This is an addendum to my will dated April 5, 2004. Since my sister Mary jean Eaton has passed away, I reiterate that all my worldly possessions pass to my brother James Michael Aldrich, 2250 S. Palmetto, S. Dayton FL 32119. With her agreement I name

Sheila Aldrich Schuh, my niece, as my personal representative, and have assigned certain bank accounts to her to be transferred on my death for use as she seems [sic] fit." The "addendum" was dated November 18, 2008 and contained the signatures of Ms. Aldrich and Ms. Schuh, who is the daughter of James Michael Aldrich.

7. Ms. Aldrich died on October 9, 2009.

So, from these facts it appears that James Michael Aldrich should have inherited Ms. Aldrich's entire estate, right? Wrong, because, in attempting to write her own will and then a codicil, Ms. Aldrich's do it yourself documents failed miserably. Why? For two reasons:

1. First and foremost, the will failed to dispose of all of Ms. Aldrich's property since it didn't include a "residuary clause" which would have addressed what should happen to any property Ms. Aldrich owned which was not included in her "possessions listed" as well as property Ms. Aldrich acquired after the date she signed the document.
2. And, just as problematic, Ms. Aldrich's attempted codicil to address the property she inherited from her sister after she signed the will failed because she didn't sign it with the proper formalities required by the Florida Probate Code - under Florida law, wills and codicils must be signed in the presence of *two* witnesses; the "addendum" only included the signature of *one* witness.

So who inherited the real estate located in Putnam County and the Fidelity account, in other words, the property that Ms. Aldrich inherited from her sister which was not listed in Ms. Aldrich's will? Enter Laurie Basile and Leanne Krajewski, two nieces of Ms. Aldrich who were the children of a predeceased brother. They intervened in the probate administration, claiming that since Ms. Aldrich's will didn't contain a "residuary clause" and the November 2008 "addendum" didn't legally qualify as a codicil under Florida law, then they should share in the distribution of the Putnam County real estate and the new Fidelity account as intestate heirs. While the lower court sided with Mr. Aldrich, who thought that he should inherit Ms. Aldrich's entire estate (which *appeared* to her intent, didn't it?), this case made it all the way up to the Florida Supreme Court, which sided with Ms. Basile and Ms. Krajewski.

Now as I said at the beginning, if this case isn't enough to convince you not to write your own Last Will and Testament, then I don't know what will. And by the way, E-Z Legal Forms has a website where you can apparently purchase a pre-printed Last Will and Testament Form for only *$2.95* - what a bargain!

The lessons learned from the *Aldrich* case have been summed up nicely by Justice Pariente, who wrote in his concurring opinion, "I therefore take this opportunity to highlight a cautionary tale of the potential dangers of utilizing pre-printed forms and drafting a will without legal assistance. As this case illustrates, that decision can ultimately result in the frustration of the testator's intent, in addition to payment of extensive attorney's fees - the precise results the testator sought to avoid in the first place."

XV. Case Studies

The following are case studies and do not reflect actual clients. The names and situations presented are fictional and for educational purposes only.

Case Study 1: Business Transfers

Business owners face major challenges in transferring valuable businesses to the next generation, and they needed to avoid significant estate taxes and liquidity issues upon their deaths. Determine which (or all) of the following techniques could be used and define how they would be used without incurring any estate or gift taxes:

(1) converting the stock in the enterprises to voting and nonvoting stock;
(2) gifting a portion of the nonvoting stock to special trusts designed to reduce income taxes and provide protection for the benefit of the second generation;
(3) selling a portion of the nonvoting stock to a specially designed trust that resulted in no income taxes payable on the gain resulting from the sale; and
(4) using significant discounts for lack of control and lack of marketability.

Case Study Two: Beneficiary Designations

Archie and Edith have drafted wills stating their assets are to be divided equally among their 3 children, Mike, Gloria, and Joey after they have both passed away. They have named each other as primary beneficiary on both of their IRA's totaling $300,000. However, Mike is the only contingent beneficiary listed. They expect him to divide the IRA's equally between the 3 children as directed in the wills (Mike is the executor of their wills also).

So what happens to the IRA's if Archie and Edith pass away at the same time?

Since both are deceased, the IRA's will pass 100% to the contingent beneficiary, Mike. Gloria and Joey will have no rights to the IRA assets even though they are equal beneficiaries in the wills because the IRA's are an asset with a beneficiary designation. Therefore, not subject to the will.

What beneficiary benefit is lost for Gloria and Joey?

Since Gloria and Joey were not listed as contingent beneficiaries on the IRA's, they cannot roll the portion of the IRA's their parents wanted to go to them into an inherited IRA. Legally 100% of the IRA's are Mike's and he is the only one who can roll them into an inherited IRA.

What does Mike do now to honor the wishes of his parents?

Being the executor of their wills, Archie and Edith thought Mike would easily be able to give Gloria and Joey their one-third portion of the $300,000 in the IRA's. Unfortunately, there are two things to be aware of with that strategy:
1) Mike will have to pay taxes on the two-thirds distribution of $200,000. This large distribution will likely push him into a higher tax bracket. If we assume he would be in the 35% tax bracket, $70,000 ($200,000 x 35%) in taxes would be due leaving $65,000 ($130,000 ÷ 2) each for Gloria and Joey.

2) When he gives Gloria and Joey $65,000 each, he will have to file a gift tax return and will be responsible for any gift tax that may be due. The IRS allows a gift of $13,000 or $26,000 (if married) a year without having to file a gift tax return.
Mike will need to discuss with the attorney settling the estate what options are available to distribute Gloria's and Joey's portion of the IRA's to them, and which is best for their situation.

XVI. The Andersen Firm Areas of Practice

Estate Planning
- At The Andersen Firm we have planned for a vast array of estates ranging in size from a few hundred thousand dollars to a hundred million dollars, all the while realizing each specific case is different and requires specialized attention.

Estate Settlement
- The process of settling an estate can be difficult and emotionally painful for the family and loved ones of the deceased. It is our goal at The Andersen Firm to ensure that the process be handled with compassion, expedience, professionalism and expertise, while protecting the rights of all parties involved. If the circumstances surrounding a client's estate require probate, our attorneys offer extensive experience in handling the processes and legalities involved.

Estate Litigation
- Our lawyers are not only skilled at handling cases involving estate and trust disputes, they draw on a thorough knowledge base of the specific procedures surrounding these issues. The Andersen Firm can efficiently take each case through to completion realizing that full blown litigation often can be avoided if we work diligently to come to resolution.

Asset Protection
- For some, putting an Asset Protection Plan in place is advisable in order to attempt to remove the economic incentive to be sued and also to try and increase the ability to force an early settlement in the event a suit is filed.

Elder Law
- The three major categories that make up elder law are (1) Estate planning and administration; (2) Medicaid, disability and other long-term care issues; and (3) Guardianship, conservatorship and commitment matters, including fiduciary administration.

XVII. Estate Litigation

Estate attorneys at The Andersen Firm represent beneficiaries, trustees and personal representatives in various jurisdictions dealing with estate litigation and probate litigation matters. A will contest challenges the admission of a will to probate or seeks to revoke the probate of a will that is already pending before the probate court. A similar type of estate litigation can take place contesting the terms of a trust. The most common causes of action in both will contests and estate litigation can be found at www.TheAndersenFirm.com or call us at 866-230-2206.

XVIII. Mail Away Estate Plans

If a client is in another state, unable to travel, on vacation, a snowbird or another situation that would prevent them from meeting with an attorney in person, The Andersen Firm attorneys are able to design, draft and execute estate plans via telephone conference and mail away documents.