COUZENS LANSKY

2013
CRITICAL LEGAL DEVELOPMENTS

VisTaTech Center, Livonia, Michigan

November 12, 2013

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Same Sex Marriage

By Lawrence F. Schiller

And

Eric J. Gould

- How it all came about
- Defense of Marriage Act
- *United States v. Windsor*

- The impact of the Supreme Court's decision
- Federal Government's Approach
- State of Michigan's Approach

- Impact on Federal Taxes
- Impact on State Taxes
- Impact on Withholding Taxes

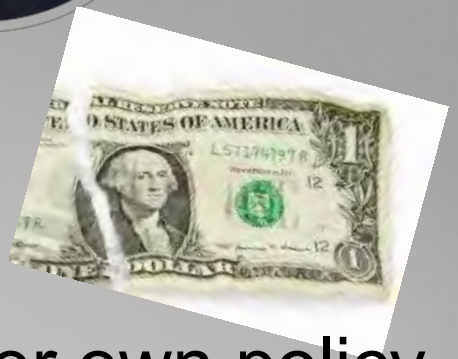
- Impact on employee benefits
- Qualified Plan Issues
  - Forms of benefit payments
  - Beneficiary designations and elections
  - Minimum Required Distributions
  - Hardship Distributions
  - Qualified Domestic Relations Orders

- Health and Welfare Plan issues
  - Employer sponsored group health plans
  - Cafeteria Plans
  - Adoption Assistance Programs
  - COBRA

Cross Purchase Buy-Sell

- Traditional Cross Purchase Agreements
  - Purchase insurance on lives of other owners
  - Issues and potential problems
    - Inverse insurance coverage
    - Unused policies

- Alternate approach – cross endorsement agreement (private split-dollar)



  - Each owner retains his/her own policy and endorses death benefit to other owner(s)
  - Endorsees must pay for access to death benefit at term or Table 2001 rates
  - Endorsements terminate per terms of agreement

Estate Planning Basics

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2 Trusts or 1 Trust?

Example

- Husband - Wife
- 3 children of marriage
- FMV of estate $3,000,000

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2 Trusts or 1 Trust?

- Distribution Pattern the Same – USE 1 TRUST:
  - Surviving Spouse Controls
  - Easier at first death
  - No estate tax – estate less than $5,250,000 ($5,340,000 – 2014)
    - Elect portability (if necessary) – surviving spouse can use unused exemption of first deceased spouse

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2 Trusts or 1 Trust?

- Distribution Pattern the Same (Use 1 Trust):
  - Fund 1 trust vs. 2 trusts
  - No Probate
  - **Action Plan** – merge 2 trusts into 1 trust
    - No need to retitle

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2 Trusts or 1 Trust?

- Distribution Pattern Different (2nd marriage) – Use 2 Trusts
- Protect Distribution Pattern – Control (use 2 Trusts)
  - One Trust for each spouse
  - Co-Trustee for surviving spouse
  - Avoid another spouse from inheriting assets
  - Assets (including IRAs) title to Trust

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2 Trusts or 1 Trust?

- Creditor Protection for Spouse (Use 2 Trusts)
  - Place assets of risky spouse in trust of less risky spouse
  - Consider H and W co-trustees of each trust
- Estate likely to exceed $5,250,000 (Use 2 Trusts) Portability – do not rely
  - Surviving spouse can remarry. Second spouse dies first using his full exemption amount.
  - Not indexed for inflation

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2 Trusts or 1 Trust?

- Creditor Protection for Children - Discretionary Trust vs. outright (25,30,35)
- Generation Skipping Tax Exempt
  - Schedule R – Estate Tax Return

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Current Basis Rules

- Step up in basis
  - If 1 trust – Double basis step-up? IRS may question 100% step up in basis upon first spouse's death and again on death of 2nd spouse. IRS – 50% step up
  - If 2 trusts – only receive step up in basis on first death. Post death appreciation will be subject to 20% capital gains tax upon sale

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Current Basis Rules

- Step up in basis
  - Planning to achieve double step up
    - Marital deduction
      - Structure – upon death of first spouse, transfer to surviving spouse (outright or QTIP trust), assets to use full exemption amount for surviving spouse.
        - Excess to Residuary Trust
      - Disclaimer – 100% to surviving spouse. Spouse disclaims to Residuary Trust.

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Current Basis Rules

Planning – transfer appreciated property to decedent. Watch out for 1 year rule. IRC 1014(e)

- 1 Year Rule - Transferor Spouse (W) cannot obtain step up in basis if she receives the assets within 1 year of transfer to Transferee Spouse (H)

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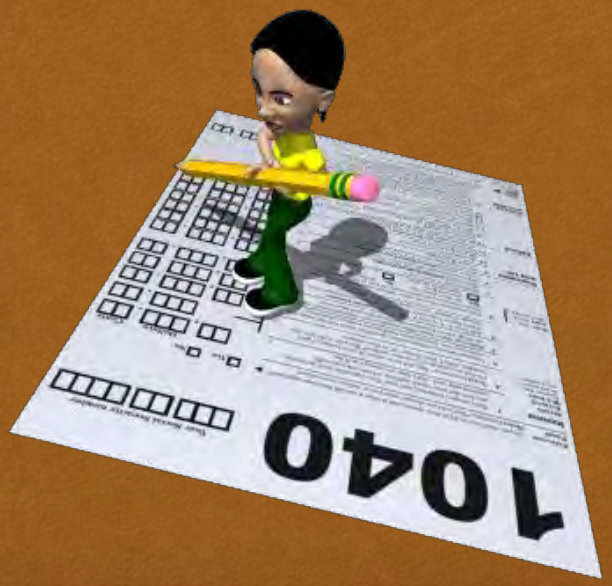
AFFORDABLE CARE ACT

- Delay of mandates
- Changes required as of January 1, 2014
  - Discrimination
  - Coverage Limits
  - Coverage for clinical trials
  - Coverage under grandfathered plans

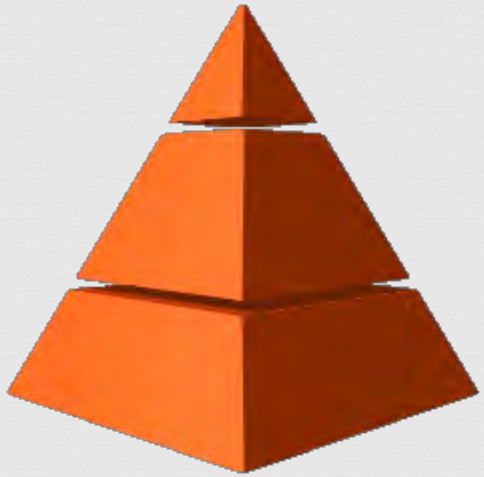
- Suggested areas of focus
- Large Group Plans
- Small Group Plans
- Self-funded Plans

Tax Update



Federal Tax Issues

- Updated guidance for Ponzi scheme victims Program Manager Technical Advice 2013-003
- Reasonable Compensation
- PTIN renewal
- 2013 filing season delay



Federal Tax Issues

- Updated guidance for claims for innocent spouse relief Rev. Proc. 2013-34
- Expanded relief for late S corporation elections Rev. Proc. 2013-30
- Incorrect basis reporting penalties
  - Brokers
  - Return Preparers
  - Taxpayers

State Tax Issues

- Pending legislation limiting responsible officer liability
- Combination of flow-through income and loss with unitary relationships
- Power of attorney rules
- Pending legislation impacting litigation of state tax issues

2014 Figures & Amounts

- Retirement Plans
- Defined benefit plans
- Defined contribution plans
- Annual compensation limits
- ESOP 5-year distribution period
- Government Plans
- Control employees

2014 Figures & Amounts

- Unchanged amounts
  - Deferral limits
  - Catch-up contributions
  - IRA contribution limits

- Social Security wage base increases to $117,000
- Annual gift exclusion is $14,000 per recipient
- Unified tax credit increases to $5,340,000
- Foreign earned income exclusion increases to $99,200

2014 Figures & Amounts

- Interest on education loans
- Personal exemption is $3,950

Thank you for joining us today

If you have any comments or questions regarding
this seminar or any other matters,
please contact the attorneys & counselors of…

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