CLIENT UPDATE *and wealth advisor*

FALL/WINTER 2023/2024

KEMPE

Law | Estates | Tax | Wealth

Offices in Jupiter, Stuart & Vero Beach

IN THIS ISSUE

AVOIDING LOSS OF ESTATE AND GIFT TAX EXEMPTIONS

- WILL IT MATTER WHO WINS THE 2024 ELECTION? -

The estate, gift, and generation skipping tax exemptions will rise to $13.610 million on January 1, 2024, but under current law these exemptions are cut in half in 2026. When 2025 draws to a close, the Trump era Tax Cuts and Jobs Act (TCJA) of 2017 will "Sunset." The tax on every dollar of wealth in excess of these exemptions is 40%. Forecasts suggest that the exemption will be approximately $7 million in 2026, when under present law the exemption will be reduced by approximately 50%. A loss of $7 million of exemption results in an increase of $2.8 million in estate tax for decedents dying in 2026 or thereafter. Will it matter who controls our government after the 2024 elections, or will our massive budget deficits necessitate increased tax on the "wealthy?"

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YOU CAN'T BE ANONYMOUS ANY LONGER - *ACTION REQUIRED!*

- MOST ENTITIES NOW REQUIRE DISCLOSURE OR FACE LARGE PENALTIES -

Most anyone who has created business entities, even if no business is conducted because the entity only owns passive real estate or stocks and bonds, must now disclose who owns, controls, or has economic rights in or from the entity, or risk significant penalties. Common small business limited partnerships, corporations, and limited liability companies ("LLC's) are business entities for this purpose. The result is more costly compliance in the formation and ongoing maintenance of such entities, known as "Reporting Companies." Failing to comply with these rules exposes those responsible to civil penalties of not more than $500 for each day that the

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FIRM ADOPTS BLACK DIAMOND AS ITS CLOUD BASED FAMILY OFFICE PORTAL

- CONSOLIDATING INFORMATION FOR FAMILY AND ADVISOR COLLABORATION AND OVERSIGHT -

Ten years ago, the Firm was selected by Advent® as one of two Beta Sites for the testing of their new Advent Direct cloud based investment oversight, performance, and reporting system. We have been a user of Advent software for seventeen years as a subpart of our client centric Wealth Management/ Family Office services. These services provide our clients with representation by their attorney in the implementation, integration, and oversight of their estate and tax planning, tax compliance, health care advocacy, and financial

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LEAVING YOUR SPOUSE (OR NOT) A DSUE OR OTHER FORMS OF AUGMENTATION

- THE EVILS PORTABILITY HAS BROUGHT -

[Reproduced from 2014 LinkedIn article by Joseph C. Kempe, Esq., and updated.] I was first exposed to gifts of augmentation while at Nixon, Hargrave, et al, as a young attorney in (Burt's) Reynolds' Plaza in the late '80s. Joined by two other 30 year old young turk lawyers, we would stop downstairs at the Backstage periodically for a cocktail before going home to our wonderful families. A 40 year old bartender had been on sabbatical, but on her return she had a new glow and looked different-at least between her neck and waist- apparently her father had died and left her money for them.

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Administrative Agencies Press The Bounds of Law

- The Firm Continues to Grow to Meet the Challenges and to Serve clients -

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As discussed within our Inside Cover article in our Fall 2022 Client Update, administrative agencies are often used to implement policies that are unsupported by current laws, which laws are enacted by Congress. See https://kempelaw.com/wp-content/uploads/2022/10/Newsletter-FALL-2022.pdf As a result, the actions of agencies are not necessarily lawful. For example, the IRS's recent release of Rev. Rul. 2023-2 voices their view on the taxation of assets within grantor trusts on the death of the grantor. It is thought that this announcement was at the insistence of Treasury Secretary, Janet Yellen, who was under pressure from several Senator's (Wyden, Sanders, et al) to close a perceived "loophole," which they had attempted to close with proposed legislation that was not approved by the full Congress. Similarly, FinCen (a Department of Treasury bureau) has proposed draconian measures (the "Corporate Transparency Act" or "CTA"), which requires the disclosure of all direct and indirect owners of business entities, no matter how small, significantly increasing the cost of creating and maintaining common business entities, while also invading the privacy rights of these owners. Penalties are substantial! The National Small Business Association has sued in federal court to have the CTA held un-Constitutional under a variety of legal arguments, but that decision is unlikely to be finalized before the effective date of the CTA. These agencies can somtimes impose penalties for noncompliance, even though unlawful, without a costly fight.

Wealth planning, management, oversight, and compliance hasn't gotten any easier, but we continue to strive to serve our clients with the technology and expertise at our disposal. The Firm continues to serve many families as their legal counsel and has continued to expand its staff and services, with more and more clients constituting the 2nd and 3rd generation. Our staff of legal professionals, tax accountants, and assistants continues to grow and our integrated services appear to be in demand. Along the way, many patriarchs and matriarchs pass-on and it is sad they are no longer with us. We become gratified, however, when decades of representation culminates in receipt of an IRS "Closing Letter," that approves our reconciliation of a lifetime of accumulation of assets and liabilities, gifts, and the estate planning that was undertaken along the way. In one recent example, where a couple died within months of one another, the overall estate and capital gains tax savings through their planning amounted to well over $20 million. We hope they smiled with the news!

Technology is allowing us to better share information among families, and we now have the ability to share a virtual Family Office cloud-based internet platform across a wide spectrum of collaborating professionals and family members, whose involvement are desired and approved. Our means and methods of serving clients has grown from preparation of simple wills and trusts; to tax compliance; to oversight of cash, money flows, and investments; and to baselevel bookkeeping and bill payment. Not all clients need these services, but we have developed them to aid our clients in transition and in preserving their independence as they age, while maintaining transparency through systems of reporting to them and members of their families.

The election is coming in 2024, and a lot can change. Black swans appear and challenge our institutions and systems, placing health and wealth in jeopardy. Even the integrity of U.S. Treasuries is being questioned, with proposals pending to assure their safe haven status. Wealth is under attack for use by our government. Debates will be widespread during the election cycle. 2024 should be a year of evaluation and preparation for what may come, with some action generally recommended in advance of the election for those who have not yet done so.

It should be noted, the Supreme Court recently accepted the Moore case for review, which may limit the taxation of wealth as income under the 16th Amendment, without a realization event. The decision could be one of the most interesting in decades, potentially curtailing proposed Democrat tax reform initiatives.

All the Best for 2024- God Bless!

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The Grantor Trust Debate

- Does the Death of a Grantor Cause a Cost Basis adjustment to Fair Market Value? -

The purpose of this note is to address recent developments associated with IRS and professional commentary (by tax law professors and practitioners) on the taxation of "grantor trusts" on the death of the grantor. Many clients and others transferred wealth to irrevocable trusts for their spouse and families over the last decade or two in anticipation of tax reform intended to lower the estate, gift, and generation skipping tax exemptions. Many of these trusts (almost all if a spouse is a beneficiary), are characterized as "grantor trusts" for income tax purposes. A grantor trust is one where the donor of property to the trust remains responsible for all income tax consequences associated with the trust. They are deemed to own the trust assets. The issue centers around whether the property in a grantor trust on the death of the grantor is adjusted to fair market value, resulting in an elimination of embedded capital gains tax (or loss) on the sale of the property. For income tax purposes, as if the grantor owned the property through date of death, as IRS rulings and regulations suggest is proper. The general rule is that property passing from a decedent at death receives a cost basis adjustment to fair market value for income tax purposes. The issue is whether property in a grantor trust is deemed to pass from the grantor on the grantor's death, even though it is not included in the taxable estate for estate tax purposes.

Grantor trust status means the person who transfers the property to the trust continues to be viewed as the owner of the transferred assets for income tax purposes, but not estate and gift tax purposes. For example, if I have properly transferred $12.92 million ($13.610 million in 2024) of property to a trust for my wife and children, I have removed that property from my taxable estate and the taxable estate of my wife. If the exemption is cut in half in 2026, as required under present law, I have succeeded in utilizing my exemption while it is higher and it cannot be clawed-back and reclaimed by the IRS. Furthermore, additional gift tax free transfers of wealth to my spouse and children occur by virtue of my obligation, as the grantor, to pay the income tax on the income of the trust. The IRS has agreed that my payment of income tax is not an additional taxable gift to my family, but I may also be reimbursed.

Recently the IRS published Rev. Rul. 2023-2 on their view on whether a fair market value cost basis adjustment occurs in property owned by a grantor trust on the death of the grantor. The IRS believes a basis adjustment does not occur, but they failed to address authority to the contrary in their ruling. Their position is that in the establishment of a grantor trust, the gift tax rules apply and that a "carryover basis" (the basis of the grantor) carries over with the property to the trust, before and after the death of the grantor. However, that is not supported by income tax rules and the basis adjustment at death is an income tax rule. It is believed that the IRS published this ruling because of pressure from several Senators (Bernie Sanders and Ron Wyden) on Treasury Secretary, Janet Yellen, to dissuade taxpayers from seeking the basis adjustment. Several legislative proposals had sought to close this "loophole," but the legislation never passed.

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Why All the Acronyms and What are They?

- QPRTs, CRATs and CRUTs, GRATs and GRUTs, SLATs, and FLPs -

Advanced estate planning tax reduction strategies come in a variety of forms and styles. Many are statutory and are based upon provisions of the Internal Revenue Code. Others are founded in legal principles established under case law. All are intended as tools that can be used by families to avoid taxation on their wealth, while often also serving other important objectives, such as preserving income sources, preserving the Florida homestead property tax exemption, and preserving control. The heirs of one long term client of ours just realized that the planning done by their parents using QPRTs, an FLP, and related strategies resulted in over $20 million of estate tax savings, and the estate tax return only received a desk audit (like many estate tax returns) rather than a more in depth field audit. Properly filing tax returns in a professional manner, contemplating the "red flags," can reduce the risk in and of audits. Estate planning attorneys call many strategies by different names and acronyms. The following are only a few:

A Qualified Personal Resident Trust (a "QPRT") is a common statutory trust that is designed to reduce the gift and estate tax on homes- a person can use QPRTs for up to two homes. It is intended to remove the value of homes from your taxable estate.

A CRAT and CRUT are Charitable Remainder Trusts and most commonly used to sell appreciated assets without immediate capital gains taxation, while retaining a source of cash flow. The creator of the trust also receives an immediate income tax deduction for the present value of the charitable remainder interest, that passes to charity, most commonly, on the death of the creator.

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Remarkable New Brain Studies -Encourage Revisiting Advance Health Care Directives –

As many of our clients have experienced the last few years, drafting health care advance directives has included a discussion on new brain research successfully restoring memory capacity or providing comfort care to an incapacitated patient.

The July issue of Frontiers in Human Neuroscience Journal just reported some "amazing" success with a prosthesis brain implant of a single electrode in the brain. In another Boston University study, individuals who received electric stimulation at different frequencies improved both short and longer term memory. People who received electrical stimulation recalled four to six more words, compared to the placebo group — a 50% to 65% boost in recall. The historic reluctance to authorize experimental treatment in advance care directives has waned over the years and delightfully reiterates the need for such discussion when drafting health care advance directive documents.

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F. D. Roosevelt Humanitarian Award

Health Care Advocacy
Bioethics Law
Death With Dignity
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When Your Holiday Visit Becomes a Wake-Up Call

- Managing transition when the signs become apparent -

It's that time of year when families get together for holiday celebration. Such actual personal visiting can be not only a cause for joy and festive gathering, but also a cause for reflection on the passage of time: "another year, another journey around the Sun." There are many times these gatherings result in calls to us as family counsel from both clients or their children about their aging parents. We reassure these worried callers (family or others) to be thankful they had the holiday visit because their calling with concern, about a possibility rather than an unanticipated and awful mishap, is appropriate and prudent-possibilities can become more probable over time. When all of us (family members, legal counsel, and physicians) are able to address a family member decline in a timely fashion, we refer to it as aiding "transition." This article is written to help family members look for such signs and symptoms requiring at least discussion and recognition about potential problems and a successful resolution.

Here are a few salient points to observe :

1. HUGS: Give your loved one frequent hugs. You can feel loss of body mass with a good full shoulder hug.
2. MAIL: Check to see where and how the mail is located, as well as whether it is being or has been addressed.
3. BILL PAYMENT: Are checking accounts and credit card payments routinely reconciled and payments verified. Many do this daily to prevent fraud and exploitation, which is more common now than ever.
4. DRIVE: Take a drive with them. Make certain they drive, not you. Very often the older person will suggest the ride about is great but ask you to drive. A fear or insecurity of driving is important to note.
5. KITCHEN: When you are in the kitchen, check both refrigerator and pantry for dated items as well as the general state of kitchen appliances.
6. BATH: Take a close look at their bathroom, particularly the state of medicine bottles, towels, under the sink space and shower or bathtub. Check for the presence of throw rugs, both there and anywhere which are fall hazards.
7. OTHER ROOMS: Check all the other rooms for gradual pile-up of clothes, books, magazines, and newspapers. Look for increasing and disorganized clutter.
8. PLANTS AND PETS: The general state of indoor plants and pets is always a key sign that day to day care of things is declining.
9. YARD and NEIGHBORS: How is the yard and how do their neighbors see them. Older people often become more seclusive. A neighbor may say how he or she rarely ever sees them anymore or that they never seem to leave the house.
10. MOBILITY: Note mobility during walking, getting up and down from a chair, and general ease in moving about the house …particularly stairs.
11. FORGETFULLNESS: You can more easily spot the type of forgetfulness they may be experiencing. For instance, if they forget a word or why they entered a room, its generally not a big deal. If they forget how to make the coffee or how to navigate to church, that is more of a concern.

As you can see from this list, these are all signs and symptoms of aging that won't be recognized during phone or video calls. These observations require in-house visiting for more than just a few hours. Sometimes such recognition may be easily solved, but occasionally they may necessitate major life changes. Regardless, their being addressed in a timely manner will prevent at best, or at least decrease, injury, heartache, and maybe even financial liability. Aging and managing transition is mostly inevitable, and involves decisions related to health and financing transition. It can involve many forms of personal assistance; banking and financial oversight; use of drivers; and reporting to other family members who may live outside of a parent's state of residence. In the end, the goal of transition is to preserve a family members dignity and independence. It is satisfying to help!

Electrical Brain Stimulation Could Be a New Dementia Therapy

- It's No Longer a Cuckoo's Nest! -

For the past few years, as we have guided clients in drafting advance directives, we have been counseling them of new therapies, which they can address in their health care directives. What is important to recognize, is that if a person does not address them, by law their health care surrogate is unable to make these important decision because these therapies are new and in some instances experimental. One of the questions involves "psychosurgery," a subject that can arouse scary memories of "One Flew Over the Cuckoo's Nest." However, with the proper reassurance, more and more clients are regarding such question. Lobotomies are no longer, thank goodness, performed, but the world of psychosurgery is bustling with new brain therapies designed to limit the progression or reverse symptoms of neuro decline. In a paper just published in Nature Neuroscience, a study of a painless, non-invasive treatment called "temporal interference," reports it is possible to remotely stimulate specific regions deep within the human brain without the need for surgery. It is posited that such stimulation could possibly treat and even reverse memory loss caused by Alzheimer's disease. As such, more and more client's desire their health care surrogates to hold such decision making powers. Neuro breakthroughs like this are the reason we encourage clients when drafting health care surrogate appointments to thoughtfully address and even expand the statutory delineated mental health options. While the surrogate can always refuse such research or therapy, a knowing direction does allow for the surrogate to pursue such options, were they to become available and beneficial.

Did You Buy Treasuries In 2023- From Whom?

- Understanding Risk and Revealing Pricing Differences When The Black Swan Arrives-

7520 Rate History

	2023	2022	2021	2020	2019
Jan	4.6	1.6	0.6	2.0	3.4
Feb	4.6	1.6	0.6	2.2	3.2
Mar	4.4	2.0	0.8	1.8	3.2
Apr	5.0	2.2	1.0	1.2	3.0
May	4.4	3.0	1.2	0.8	2.8
June	4.2	3.6	1.2	0.6	2.8
July	4.6	3.6	1.2	0.6	2.6
Aug	5.0	3.8	1.2	0.4	2.2
Sept	5.0	3.6	1.0	0.4	2.2
Oct	5.4	4.0	1.4	0.4	1.8
Nov	5.6	4.8	1.4	0.4	2.0
Dec	5.8	5.2	1.6	0.6	2.0

Use of the 7520 rate is required in many estate tax planning strategies, including GRATs and QPRTs. Generally, the higher the rate the better for QPRTs, GRATs, and some other advanced tax planning techniques.

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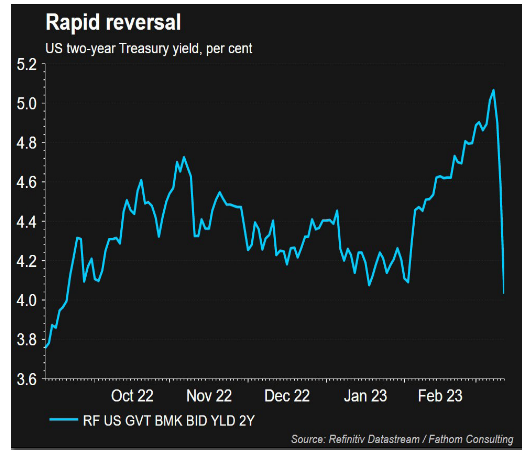
As we have written on several occasions, where your investments are custodied can carry unperceived investment risks. The risks associated with holding investment portfolios custodied in a trust company versus custody with a broker-dealer are quite different. See Page 5, Who Custodies Your Investments Can Matter, https://kempelaw.com/wp-content/uploads/2022/10/Newsletter-FALL-2022.pdf. Regulated investment advisors may also custody in a variety of places and may commingle assets of many clients in accounts which may hold more volatile and riskier assets than your portfolio alone- they may even hold Crypto assets. The need to recognize these different types of risk is heightened when World and financial trauma (the "Black Swan") arrives, when the results of complacency may be revealed. September 11, 2001; the 2007-2008 financial crisis; the 2014 and 2019 Treasury market surprise erosions of liquidity; year 2020-2021 Covid; the Crimea and Ukraine invasions by Russia; the 2023 bank run driven by the failure of Silicon and Signature banks; and the Hamas attack on Israel, all demonstrate unexpected domestic and World events that can jeopardize the stability of markets and thus investments, that are custodied (or in clearing transactions) with financial intermediaries. When these Black Swan events occur, as famous investor Warren Buffett is commonly quoted: "It's when the tide goes out that you learn who has been swimming naked." Furthermore, there is a rush for cash preservation and liquidity- to Treasuries we will go! But what are the risks and are there pricing variations? We and at least one Ivy League professor, sought to know!

On September 14, 2022, SEC Commissioner Caroline A. Crenshaw announced proposed regulations to address risks to the World's safest investment and cash haven: U.S. Treasury securities. As of this date, they have not been finalized. Risks had been identified in the increased volume of interdealer trading referred to as dark pools (much high-volume computer driven), which lacked central clearing. Dealers as counterparties were more frequently trading amongst themselves in all forms of securities, including Treasuries, which jeopardize them as havens of safety in troubled times. Central clearing is generally viewed as safer, where an omnibus facility housing securities are delivered and cleared for buyers and sellers and backed by principal participants in those activities. Regulators can thus focus on one clearing facility and the risk to the principals of the omnibus intermediary avoid free riding and moral hazard economic risks, since they have economic liability for defaults and failures. Equity securities are generally cleared through Deposit Trust Company ("DTC") and its nominee, Cede & Co., while the largest Treasury clearing agency is Cede & Co.'s sibling and another DTC nominee, the Fixed Income Clearing Corporation ("FICC"). The proposed SEC regulations address counter party risk and potential contagion risk by <u>requiring</u> participation in and clearing through the FICC.



In March of 2023, the collapse of Silicon Valley Bank and Signature bank caused a "bank run" (withdrawal of deposits) and depositors sought safe havens for their cash. Treasury Direct (direct purchases of Treasury's from the federal government) experienced a spike in direct purchases and Treasury volatility reached levels not seen since the 2008 Global Financial Crisis. FINRA TRACE (a securities industry regulator's database) reported $720 billion in dealer-to-customer trading on March 14, 2023, spiking a price rise and yield decline. During times like this, when Buffet's tide goes out, contagions can occur and large numbers of smaller potentially less regulated and undercapitalized participants in markets can stress financial systems. Centralizing clearing of securities transactions avoids these risks, reduces the risk of contagion, and unifies pricing of Treasuries, which in interdealer trading is difficult to discover. Centralization will eventually provide economies of scale that will reduce trading costs from current levels, but it also highlights the lack of discovery of pricing which is not currently readily available with interdealer purchases. Columbia University, Business Professor, Dr. Larry Selden, recently contacted us and raised this issue, suggesting that there should be pricing differences and those pricing differences should be impacted by risks being incurred. For example, if you are paying less for the purchase of Treasuries from a broker-dealer who clears on an interdealer basis, rather than from direct principals of the FICC, that may evidence that you are incurring greater risk. Treasury Direct processes transactions without fees or commissions, but it lacks the convenience and liquidity of purchases from broker-dealers or trust companies. Contrariwise, should you be allowed to bear the risk and pay less? SEC Commissioner Crenshaw, rightly so, does not want to jeopardize the World's financial safe-haven with this risk. <u>**Note**</u>: Dr. Selden is currently studying this area and we are hopeful he will publish his research within the near future.

Legal Developments for Tax Reporting of Crypto Currency Staking Rewards

- The Fat Lady Has Yet to Sing -

A survey conducted in February 2023 suggested that 20% of American adults currently own one or more different types of cryptocurrencies. Whether cryptocurrencies will function as a considerable form of payment, help facilitate smart contracts, or if their function is yet to be discovered is still unknown. However, they are here to stay. As such, the IRS has been forced to deal with the tax ramifications of receipt and dispositions of these forms of property.

The IRS has issued Rev. Rul. 2023-14 which specifies that a cash-method taxpayer who stakes crypto tokens on a proof-of-stake blockchain must include the fair market value of any crypto token received as staking rewards in their gross income in the tax year when they gained dominion and control. As background, cryptocurrencies utilize blockchain technology. In a sense and at a rudimentary level, this technology replaces the need for an intermediary to transact with the cryptocurrency. Generally speaking and as discussed in our Fall 2022 Client Update article entitled, Regulation of Digital Assets and Crypto Currencies, blockchains can be broken into two man categories: Proof-of-Work ("POW") and Proof-of-Stake ("POS"). POW blockchains involve solving complex mathematical problems with specialized computers referred to as "crypto mining". POS blockchains involve taxpayers that own the native crypto token "staking" their tokens to strengthen the blockchain to protect from potential malicious attack. By doing so, these individuals who "stake" their tokens receive tokens as rewards. The issue presented to the IRS was, are these tokens received by a taxpayer who have staked their native tokens considered income or are they to be considered property created by the taxpayer and only taxable upon disposition?

The recent case of Jarret v. United States had been grappling with this very issue. The Jarret's received crypto tokens in reward for staking their native crypto tokens. The Jarret's filed their tax return for the year of receipt of the rewarded crypto tokens and included these tokens as "other income". They then amended their return to exclude this amount as other income and petitioned for a refund. The Jarret's argued their rewarded crypto tokens are similar to grown crops or mined minerals, should receive a zero-tax basis, and are taxable only upon disposition. The IRS argued the full amount of the tokens received should be includable as income with a fair market value equal to value of the token on the day the Jarret's gained dominion and control. The government authorized the refund to settle as the Jarret's had petitioned, but the Jarret's rejected this offer as the IRS had not given assurance of future tax treatment of crypto staking rewards. However, the court ruled the action is now moot as the IRS had issued the Jarret's their requested refund. Even though this is a victory for the Jarret's, this still provides no certainty for future tax treatment of staking rewards.

Many have taken issue with the IRS' guidance under Rev. Rul 2023-14 on the subject. As you may be aware, the crypto market has proven highly volatile. If a taxpayer has staked a substantial amount of crypto tokens in a given year and the price of those tokens were to crash within that year, the taxpayer could be left in a problematic situation when forced to pay their income taxes. For example, taxpayer has two assets: his residence and 100 crypto tokens worth $1 each. He stakes 75 of these tokens when they are worth $1. He is rewarded with 5 tokens for staking when the tokens are worth $1.25. The taxpayer is in the 35% income tax bracket and, thus, responsible for a $2.18 income tax liability due to the rewarded tokens. However, when he wants to liquidate tokens to generate cash to pay this income tax, the token price has crashed and is worth $0.30. Therefore, he must now sell 7.27 tokens to generate the amount of cash to pay off his income tax liability for receipt of 5 tokens and, thus, diminishing any incentive to strengthen the blockchain of the underlying cryptocurrency.

Furthermore, this example does not take into account the inflationary factor of the overall increase in supply of the cryptocurrency. Suppose there is a POS cryptocurrency with 1 million tokens in current circulation. Each token is worth $1. The market cap for this token is $1 million. A taxpayer owns 5,000 of this specific token, has staked some of his tokens in a given year, and has received 1 crypto token as a reward. Now, Taxpayer 1 has 5,001 tokens. Does the market cap for the token now equal $1,000,001 or does it stay equal to $1 million? Basic economic principles of supply and demand will eventually dictate the price, and so, all else equal, the price should decrease due to the increase in supply. But at the time of receipt, the price will more than likely remain equal to $1. Thus, the taxpayer will receive a depreciating asset due to the increase in supply as the price will decrease overtime. Under current law, the taxpayer will owe tax on the value of the token at time of receipt which will hypothetically be higher than the time for payment of taxes. So, why should the taxpayer be punished for receipt of property where the price will soon reduce?

We are continuing to monitor the evolution of this area of law and will continue to update, but for now, IRS guidance should be followed.

Cryptocurrency Trivia and Facts

- Bitcoin, once proclaimed as "rat poison", recently surpassed Berkshire Hathaway in market cap.
- The US government has expressed they are looking into taking the dollar digital as a Centralized Bank Digital Currency. The benefits outlined are that it is safer, allows for quicker transfers between parties, and for automatic payment of taxes. However, history warns one should be wary when giving up privacy of your affairs tp the government.
- Zero-knowledge proofs allow for the effectuation of seamless smart contracts whereby, for example, title to your car is transferred to a blockchain and only released if either the buyer transfers the agreed-upon payment (title to buyer) or if the buyer defaults (title back to you).
- The Department of Motor Vehicles for the State of California has agreed to partner with the creators of the Tezos Blockchain to become the first state to transfer all 14 million automobiles registered in the state to a private "hardfork" of the Tezos blockchain. California residents will prove and be able to transfer ownership by way of Non-Fungible Tokens ("NFTs").
- Binance, the world's largest cryptocurrency exchange, agreed to a guilty plea deal for money laundering violations due to their willful failure to prevent money to flow to terrorists, cybercriminals, and child abusers for the largest fine in the cryptocurrency arena to date- a whopping $4.3 billion.
- There are currently eight (8) spot Bitcoin ETF applications from the likes of Blackrock, Fidelity, Ark Invest, etc. awaiting approval by the SEC with final deadlines for decision in the first quarter of 2024. Other countries, such as Canada, Germany, and Jersey have already approved such ETFs, with China also awaiting their first application approval.
- Spot ETFs differ from futures ETFs as the issuing company must own the underlying asset instead of owning speculative futures contracts, hypothetically leading towards a supply shock effect for the underlying asset.

Conner R. Kempe, Esq., LL.M, received course completion certificates from MIT's Sloan School of Management, on Blockchain Technologies: Business Innovation and Application, and the Saïd Business School, University of Oxford, England, on How are Cryptocurrencies Driving Innovation.

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A Historical Perspective of the Estate and Gift Tax Exemptions and Rates

The original estate tax was enacted in 1916, with an exemption of $50,000 and a rate of 10%. The highest the rate has been is 77%, which was in the 1960s. The current exemption is reduced under current law in 2026 to $5 million (indexed from 2007).

Historical Gift Tax Exemption Amounts (Per Person)

1997	$600,000	55%
1988	$625,000	55%
1999	$650,000	55%
2000	$675,000	55%
2001	$675,000	55%
2002	$1,000,000	50%
2003	$1,000,000	49%
2004	$1,500,000	48%
2005	$1,500,000	47%
2006	$2,000,000	46%
2007	$2,000,000	45%
2008	$2,000,000	45%
2009	$3,500,000	45%
2010	$5,000,000 or 0%	35% or 0%
2011	$5,000,000	35%
2012	$5,120,000	35%
2013	$5,250,000	40%
2014	$5,340,000	40%
2015	$5,430,000	40%
2016	$5,450,000	40%
2017	$5,490,000	40%
2018	$11,180,000	40%
2019	$11,400,000	40%
2020	$11,580,000	40%
2021	$11,700,000	40%
2022	$12,060,000	40%
2023	$12,920,000	40%
2024	$13,610,000	40%

This exemption is set to be cut by 50% in 2026 under current law.

Note: The generation skipping tax rate and exemption is the same as the highest estate and gift tax rate and the exemption threshold has historically been the same as that of the estate and gift tax.

Donor Advised Funds Are Not Private Foundation Replacements

- There Are Pros and Cons to Each -

Donor Advised Funds ("DAFs") are promoted by financial institutions as a substitute for private foundations and as offering greater benefits in a simpler form. Fidelity, Vanguard, Schwab, and many other institutions have their own versions, but they are not all the same. Some are more flexible and contemplate future events and contingencies. One recent study found that Community Foundations offer some of the most flexible DAFs. However, DAFs should be distinguished from private foundations, as they are not the same, are taxed differently, and have different mechanisms for control of investments and what charities ultimately receive benefits.

DAFs are generally treated as public charities and therefore avoid some of the limitations on charitable contribution deductions and regulations associated with self-dealing and forms of prohibited transactions that apply to private foundations. There is no income tax on DAF income and there is no ongoing reporting by the donor. Once a contribution is made to a DAF, the DAF owns the assets contributed but agrees to be "advised" by the donor on how the contributed assets can benefit one or more charities. The manner in which DAF investments are managed is also not subject to donor unilateral control. The donor cannot mandate which charities benefit but, in practice, DAFs generally honor the wishes of the donor, or they would go out of business. But what if the donor becomes incapacitated or dies, who can advise the DAF? This is where family influence can become dissipated, and DAF agreements vary on the extent family members or others may continue to advise the DAF. A DAF agreement can generally be customized to address succession of the advisory role, but this is often tied to the size of the contribution to the DAF- where large, a DAF representative may be more willing to take their time! As mentioned above, Community Foundations seem more inclined to permit customization.

Private foundations ("PFs"), on the other hand, are typically governed by family members as a board of trustees or directors. A PF can be organized as a trust or non-profit corporation and can be controlled by family members. Charitable contribution income tax deductions are sometimes smaller than to public charities. PFs file income tax returns and generally pay a 1.39% income tax on their income and are required to distribute 5% of their average monthly asset value to other charities. Continuity of management and philanthropic policies and objectives can be agreed and provided for within the organization documents. Family members and others who serve a PF can receive reasonable and customary compensation.

For the above primary reasons, DAFs tend to be funded with smaller amounts than PFs, though there have recently been some reports of very large gifts to DAFs. Private foundations have a significant up-front cost compared to a DAF and require IRS approval. The cost of organizing a PF typically ranges from $3,500 to $10,000 or more, depending on the objectives and the scope and burdens imposed through IRS review. Funding a DAF is without cost, other than custody fees. In the end, more control is retained in a PF but costs of organization and maintenance may be higher than in funding a DAF, which is nominal. As a result the size of the contribution and desire for family control will dictate the method used to further the family's philanthropic objectives.

Firm Adopts Black Diamond As Family Office Portal

(continued from cover)

affairs. Advent Direct was being developed in an effort to provide clients with more timely and direct reporting, knowledge, and oversight of their financial affairs on a segregated or consolidated basis through a cloud-based portal. We suggested adding libraries or file cabinets of legal and oversight documents, such as customized reports, wills, trusts, and tax information, which could be accessed in a secure way from anywhere in the World and by anyone who was entrusted with access. Advent took us up on our recommendations and simultaneously acquired rival, Black Diamond, which the Firm has recently integrated.

Black Diamond now allows us to report to families their investment allocations and performace, with multiple money managers or financial institutions; in real estate; and private equity, on a separate or consolidated basis and with differing benchmarks and risk analysis. **Per Advent®**: "Imagine everyone … on the same technology platform, sharing a common, intuitive interface, with instant access to all the data they need in one place, no matter where it resides. Anytime, anywhere, on any device."

Avoiding Loss of Estate Tax Exemptions

(continued from cover)

Recent financial reports presented to the Senate Budget Committee warn that "the continuous rise of the debt-to-GDP ratio indicates that [current policies] are unsustainable." Democrat policy makers focus on taxing "the rich" and their wealth, while Republican law makers focus on eliminating government waste, unnecessary government regulation, and encouraging tax policies that do not hinder U.S. worldwide competitiveness. Bush versus Clinton policies are used as examples, with Bush's much more progressive than Clinton's, which would tax the rich less and middle class more today under these models. Millions of American working families pay no income taxes today but did in 2000. This is due to the progressive nature of the Bush tax policies. In 2001, the top 1% paid 33% of federal income taxes; the bottom 50% paid 4.9%. In 2020, the top 1% paid 42%; the bottom 50% paid 2.32%. Were the rich to pay the same share today as they paid in 2001, their share would fall by $159 billion. Returning to Clinton-era policies would add an additional 20 million working families back on the tax rolls. See: Data from Tax Foundation President, Scott Hodge, presented to Senate Budget Committee, May 17, 2023.

Under Democrat proposals, massive increases in spending are offset by one of the largest proposed tax increases in American history, that would make America uncompetitive again- pushing income tax rates to some of the highest of OECD States. For example, Biden proposals seek to increase the income tax rate from 21% to 28% on corporations, 6% higher than the average OECD member rate. The Democrat focus has been on increasing income taxes on

Continued on page 10

Use Your Exemptions Now

- Gifting to Spouses and Others in Advance of Elections -

Most of our clients have a base, Phase 1, estate plan. Many have taxable estates and have migrated into Phase 2 and 3 planning, which involves a variety of choices, including the creation of qualified personal residence trusts, gifting trusts for a spouse and descendants, family holding companies, and intrafamily loans and sales. There are a variety of common techniques that are used to reduce exposure to the estate or wealth transfer tax system. With the potential reduction of the estate tax exemption in 2026 from over $14 million to just over $7 million, careful consideration should now be given to use of your estate, gift, and generation skipping tax exemptions.

Gifting wealth carries with it a reality that where principal goes, so may income. As a result, an evaluation is often done of the sources and uses of cash during a typical year, in order to understand the financial impact of gifts. For example, if part of one's budget involves gifts to charity or gifts to children and grandchildren, once a gift of the exemption amount is made, those same beneficiaries can be made beneficiaries of a trust so no further individual cash drain is necessary. Also, some gifts have no impact on cash flow and are designed to shift principal or property, and not income, out of a taxable estate.

Where a married couple is involved, a donor spouse may create a trust for the benefit of the donee spouse and their descendants. These are commonly referred to as a "spousal lifetime access trust" or "SLAT." The donor may indirectly benefit from the donee spouse's access, and, if properly drafted, the corpus of the trust will not be taxed in either of their estates. The trust can be designed in a variety of ways to conform with the family's financial needs. We have encouraged many clients to create these in advance of tax reform, elections, and the sunsetting of prior tax reform. As discussed in the article above, Avoiding Loss of Estate Tax Exemptions, the current estate, gift, and generation skipping tax exemptions are set to be cut in half in 2026.

If one spouse creates a SLAT for the other, can the donee spouse create one for the donor spouse who established the first SLAT? The answer is yes, provided avoidance of the "Reciprocal Trust Doctrine" is accomplished. This doctrine has been discussed in a number of our prior Client Updates, with the last found on the bottom of page 3 of our Fall 2022 Client Update: https://kempelaw.com/wp-content/uploads/2022/10/Newsletter-FALL-2022.pdf.

Second marriages create some obstacles in planning, but most can be overcome with proper planning. Furthermore, a spouse in a second marriage who has had a prior spouse die and who received a "DSUE" (see the 4th article on the cover page), should recognize that they must use the DSUE first and prior to the use of their own exemption. The DSUE won't be reduced by the 2026 Sunsetting, but it must be used first before one's own exemption is used. As a result, to avoid loss where a DSUE exists, a much larger gift must often be made to fully avoid loss of exemptions in 2026.

More and More Clients Opting to Convert to Community Property Trusts

- Tax Driven Motivation to Avoid Capital Gain -

More and more clients, given the choice, are opting to utilize Community Property Trusts, as the center of their estate plans. This is becoming common when married clients hold substantial appreciated assets and desire to eliminate capital gain on the first death, where normally there would only be a 50% cost basis adjustment and capital gain elimination. We wrote about Florida's recent enactment of Community Property Trust legislation in our Fall 2022 Client Update in the 3rd article on the cover page: See https://kempelaw.com/wp-content/uploads/2022/10/Newsletter-FALL-2022.pdf

An interesting nuance is that non-Florida residents can utilize this statute with proper planning. A variety of assets may be titled in a trust with a Florida trustee to secure these benefits. The motivation is elimination of 100% of the capital gain tax on the first death.

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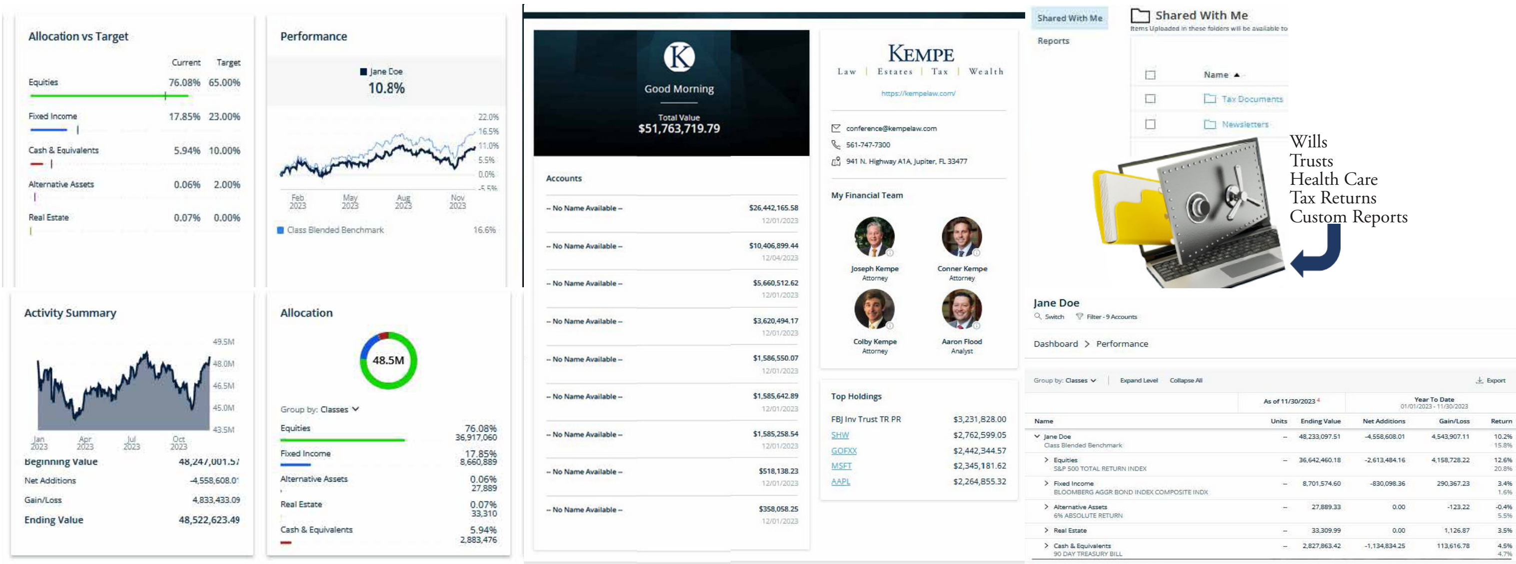
Wealth Monitoring and Family Office Services

- Black Diamond and Our Proprietary and Copyrighted Monthly Client Snapshot - Family and Advisor Reporting -



Projected Increases in Estate, Gift, and GST Exemptions and Exclusions for 2024

Various tax laws are affected by inflation, which adjusts deductions, exemptions, and credits on an annual basis. Here are a few affecting estate planning:

• The estate and gift exemption amount (currently $12.92 million) will increase to $13.61 million for 2024. The GST exemption will likewise increase by the same amount.

• The annual gift tax exclusion will increase from the current $17,000 up to $18,000 in 2024.

• The gift tax exclusion amount that can be given annually to a non-citizen spouse is increasing from $175,000 up to $185,000 next year.

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Client Name:	Jane Doe
Client #:	999.281
Date:	11/25/2023
Reporting Period:	October 2023
Legal Assistant:	Sonya Mochegova
CPA:	Chris Bourdeau
Advent Analyst:	Aaron Flood
Lawyer:	Joseph C. Kempe

Client Snapshot

CURRENT

Total Family Wealth:	$90,932,000
Tax Exempt Trusts & Entities	67,520,000
Husband's Estate Size:	-
Wife Estate Size:	23,411,000
Joint Estate Size:	-
Current Estate Tax:	9,059,000
Percent of Current Estate:	10%
*Projected Gross Estate:	105,726,000
*Projected Estate Tax:	12,766,000
Percent of Projected Estate:	12%
Estate Tax Bracket:	40%
IRA Portfolio:	348,000
*Total Family Partnership	25,098,000

Based upon a 3% return, net of expenses over life expectancy and no valuation discounts. The current Estate Tax estimate assumes a $12,920,000 exemption and 40% tax through 2026, reverting to the 2017 exemption of $5.49M indexed for inflation in later years. We are assuming an inflation rate of 2.5%.

Investment Performance

Year to Date

Portfolio:	**6.80%**
S&P 500:	10.70%
Barclays Agg:	-2.80%

Last 3 Years

Portfolio:	**6.10%**
S&P 500:	10.40%
Barclays Agg:	-5.60%

Current Year Realized Gains and Estimated Tax Status

2023 Gains/(Losses):	$827,000
Protected Tax Status:	Yes

(Performance and Realized Gains are through the reporting date on monitored investment accounts. The IRR for periods over a year are annualized as per GIPS recommendation.)

Income for the Period Ending 2022

Total Income:	$ 750,000
Tax Free Income:	60,000
Adjusted Gross Income:	610,000
Taxable Income:	575,000
Marginal Tax Bracket:	24%

Gift & GST Exemption Used

Husband Gift:	N/A
Wife Gift:	$12,457,000
Husband GST:	N/A
Wife GST:	$11,250,000
DSUE Available:	N/A

Estate Planning Developments

Reviewed & Current	**YES**	**NO**
Will:	X	
Trust:	X	
DPOA:	X	
HCP:	X	
Living Will:	X	
IRA Integration:	X	
Recommendations:	Redemption Completed	
Document Code:	Single 80-20 mod	

Miscellaneous

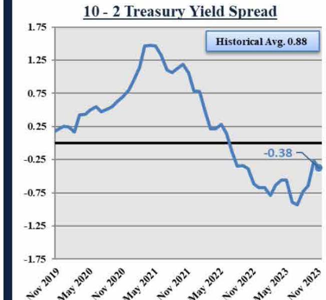
Promissory Notes Current:	Yes
QPRT Lease Anniversary:	FL-June MI-December
Crummey notices verified:	N/A
Family Partnership Records Current?:	Yes
RBD Date: H/W	N/A 12/05
RBD Compliance:	N/A N/A
RMD Compliance:	N/A

Legal Developments

The IRS has released inflation adjustments affecting taxpayers. Among them, the estate gift, and generations skipping tax exemptions increases to $13.61 million on January 1, 2024. Currently, it is $12.92 million. Under present law, the exemption amount is effectively cut in half on January 1, 2026. As such, it is important to use the exemptions before then, or they will be lost and could result in estimated tax increases exceeding $3 million. As such, use in advance of reduction is a significant estate planning consideration at this time. Additionally, the annual gift tax exclusion has increased from $17,000 to $18,000 per donee effective January 1, 2024.

Economic Developments

10 - 2 Treasury Yield Spread



Source: fred.stlouis.org

Observations

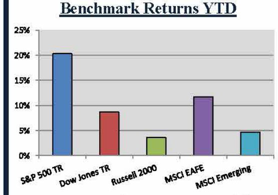
The Fed appears content with allowing the increase in long-term interest rates to constrain the economy in its battle against inflation. This has institutional investors gambling that a soft landing will occur, without a meaningful recession. The CPI was recently measured at 3.2%, with less government spending to produce it, but still positive in increasing prices - just not as fast as it has been over our recent history. Some analysts predict a recession in 2024, while others believe a strong economy and labor market will prevent us from having one. The stock market has reacted with a belief that the Fed will either not raise its key Fed Funds rate or just one more time, and will potentially begin reducing them in 2024, which will enhance market values. Nevertheless, without earnings increases (with a questionable recession as a headwind), a current price earnings multiple exceeding 20% appears to provide some risk that equity markets may be overvalued.

Economic Statistics

	Reported	SGS
Consumer Inflation	3.24%	11.07%
Unemployment	3.88%	25.40%
GDP	2.93%	-2.45%

Source: BLS, ShadowGovernmentStatistics

Benchmark Returns YTD



Source: YahooFinance. Total Returns. Data through 11/27/2023

Vehicles, Including Golf Carts, Pose Liability Risk
- $50 Million -
- How They Are Titled and Who Uses Them Matters -

The vicarious liability laws of Florida extend to all passenger vehicles, such as a car, pickup truck, SUV, van, and even golf carts. The person driving and the vehicle owners can both be responsible for economic and non-economic damages caused by the driver's wrongful acts or negligence. What's more, if the vehicles are jointly owned by spouses, the liability protections afforded them over tenancy-by-the-entireties property, and other forms of ownership may be lost. In a recent Florida case, a golf cart owned by a Miami couple was driven by their 16-year-old niece. She ran a stop sign and an automobile ran into them, ejecting her 12 year old friend who was left with brain and other catastrophic injuries. A Miami-Dade Circuit Judge entered a $50 million judgment against the couple who jointly owned the golf cart, as owners, who were vicariously liable under Florida's dangerous instrumentality doctrine for allowing the niece to operate the vehicle. A separate $18 million judgment was entered against the 16-year old's parents. Differing ownership forms of property have various consequences which should be considered with proper legal counsel.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Estate Planning


Alison Overton, LA
Estate Planning
Wealth Management

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Grantor Trust Debate

(continued from page 3)

A position of the IRS in a Revenue Ruling has no precedential weight and only expresses the view of the IRS. It is no different than my view or the commentary of any other tax lawyer or tax law professor. Rev. Rul. 2023-2 did not cite current regulations or prior revenue rulings where the IRS deems the grantor to own the property of a grantor trust for "income tax purposes." The cost basis adjustment is an income tax rule, and not an estate, gift, or generation skipping tax rule. Furthermore, the notion that the assets are owned by the grantor for income tax purposes are embedded in regulations under the Internal Revenue Code, which has precedential value, and some believe is substantial authority for the position that a cost basis adjustment to fair market value is required by law on the death of the grantor. The IRS argument is viewed as being based upon policy but not current law, and taxpayers are required to follow the law and not policies that have not yet become law. Ultimately a court will decide the issue and resolve the differences in opinion. In this regard, courts have recently removed "deference" toward government agencies being presumed correct when resolving controversies with taxpayers and now base their decisions in law and not current policy views. Those policies must first be enacted as law by Congress before courts are bound to follow them.

An alternative course of action to avoid debate with the IRS in a potential audit is for a grantor facing an imminent death to swap cash for property in the grantor trust. After the swap, the grantor will directly own the property that will receive a basis step-up at death, while cash is in the trust and doesn't need one. This can be done with most grantor trusts without any adverse income tax consequences. The problem is raising and departing with sizeable amounts of cash. We are suggesting that some clients secure a bank line of credit secured by the property in the grantor trust to accomplish the swap in advance of death. Immediately repaying the loan after the grantor's death minimizes any cost of the financial facility, which is more than offset by the tax savings of the cost basis adjustment and elimination of IRS debate over this issue.

Avoiding Loss of Estate Tax Exemptions

(continued from page 8)

corporations and taxing individual wealth, by taxing unrealized gains; taxing wealth in trusts on a periodic basis (like in the United Kingdom, every 21 years); eliminating the increase in the basis of property passing from a decedent at death to fair market value; and causing the recognition of tax on a greater number of individuals on their deaths, by taxing unrealized capital gains (much like under the Canadian system). The Brookings Institute has supported some of these measures and suggests expanding the estate tax to an inheritance tax on recipients receiving more than $1 million. This is suggested as having "the political advantage of focusing on wealthy heirs, who were lucky enough to be the beneficiaries of wealthy relatives or friends, instead of targeting those who accumulated the wealth."

Republicans, on the other hand, suggest focusing on the more than 200 "tax expenditures" (tax driven incentives) that favor high-income taxpayers and large businesses, such as the over two dozen tax credit programs aimed at incentivizing clean energy, carbon capture, alternative fuels sources, and energy efficient businesses. Similarly, further elimination of itemized deductions that benefit the wealthy far more than the middle class are recommended. Republicans have not called for an increase in death taxes or the taxation of unrealized gains. The CATO Institute suggests that "other large modern welfare states fund higher levels of government spending with high taxes on a broad swath of the population." The Institute claims "this is not because politicians in those countries do not want to tax the rich; its because there is not enough money at the top of the income distribution to fund their desired spending levels." As Elon Musk rightfully stated when the IRS leaked his tax information, which was used by the media to support taxation of the wealthy: "Eventually, they run out of other people's money and then they come for yours!"

All that can be concluded at this time is that the 2024 election will likely have an impact on whether the Trump era tax reform will be allowed to Sunset. Both the Democrat and Republican parties have committed to making tax policy front and center in 2024 election debates. We can conclude that something must happen to stem an unsustainable budget deficit. We can further conclude that Democrats are more inclined to maintain spending while increasing the tax on wealth, suggesting they would allow the Sunset to occur. Republicans would be more inclined to extend the increases of the estate, gift, and generation skipping tax exemptions, or at least freeze them at the 2025 level - likely in excess of $14 million. As a result, we continue to suggest clients use their exemptions in advance of the Sunset. Spouses should consider using one of their exemptions before the election. For further recommendations, see https://kempelaw.com/wp-content/uploads/2022/10/Newsletter-FALL-2022.pdf

Newest Members of our Tax Compliance Department

Karen Rezikyan, CPA

Mr. Rezikyan joins us from the national CPA firm, Frankel Loughran Starr & Vallone LLP's, where he was a Tax Manager in their high-net-worth tax department. Prior, he was an international tax accountant with Brunton, Strachan & Khan, CPA in Boca Raton, FL. Mr. Rezikyan's background is concentrated in tax compliance and planning for high wealth individuals; related closely held investment and business entities; and cross border transactions and compliance. Mr. Rezikyan is fluent in both Armenian and Russian. Prior to becoming a CPA he was an equity analyst in St. Petersburg, Russia.

Michael Hersey, CPA

Mr. Hersey is a Florida native whose background and experience are diverse, ranging from tax, accounting, and financial reporting for biotechnology, manufacturing, real estate, and software development companies and their individual owners. Prior to joining us, he spent seven years with Deloitte & Touche, in its West Palm Beach office as well as owning his public accounting firm in Palm Beach County. Mr. Hersey graduated Florida Atlantic University as a member of its Business Honor Society and its Beta Alpha Psi Accounting Fraternity.

Julia Whalen

Ms. Whalen joins us from the international accounting firm of RSM US LLP, where she was involved with individual and business reporting, tax planning, and compliance. Ms. Whalen is a graduate of Florida State with a Masters and a Bachelors degree in Accounting. She was born in Lakeland, Florida.

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Our Tax Compliance and Accounting Department, Multi-Profession Team Members

Our Wealth Management and Family Office Department makes us somewhat different from other firms, as it is centered on a collaborating team of tax lawyers, estate and property lawyers, accountants, financial analysts, and paralegals, all focused on integrating and overseeing estate, tax, and financial planning - true Wealth Management - for our clients.

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Tax Accountant and Wealth Management
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U. Minnesota, Masters of Tax

Chris Bourdeau, CPA
Tax Accountant and Wealth Management
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USS Independence

Owen Bradley, CPA
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f/w Deloitte Tax, LLP
Combat Infantry, Afghanistan

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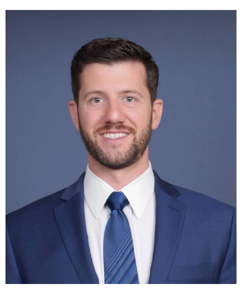

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Aaron M. Flood
Economic Analyst
Wealth Management
Black Diamond® Analyst

Maureen Lloyd Rigaudon
Tax Accountant
Bookkeeper
Wealth Management
Black Diamond® Analyst

Supreme Court Justice
Louis E. Brandeis

Tax Evasion vs. Avoidance

"I live in Alexandria, Virginia. Near the Supreme Court chambers is a toll bridge across the Potomac. When in a rush, I pay the dollar toll and get home early. However, I usually drive outside the downtown section of the city and cross the Potomac on a free bridge. This bridge was placed outside the downtown Washington, DC area to serve a useful social service, getting drivers to drive the extra mile and help alleviate congestion during the rush hour. If I went over the toll bridge and through the barrier without paying the toll, I would be committing tax evasion ... If, however, I drive the extra mile and drive outside the city of Washington to the free bridge, I am using a legitimate, logical and suitable method of tax avoidance, and am performing a useful social service by doing so. For my tax evasion, I should be punished. For my tax avoidance, I should be commended. The tragedy of life today is that so few people know that the free bridge even exists."

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Estate Administration
Fiduciary Services
Wealth Management

Donna Baummier, LA
Estate Administration
Fiduciary Services
Wealth Management

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Do You Have a Someday Box?

- A Longer and More Thoughtful Goodbye -

Our clients usually have a very complete Estate Plan, that includes at a minimum a will, a trust, a durable power of attorney, and advance health care directives, including a living will. However, there are many other writings and thoughts one can consider for end-of life planning. These writings can be saved in a designated box for family. Such a box is often called an "On My Death Box" and to be read or opened by family upon death. Such a characterization may be considered morbid and may end-up being so off putting as to not be opened at all!

We like to suggest another name for such a box, which may serve to better communicate your thoughts and wishes at the end of life: "A Someday Box. " It serves to prevent in many instances, the "I wish we had talked about it" feeling often accompanying survivors. It can also serve to preserve your memory and even be a source of comfort to you in your waning days. Thoughts on what type of funerals or celebrations of life you would like to have carried out upon your death may be addressed by your lawyer. We offer such consideration in our advance directives, but clients often say they would like to develop those thoughts on their own over time. These thoughts and plans evolve over time and having a particular spot to place them encourages one to engage in the process. As an example, green funerals are becoming more and more popular. There is no embalming of the body. Rather the body is often just wrapped in a shroud, placed in a plain pine box, and then interred directly into the ground. This method allows for the remains to become "part of the earth," usually within five to seven years. There are several articles and websites already devoted to this concept. Such green burials are currently not an option for South Florida, but arrangements can be made for places that can accommodate this desire and local funeral homes are familiar with this request. Since this is an evolving concept, an ongoing journal of thoughts on the plan would be very helpful to your family.

When someone desires a Celebration of Life, family members like to receive direction regarding speakers, music, and even a menu. When you take the time to develop these thoughts and write them down, the gratitude of your family is immeasurable. It provides great reassurance to your family to be able to say: "this is exactly what my mom or dad wanted." Another consideration for inclusion in our Someday Box is an "Ethical Will." You share what you would like your family to remember about your thoughts and values. Such a writing never has to take place in one sitting but may reflect various thoughts at different times…these various thoughts are often the very most treasured and appreciated by your family. Sometimes, one writes specific letters to various family members, especially children to be opened at particular times in their lives: upon a graduation, a wedding, even the birth of their own children. Great memories of past events can also be included for sharing. Just the exercise of preparing a Someday Box can have a very positive effect on your life, in the moment. We encourage you to engage in such an endeavor and will be happy to assist should you desire.

Why All the Acronyms And What Are They?

(continued from page 3)

GRATs and GRUTs are Grantor Retained Annuity (or Unit) Trusts and are a common method of transferring appreciating assets out of a taxable estate after a retained cash-flow stream for a stated term expires. They work well in rising interest rate environments because the present value of that cash flow stream reduces the value of the gift to junior family members who receive the trust assets in the future. The greater the appreciation potential of gifted assets above an implied investment return factor, the greater the estate tax savings achieved.

SLATs or Spousal Lifetime Access Trusts are trusts created by one spouse for the benefit of the other, and commonly their heirs. Once the gift is made, the donee spouse has access to the income and principal of the trust, but the trust assets are not included in the estates of either spouse for estate tax purposes.

FLPs or Family Limited Partnerships are commonly designed as investment holding companies that are intended to accomplish a variety of purposes, such as liability protection, investment diversity, a forum for investment discussions, and others. A peripheral benefit often is estate tax savings through market value appraisals of the value of shares held by family members on death, which generally discount the value of the underlying assets that would otherwise be in their estate.

Joint Trusts and Tenancy by the Entireties

- Liability Protection Remains Questionable -

Revocable living trusts generally offer no liability protection. On the other hand, properly drafted joint trusts between husbands and wives may carry with them tenancy-by-the-entireties protection against the liabilities of and claims against one spouse. Tenancy-by-the-entireties is a form of ownership only available to married couples that protects jointly owned property from reach by the creditors of one spouse. Some commentary suggests that, before property is conveyed to such a trust, that it first be owned by the husband and wife as tenancy-by-the-entireties. The law on a variety of issues in this area is unclear and evolving. As a result, those that are concerned about their exposure to liability should have their circumstances reviewed by competent legal counsel.

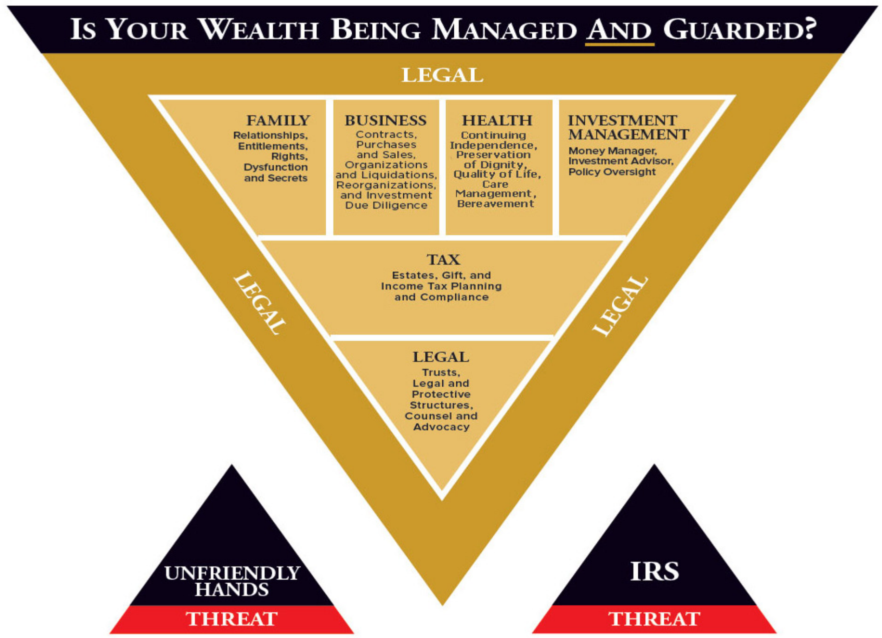
As illustrated in the example on page 10 in the left margin, how assets are titled can expose you to liability risks. If an asset's ownership produces liability to both spouses, the protection afforded to one spouse by tenancy-by-the-entireties status will be lost. As such dangerous instrumentatilties should not be jointly owned or in trusts and proper insurance involving them should be secured.

Alexandra Cormier, LA
Estate Planning and
Estate Administration

Kempe
Law | Estates | Tax | Wealth

What Wealth Management Should Look Like But Popularly Doesn't!

- Don't Confuse Investment Management with Wealth Management -



Leaving your Spouse (Or not) a DSUE

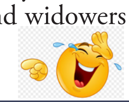
(continued from cover)

It's funny how tax law can bring back these memories and estate planning options. Thus, the "DSUE" or Deceased Spouse's Unused Exemption gains relevance. You see, the DSUE is a form of augmentation you can leave to your spouse, if you wish. If not, the augmentation can be prevented. (We don't advocate such sinister planning, but our job is to educate our clients to their choices, not condemn or insert our biases.)

The DSUE is a new term that has been recently created as a result of the evils portability has brought. Portability, you see, allows a surviving spouse to receive the unused estate tax exemption that historically would be wasted if the first deceased spouse's estate lacked proper planning. For example, historically, if a husband had a multi-million estate and left it all to his wife, the family would have lost his estate tax exemption, because he overfunded the marital deduction by leaving his entire estate to his wife rather than having created an exempt trust for her benefit. Historically, his unused exemption would lapse and not pass to the surviving spouse. On the facts of this example, the "portability" law allows the husband's unused exemption (the "DSUE") ($13.61 million in 2024, and increasing in 2025) to pass to the surviving spouse, but only if an election is made on a timely filed estate tax return, Form 706, and his will does not direct his executor not to make the election. If the election is made, the surviving spouse's exemption is augmented by adding her deceased husband's exemption to hers, for a combined $27.22 million of exemption. What's more, if she remarries and survives her second husband, her exemption could increase further and, as a result of indexed increases, more each year thereafter. (She can use the last deceased husband's DSUE for gifts and, if she remarries again and he leaves his estate to her, she may receive another DSUE from the second husband, according to T. Reg. § 20.2010-3(b).)

Now for more sinister motive through augmentation: What if she can't use the DSUE because her estate isn't large enough, does augmentation make her more marketable in the realm of love or money? Maybe, and here's how. The DSUE of the first spouse is worth $5.44 million in real dollars (40% tax on $13.61 million). Should she marry a gentleman with a sizeable estate, he can use her DSUE plus her "applicable exclusion amount" or exemption (another $13.61 million or $5.44 million is tax savings or $10.88 million combined, in real dollars) to benefit his family. Shouldn't she be compensated, or does she just come to the marriage with a different glow- at least until the lawyers begin to negotiate the value of augmentation in a prenuptial agreement?

<u>**Note:**</u> Under most state laws a married couple does not have to consummate the marriage or even live together. Anyone want to start a database of widows and widowers with DSUE and broker them?



What is Contingent Inclusion?
- Causing Estate Cost Basis Adjustments -

For decades, individuals have attempted to use their gift tax exemptions to remove wealth from their taxable estates. In the 80s, the estate tax exemption was only $600,000, and as of January 1, 2024 it will be $13.610 million. As wealth is and has been shifted by gift, generally the unrealized capital gain is shifted to the donee too- often a trust. The estate tax rate has been as high as 70% above certain thresholds and is currently 40%. The capital gains tax rate at its highest is currently 23.8%. As a result, removing assets from the estate tax system is generally taxwise and more beneficial. But, what of those who have gifted appreciated assets but no longer have a taxable estate because of the increase in the estate tax exemption. Can they put some or all back into their estate to secure a cost basis adjustment at death to fair market value and elimination of the capital gain? The answer is yes, and we generally recommend that it be done with contingencies, drafted by formula, so that if the exemption falls (as current law causes in 2026) no adverse estate taxes are incurred. The attorney's scalpel is the pen!

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Administration
Property Management

Esther Garner
Administration
Stuart Office

Shelly Fisher
Tax Department
Assistant

Allison Judkins
Fiduciary
Administration
and Reporting

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Law | Estates | Tax | Wealth

You Can't Be Anonymous Any Longer

(continued from cover)

violation continues or has not been remedied, and may be fined not more than $10,000, imprisoned for not more than two (2) years, or both.

On September 30th, 2022, the Financial Crimes Enforcement Network ("FinCEN") released the final rule on Beneficial Ownership Information ("BOI") reporting under Section §6403 of the Corporate Transparency Act ("CTA"). The new Section 31 C.F.R. §1010.380 requires certain types of entities called "Reporting Companies" to submit BOI to FinCEN. Reporting obligations begin upon the effective date of January 1st, 2024 ("Effective Date") and apply to both existing entities and newly created entities. Pursuant to 31 C.F.R. §1010.308 (a), entities created before the Effective Date, will have until no later than January 1st, 2025, to file their initial BOI report. Entities created on or after the Effective Date are required to file a BOI report within thirty (30) calendar days of the earlier of the date in which it receives actual notice that its creation has become effective or the date in which the secretary of state, or similar office, provides public notice, such as through a publicly accessible registry (SunBiz in Florida). FinCEN has recently extended this time to ninety (90) days for entities created on or after the Effective Date.

The responsible persons of a Reporting Company must file on behalf of its Beneficial Owners. The definition of a "Reporting Company" under 31 C.F.R. §1010.380(c) includes as a corporation, limited liability company, or other similar entity that is created by filing a document with a secretary of state or a similar office under the law of a State; or formed under the law of a foreign country and registered to do business in the U.S. by filing a document with a secretary of state or a similar office under the law of a State. Therefore, this includes most entity structures, except for most general partnerships and non-business trusts, and those listed in 31 C.F.R. §1010.380(c)(2). These exceptions pertain mostly to entities that are otherwise already regulated in some manner (registered broker dealer, investment company on securities exchange, etc.), banks, government entities, larger entities that meet certain criteria (gross receipts, number of employees, etc.), and others such as charitable or non-profit organizations. It should be known that even certain inactive entities will need to file a BOI report. If an entity is deemed a Reporting Company, pursuant to 31 C.F.R. §1010.380(b)(1), they are required to report the entities legal name; any trade name or DBA; business address; jurisdiction it was formed and registered; and its EIN.

If the entity is one which falls within the definition of a Reporting Company, the "Beneficial Owners" of the entity and each "Applicant" with respect to that Reporting Company are required to provide their BOI. Pursuant to 31 C.F.R. §1010.380(d), a "Beneficial Owner" is defined as an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise exercises substantial control over the entity (including a Trustee of a trust, see 31. C.F.R. §1010.380(d)(1)(ii)); or owns or controls not less than twenty-five percent (25%) of the "ownership interests" of the entity as defined in 31 C.F.R. §1010.380(d)(2). There are certain exceptions to the definition of a Beneficial Owner, which include persons such as minor children; individuals acting as a nominee, custodian, or agent; an individual whose only interest in the Reporting Company is through a right of inheritance; and others. This will include disclosure of Beneficial Owners of a trust or general partnership in the event they are involved in the ownership of a Reporting Company. An "Applicant" is defined under 31 C.F.R. §1010.380(e) as any individual who files an application to form a Reporting Company under the laws of a state, or registers or files an application to register a Reporting Coompany to do business in the U.S. by filing a document with the secretary of state or similar office under the laws of a state. This applies to both the persons who file the company registration and the individual who is "primarily responsible" for directing or controlling the filing (Attorney and Legal Assistant).

If you are deemed a Beneficial Owner or an Applicant of a Reporting Company, 31 C.F.R. §1010.380(b)(ii) provides that you are required to provide specific personal details such as your full legal name; date of birth; current residential or business street address; and a unique identifying number from an acceptable identification document (passport, driver's license, or other identification document issued by a State) on the FinCEN BOI report. After the initial report is filed, any changes to the BOI of the Reporting Company is required to be made within thirty (30) days.

Failure to conform to this reporting will result in the application of certain penalties. Pursuant to 31 U.S.C. §5336(h)(3), any person who willfully provides, or attempts to provide false or fraudulent information, or fails to report complete or updated beneficial information to FinCEN will be liable for a civil penalty of not more than $500 for each day that the violation continues or has not been remedied, and may be fined not more than $10,000, imprisoned for not more than two (2) years, or both.

The new reporting obligation for Beneficial Owners of a Reporting Company is a significant change to the anonymity some structures provided to those Beneficial Owners. With the extent of the penalties non-reporting or fraudulent reporting carry, it is important to have a plan in place to submit these disclosures in a timely manner by the required deadlines. As a result of the implementation of this new reporting, we are implementing and offering a new service to bring those existing entities current on their filing obligations prior to the January 1st, 2025, due date and as part of the organization of new entities. Please contact our office to discuss your specific reporting circumstances.

What is a Family Office?

- It's About Management of Legal, Tax, Financial, and One's Life Affairs -

Some families are wealthy enough to have an office with full time lawyers, accountants, investment managers, and secretarial assistants. Many families aren't as wealthy but have the same needs. Thus, the Multi-Family Office concept was created, whereby professional service firms have sought to scale their services to satisfy the needs of many families, with reduced cost. We believe the services are best delivered through the lens of family legal counsel and have sought to provide this service since the early 1990s. With technology, clients now have a choice to utilize a virtual office, where work product and investment oversight can be monitored and reported through cloud-based internet platforms. Think of it as having your important papers and information readily available, and accessible throughout the World by those you desire and trust, through a computer screen which houses the files and information you otherwise maintain in your home.

Bookkeeping Services Now Offered

- Helping Our Clients Maintain Independence -

As our clients have aged, the services they need to maintain independence has caused the Firm to grow to meet those needs. A common need is bookkeeping and bill payment assistance. Related to this is reporting of financial and medical oversight to family members in distant states. A summary of the level of personal bookkeeping services we offer and customary pricing is provided below:

Estimated Fees	Description of Options
No bill paying, Review of bank activity only - Bookkeeping **$250/mo. ($3,000/yr)** **PER ACCOUNT**	**Option 1: Viewing/Monitoring Account Only** • Obtain online login and password bank information from client; • Monitoring of bank activity including checks and automatic payments such as utilities, caregiver/household employee, and independent contractors; and • Immediately notify client if any inconsistencies or fraud like activity.
Less than 15 checks a month, Bill Paying and Bookkeeping services **$416.67/mo. ($5,000/yr)** **PER ACCOUNT (Individual circumstances may affect pricing)**	**Option 2: Limited Bill Paying/Bookkeeping Services** • We provide limited bill paying services; • Set up and manage QuickBooks Account; • Obtain online login and password banking information from client • Travel to/from client house for signature of checks on a biweekly basis; • Collect and gather bills from client; • Download or Manual input of bank activity into QuickBooks account and perform monthly bank reconciliation; • Provide monthly bank register; and • Provide Quarterly limited financial statements, ex. Profit and Loss and Transaction List by Vendor Report.
The same as above but with 15 checks or more a month **$625/mo. ($7,500/yr)** **PER ACCOUNT (Individual circumstances may affect pricing)**	**Option 3: Full Bill Paying/Bookkeeping Services** • We provide full bill paying services; • Set up and manage QuickBooks Account; • Obtain online login and password bank information from client; • We prepare checks with any 3 Firm members sign checks after client's approval; • Collect and gather bills after change of billing address to the firm. Provide client Weekly Unpaid Bills Report for approval: • Download or Manual input of bank activity into QuickBooks account and perform monthly bank reconciliation; • Provide Weekly accounts payable reports; • Provide Monthly bank register; • Provide Quarterly Transaction by Vendor Reports; and • Provide annual Balance Sheet and Profit and Loss Statement, General Ledger, ex. Profit and loss, and detailed expense breakdown.

These services are often combined with reporting services and financial oversight, such as are illustrated by examples of some reports used on pages 9 of this Client Update. Reports are shared with other family members as approved.

Grace Legner
Estate Planning

Laura Urbina
Estate Planning

Pamela Bruchal
Tax Department Assistant

Kempe
Law | Estates | Tax | Wealth

Kirby (Kempe) Nielsen awarded the International 2023 Exeter Prize

- Caltech Professor and William Hurt Scholar -

The Kempes are proud to announce that their daughter, Professor Kirby Catherine Nielsen, was presented the 2023 Exeter Prize in London, for the most outstanding article published in a refereed journal in the previous calendar year (2022) from the following fields: experimental economics, decision theory, and behavioral economics. Kirby is a post-doctoral fellow of Stanford University and is currently a William H. Hurt Scholar endowed Professor at "Caltech," The California Institute of Technology, in Pasadena, California - commonly ranked the #1 research institution in the World.

See: https://business-school.exeter.ac.uk/research/exeter_prize/

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Counselors Realty, LLC d/b/a Coastal Estates

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Gatlin Title, LLC

Selling a condominium?

- The Sales Contract Obligations Are Mandatory -

In a recent case, A buyer of a residential condominium unit brought an action for breach of contract against the seller and sought the return of their deposit. The purchase and sale agreement contained the standard condominium rider that allows a buyer to cancel the contract within three days of receiving the condominium documents from the seller. The "condominium documents" listed in the condominium rider included, not only the current Declaration of Condominium, but also the Articles of Incorporation, the Bylaws, the Rules of the Association, and a copy of the most recent Year-End financial information and the Frequently Asked Questions and Answers document. Once requested by a buyer, these rights cannot be waived. Just prior to the scheduled closing, the buyer canceled the contract due to the seller's failure to deliver the condominium documents and demanded a return of the deposit. The seller asserted the deposit was forfeited because the buyer refused to close.

The buyer sued the seller for breach of contract and demanded a return of the deposit. The buyer asserted that the seller's failure to deliver the condominium documents before the buyer terminated the contract entitled the buyer to summary judgment, i.e., an order from the judge in favor of the buyer without the need for a trial. The seller argued that the buyer's right to cancel the contract and seek the return of the deposit terminated on the contract closing date, even though the closing never occurred.

Following a hearing, the trial court granted the buyer's motion for summary judgment after finding that the buyer never received the condominium documents that were required to be delivered under the agreement, and therefore, they were entitled to terminate the contract and receive their deposit. The seller moved for rehearing and upon its denial appealed.

In denying the seller's appeal, the Third District Court held that the buyer's right to cancel terminated upon the closing of the transaction. It reasoned that since the closing never occurred, the event that triggered the termination of the buyer's right to cancel did not occur and the buyer was entitled to terminate the contract because it had not received the condominium documents. Imagine right before a closing of your condo, your buyer terminated the contract because you had not delivered all the required condominium documents. If you are selling a condominium, it is imperative that the buyer receives the condominium documents enumerated in the condominium rider and acknowledges in writing that he or she has received them.

Welcome Back Jesse!

- Real Estate Attorney Returns -

Returning after a stint with NextEra, Alumni attorney, Jesse Hap, resigned from our real estate department in 2022 and joined the real estate legal department at NextEra ("FPL"). There he focused on a variety of real estate legal issues, including the enforcement of easements and related issues. After testing the corporate arena, he realized that private practice was where he preferred and he has rejoined the Firm.

New Title Company

- Expansion into St. Lucie County -

David Tassell, Esq., has negotiated the creation of a new title company and strategic alliance with a team of professionals in St. Lucie County. The company name is Gatlin Title, LLC and it is located on Gatlin Boulevard near I-95.

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