CLIENT UPDATE *and wealth advisor*

WINTER 2025 - JANUARY

KEMPE

Law | Estates | Tax | Wealth

Offices in Jupiter, Stuart & Vero Beach

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The hiring of a lawyer is an important decision that should not be based solely upon advertisements. Before you select an attorney, ask them to send you free written information about their qualifications and experience.

WILL TRUMP REPEAL THE ESTATE TAX?

- PLANNING GOALS REMAIN THE SAME -

For those involved with estate planning a great sigh of relief occurred on November 7, 2024, when not only Trump won the election, but the Republicans won the Senate and House. Whether Trump will repeal the estate tax and substitute another system of taxation only time will tell, but this will need to wait until after Trump orchestrates an extension of his 2017 tax reform ("TCJA"). Only two Presidents have served in non-consecutive terms, Grover Cleveland and Trump, with Trump the only one 10 years later able to oversee the extension of his former tax reform. The TCJA was achieved using the Byrd Rule and reconciliation in 2017, which causes it to Sunset in 2026. Whether an extension occurs before the Sunset and will include continued increases of the estate, gift, and generation

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THE QTIP TRUST - FOR THE 99%

- OFTEN BEST AT DEATH BUT A SUPERSTAR DURING LIFE! -

The popularity of QTIP trusts is rising with clients possessing both nontaxable and taxable estates. A "QTIP" (a "qualified terminal interest property trust") is a trust created by one spouse for the other, that by election can qualify for the marital deduction (which is unlimited in amount). For these purposes, a QTIP election means it is treated for tax purposes as a gift to the beneficiary spouse and no tax occurs or exemption is used by the donor spouse on the transfer. On the death of a spouse, a will or revocable trust that provides for a distribution to a surviving spouse through a QTIP trust can provide flexibility, to secure optimum results for a surviving spouse and one's family. Optimization is a result of providing flexibility by election in

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IS YOUR INSURANCE OR GIFTING TRUST A MESS?

- THEY ARE COMMONLY MISMANAGED -

It is quite common for us to review existing irrevocable trusts of prospective clients. We do so without obligation, which invites quite a high volume of review of documents that were prepared by other attorneys around the Country. A common theme with these reviews involves three areas of neglect. The most common tax compliance omission is a failure to file gift tax returns and comply with various gifting rules, even if gifts are under the annual gift tax exclusion (for 2025, $19,000 per person a year). A simple example illustrates the issue. If a premium of $10,000 on a $1million life insurance policy is gifted to a trust, allocating generation skipping tax

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A DIVORCING CHILD AND A TRUST

- HOW TRUSTS PROTECT YOUR HEIRS (OR DON'T)! -

As a general rule, the vast majority of our clients desire that their wealth pass to their heirs, free of risk of attack by a former spouse in a divorce. Similar objectives exist with risks from other unfriendly hands, such as creditors or tax systems. A properly written trust containing spendthrift provisions and proper standards can generally accomplish these objectives, though the terms of the trust matter. For example, mandatory distribution provisions may be garnished as belonging to your heir, whereas discretionary distributions may not be reached. This is often why clients desire wealth to

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What Will 2025 Bring?

- Lots Of Change Is Forecast, But The Results Are Unknown! -

This past year was stressful, given the political bantering and approaching sunset of Trump's 2017 ("TCJA") tax reform. The responsibilities associated with advising clients on the movement and sheltering of their wealth involved billions of dollars and sophisticated structures offering a variety of results, as well as contingency plans. Trillions of dollars of wealth have been transferred by wealthy Americans in contemplation of changes in our tax laws, that now seem as though they will be delayed or even eliminated. With a Trump win and Republican control of Congress, the stress is off for now, but planning mostly remains the same- protect wealth from threats and use the laws to reduce taxes on that wealth.

Trump and Congress are set to follow-through with a revamping of our federal bureaucratic state, backing-up various Supreme Court decisions that ruled our administrative agencies, such as the IRS, EPA, and others, had gone too far in exercising powers not given to them by Congress. "Chevron Deference" (a presumption of correctness in favor of the agency) is dead, and the power of administrative agencies and those within the club leading our Executive Branch (and agencies) may now be significantly reduced, including regulations and regulatory authority. Not only our federal budget, but everyday business expenses will therefore likely be reduced.

The markets ended the year with volatility which will likely continue into 2025, with interest rates and earnings competing for price discovery. Gold and Bitcoin ($100,000 a coin) hit record highs on the back of global tensions. Many pressures are causing market prognosticators to suggest interest rates won't cooperate with the Fed's goal and will remain higher for longer, leaving earnings with a higher hurdle to justify price appreciation. Trump negotiations with the World will potentially exacerbate the associated economic metrics, until hoped-for normalization occurs. But without pain there is no gain, so the optimist in me is hopeful for peace on Earth and prosperity! Furthermore, the reduction of regulation and government waste should be a positive for earnings and interest rates, as our budget and deficits reduce. This may take some time, but the Republicans have a 100 day plan. As a result, the markets are expected to be volatile during 2025 until all of this gets sorted out.

Technology has run amuck, and hacking and cyber crime are on the rise and are likely here to stay. It is an international problem. Like everything, vigilance is imperative in safeguarding oneself and one's wealth. Systems exist to protect us, but none are perfect, and artificial intelligence will exacerbate the problem. Don't click! We are here to help!

Simultaneously, elder abuse and financial exploitation of the elderly is epidemic. Memory loss, loneliness, isolation, and reliance on others compound the abuse and exploitation. Laws provide treble (3 fold) damages against perpetrators, but seldom are they caught, prosecuted, and able to pay the damages. Policing and oversight of ones personal and financial affairs is imperative and our family office services are more frequently and routinely assisting with verification and oversight. In one instance, our 100 year-old widowed client had a new much younger male companion who seemed to all of a sudden be on the scene helping. He claimed to be a volunteer from her church, but the church didn't know him. A background check revealed insolvency and a criminal record. We summarily changed the locks, passwords, and requested he no longer visit. He has not been heard from since. This is more common than you would imagine with people living alone who welcome companionship.

We wish you all the best for 2025. God Bless you and your family!

Joe Kempe

Don't Click!

Don't Provide Numbers!

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Loans To Junior Family Members -Interest free?

- Some Claim It Is A Loophole That Keeps On Giving! -

The Rockefeller family built tremendous wealth, and they managed to preserve and grow their fortune over generations, unlike others that the "shirt sleeve to shirt sleeve in three generations" proverb is meant to depict. They centralized management in a family office, created protective structures using holding companies and trusts, and understood the power of leverage in building wealth through family banking and lending. The foundation of protective wealth building proves to be legal structure. See inverted pyramid on page 13. On a smaller scale, many families seek to provide financial assistance to junior family members when pursuing business ventures, investments, or professions. On an even smaller scale, and quite commonly, senior family members seek to assist junior family members with one of the more important purchases in life, a home. With interest rates rising over the last several years, the leverage created by loans comes at a higher cost than it had before the recent spike in interest rates and inflation. But, can senior family members control the interest actually paid by junior family members, and perhaps charge none at all?

When a senior family member loans money to a junior family member, several issues arise. Some are tax oriented, while others like the marital rights of sons and daughters and their spouses are less technical. Is a gift intended to be made to the son or daughter-in-law the same person who is entitled to keep it after a divorce or death? Should you hold a recorded mortgage, which would prevent them from securing bank refinancings for cash to buy a yacht or Ferrari without your knowledge? Should the loan be joint and due and payable on their divorce or death? These are common considerations in helping junior members and their spouses create a home, where they both feel it is theirs and their long-term investment. Gifting as opposed to lending could just waste money away in a divorce or after a child's premature death. A principal reason to lend as opposed to gift is protection of family wealth. What about interest? Does it need to be paid?

As the Rockefeller family and many others have demonstrated, loans are a great way to shift wealth through the leverage created while protecting that wealth through security arrangements. As long as the proceeds are invested to achieve a higher rate of return than the interest charged, positive leverage occurs in the hands of junior family members without making a gift. The junior family member earned the difference and created their own wealth, which often should be maintained in trusts. However, our tax laws recognize that some may wish to charge less interest to cause greater leverage and wealth to be created, without paying income tax or gift tax and in some instances, also avoiding generation skipping tax. As a result, intrafamily loans must generally impose the "applicable federal rate" of interest, which is published monthly by the IRS. Failure to pay adequate interest, or none at all, may cause adverse imputed taxable income and gift tax to the lending senior family member. So, what is the loophole? What if the loan is from a trust in which the junior family member is a beneficiary? Why did the 2024

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The Trust Protector - The Super-Hero of Some!

- The Increasing Use and Purpose Within Family Control -

We sometimes refer to a Trust Protector as a "fixer," who is either called-in or nominated to serve a trust in certain instances or to accomplish certain objectives. Generally, families desire family control of wealth and often they are trustees of wealth they gift in trust for their children or of trusts funded by others in which they are beneficiaries. For example, a senior family member may make gifts to a trust for their children and grandchildren and serve as trustee and allow their children to succeed them. In this context and to meet various Internal Revenue Code rules and regulations, there must be an "ascertainable standard" for distributions to beneficiaries from the trust to avoid loss of protections and tax-exempt status. By being ascertainable, they are not deemed to hold arbitrary or vague powers which equate to outright ownership. The most common ascertainable standard is "health, education, maintenance, and support," commonly known as a "HEMS" standard. This was discussed in greater detail in our Winter 2019 Client Update, at the bottom of the cover page captioned, *Designing Trusts* : https://kempelaw.com/wp-content/uploads/2021/12/Newsletter-2019.pdf

A trustee is a fiduciary that is bound to the terms of the trust, and for our purposes the ascertainable HEMS standard. If a trustee desires to interpret a trust in a particular way or accomplish a particular goal or objective, they may be violating the terms of the trust. If the beneficiaries of the trust permit the violation to occur, they may be deemed to make a gift or otherwise incur a form of liability for an improper act in not holding the trustee to a fiduciary standard.

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ANTIMICROBIAL RESISTANCE CRISIS
- Recognition of a Future Epidemic -

Antimicrobial resistance ("AMR") is a silent but growing global crisis. Some medical predictions warn that by 2050 this will kill more people than cancer, heart disease, and renal failure combined. This medical condition occurs when bacteria , viruses, fungi, or parasites evolve to resist the drugs designed to kill them. It is a direct result of overuse and over prescription of antibiotics for patients, animals, and general agricultural use in crop protection. The result is a future where once treatable infections like pneumonia, tuberculosis, and urinary tract infections could become untreatable, leading to prolonged illnesses and higher mortality rates

One of the most alarming aspects of AMR is its potential to render routine medical procedures, such as surgeries and cancer treatments, far riskier due to the increased threat of infection If effective antibiotics are unavailable even minor surgeries could become life -threatening

In 2019, AMR alone was responsible for 1.27 million deaths worldwide, a figure projected to rise significantly if not urgent action is not taken. To combat AMR, awareness and responsible use of antibiotics are essential . Patients should avoid demanding antibiotics for viral illnesses like colds and flu, while health care providers must prescribe these drugs judiciously. Global efforts to promote research and improve sanitation and regulate antibiotic uses in agriculture need to increase. Perhaps the most important action for the general population is annual flu vaccines and to guard one's health. Stay Healthy!

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Bioethics Law
Death With Dignity
Guardianship Proceedings

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The Value Of A Good Plan Of Care

- Contemplating The Outcomes and Circumstances In Advance -

Recently an article appeared in The New York Times describing circumstances where a person being evaluated in a hospital setting for the spread of cancer had a Do Not Resuscitate Order("DNR"), which specifically requested that a Do Not Intubate directive be placed on her medical chart. The chart included the requested directive but, in an apparent violation of that directive when the patient experienced an inability to breathe, further life saving measures were implemented. According to the article the patient was clearly in distress while signaling for help. Pursuant to standard hospital protocol, an emergency code was called and, "violating the wishes outlined in her medical chart," the patient was intubated (a tube placed down her throat and into her lungs). The question often posed: "how do these things happen?" The answers are not easy. In this situation, there was a patient struggling to breathe in the presence of oxygen already being delivered through a tube in her nose; and her charts had Do Not Resuscitate and Do Not Intubate orders on file for years instructing medical staff to withhold measures to restart her heart and to never give her a breathing tube. In spite of already receiving a less intrusive method of care (oxygen by cannula), the patient was in critical distress and her daughter called for help.

An emergency situation requires emergency action. A patient struggling to breathe requires immediate medical attention. Dying when awake and aware from oxygen hunger is horrific for a patient and has often been referred to as "death terrors." While this patient clearly was not wanting her life extended through intrusive mechanical means, it is safe to assume she was never envisioning such an untoward experience, as she was suffering when her daughter called for help.

Could this situation have been avoided? This is perhaps the question that needed to be asked in advance. Most likely a more detailed informed consent, with the patient made aware of possible adverse outcomes, like temporary but severe shortness of breath, could have resulted in a "lifting of any DNR/ DNI (do not intubate) Orders" for the procedure and recovery, which would have presented the patient with a choice as to whether to even undergo the diagnostic scope for cancer spread. The value of such a conversation allows the patient to understand the possibilities of emergency intervention and allows the medical staff to provide appropriate care without second guessing what to do in an emergency situation.

The Vulnerability of Loneliness in The Elderly

- Exploitation of the Elderly Is On The Rise -

Elder loneliness is an increasingly prevalent issue in modern society, often overlooked, but deeply impactful as individuals age. With age, social circles tend to shrink due to loss of spouses, family members, and friends, while physical limitations make social engagement more challenging. This isolation can lead to profound emotional fragility, characterized by feelings of abandonment, sadness, and increasing vulnerability to fraud.

The emotional toll of loneliness in elders is not just psychological, it has tangible effects and physical health studies have linked chronic loneliness to a lack of connection and vulnerabilities that may make one more susceptible to anxiety, depression, and at worse premature mortality. These conditions create a ripe condition for financial exploitation, as a target of telephone or mail scams.

Emotional fragility can create a vicious cycle as feelings of hopelessness, discourage efforts to seek companionship and interact with friends and family. Addressing elder loneliness requires a multifaceted approach. Family members, caregivers, and communities must actively foster environments that encourage interaction and inclusion programs that promote intergenerational connections, group activities, and particularly technology training.

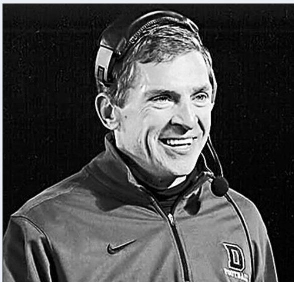
Technology training can help bridge the gap between the young and elder population. Regularly scheduled phone calls, and personal visits ought to be adopted by every family member of an elder. Particularly hearing from grandchildren and young people has been shown to not only be exhilarating, but also very encouraging and stimulating for continued engagement for an elder. Family members who recognize an elder as a source of wisdom and family history create a mutual beneficial solution.

Combating elder loneliness is not just an act of kindness. It is a societal obligation to honor and care for those who have contributed to our shared world.

Thanks Coach!
- Mentoring Our Youth and Future Leaders -

Good Coaches Matter! The accompanying NIL article suggests the importance, and "Coach" means a lot to a lot of people. Here are two that have left us and who had a significant impact on 100's if not 1000's of student-athletes:

Coach Buddy Teevens, Dartmouth Football- Hanover, NH (1956-2023)



Coach Vince Zappone, Chaminade Football- Hollywood, FL (1930-2023)

The NIL and Money Ruining Lives and Amateur Sports
- Most Entertainers and Athletes Die Broke While Paying Taxes-

Good coaches, like Nick Saban and Jim Larrañaga, are leaving college sport because money is ruining it! Good coaches matter! As a former collegiate athlete, like two of my siblings and my father, I feel that I was born about ten years too early to prosper from the monetization of "NIL"- an amateur athlete's "name, image, and likeness." In a short time, non-professional athletes went from being just student-athletes, to being able to monetize themselves in an attempt to make millions of dollars before college graduation. (In full disclosure, I was part of a class-action lawsuit where I received the meager amount of $1,000 for the use of my NIL within an NCAA football video game.) Not all athletes understand proper investment today in their future, as statistics reveal most athletes (and entertainers) die broke. NIL can detract from the investment required to establish the best in oneself, free of superficial reward for what statistics prove is fleeting. Being the best athlete while obtaining the best education provides diversity in opportunities, but it isn't easy as shown. See *Day in the Life of a Dartmouth Football Player* for a typical 6:30am to midnight day. https://www.youtube.com/watch?v=ShEzM3kipNk The focus on NIL and the next flashy piece of jewelry should be discouraged, and proper mentorship can help, since money can prove to be short lived. A good coach matters!

There are many restrictions on how athletes are compensated, with limitations on compensation from schools, coaches, and boosters and for certain restricted things. Furthermore, imagine recognition of the impact of federal and state taxes, investment choices, and fraud and abuse once these young entrepreneurs confront them.

With the monetization of NIL comes tax liability. All income from NIL is income of the student-athlete. If the student athlete can be claimed as a dependent of their parents and earns more than $14,600 for year 2024, they must file their own tax return and report the income received. Student-athletes are considered independent contractors for tax purposes and will receive a Form 1099 to report income received for that given year, by the federal government and each state in which their income is sourced.

These deals are exciting, but it is also necessary to protect the student athlete's NIL as the contracts that they enter could unknowingly last forever. Therefore, a contracting party may maintain rights to an athlete's NIL for longer than that athlete imagined. As such, it is advisable to have an attorney review and negotiate these contracts. Having proper representation in tax planning and investment becomes critical. Furthermore, it is important to recognize that unscrupulous characters prey on naive nouveau riche.

From an estate planning perspective, it is important to protect a student athlete's NIL for the future, especially in separated families where NIL would pass to parents if the student athlete were to predecease without a wife or descendants. Furthermore, marital rights may attach to NIL after a marriage. Proper trust and other planning can assure that the NIL is protected and passes as the student-athlete intends. A student athlete's name is more valuable than ever, so every student athlete and their family should understand their rights to that athlete's NIL before entering any contract where rights are relinquished to another. The student-athlete should be educated to a host of legal issues, and be educated to the need to properly manage income and wealth to avoid the insolvency that is predicted for most professional athletes who did not otherwise obtain competent counsel and management.

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Don't Click or Provide Numbers!
Be Vigilant

A sign like this should be kept around the house, and particularly by phones and computers. Financial exploitation of the elderly is at epidemic levels. What can we all do to help? Education and second- or third-party authentication is a start, but with AI it may not be enough in the near future, so staying ahead of the fraudsters will take vigilance. Here are some suggestions, in addition to the above:

1. Do not respond to phone calls, emails, or text requests for private numbers and information. Assume everyone other than family is looking to scam you.
2. Seek second and third-party verifiers.
3. Suspect anyone requesting phone numbers, passwords, social security, or account numbers and verify who they are by third parties.
4. Leave reminders around the house on what do to and not to do.
5. Pay with automatic transfers rather than checks or credit cards.
6. Perform a daily review of your bank accounts and credit card transactions.
7. Freeze your credit with credit bureaus.
8. Keep an arm's length relationship with new friends and companions who all of a sudden are in your life. Have your attorney do background checks.

Elder abuse is a serious and increasing crime. Damages are multiplied by three, but seldom will damages be collectible from fraudsters!

Crypto Staking-Taxable Income or Creation of Property?

- Clarity Should Be On The Way -

As first mentioned in our last Client Update on page 6, the case of *Jarret v. United States,* addresses the taxation of cryptocurrency mining and it has resurfaced and raises a new issue: the tax consequences of rewards from staking cryptocurrency. https://kempelaw.com/wp-content/uploads/2023/12/Newsletter-Fall-Winter-2023-24.pdf As background, the *Jarret's* staked some of their native cryptocurrency tokens into a block validator pool and received tokens in exchange. Staking tokens means locking up cryptocurrency on a blockchain network to actively support its operations, acting as a validator to verify transactions, in exchange for receiving rewards (usually a percentage of your staked tokens). This process is associated with Proof-of-Stake ("PoS") cryptocurrencies like Ethereum, Cardano, and Solana, where you essentially earn passive income by staking your tokens and contributing to the network security, similar to earning interest on a savings account. By doing so, you cannot utilize these tokens during the time of staking but are rewarded newly issued tokens of the native crypto token. The issue is whether the receipt of the tokens from the staking is considered taxable income, or are they considered property created by the blockchain protocol and only taxable upon disposition.

The arguments on both sides of this issue are persuasive. Some argue that this is similar to interest income or a reward for lost opportunity cost, while others argue that property is created by way of the blockchains protocol and should only be taxable upon disposition, much like mining minerals. *Jarret* wants clarity for the benefit of the whole crypto community and has not been willing to settle with the IRS. Therefore, he has filed a second lawsuit over an IRS assessment received after staking roughly $32,000 of native token. *Jarret's* new case provides the government with the opportunity to address this issue. President-elect Trump has been vocal about being the first "crypto president." He has announced that he will push for a United States strategic reserve of Bitcoin (much like gold was used historically). He wants to make the United States the #1 Bitcoin miner in the World, and wants to "do something great with crypto." Further, he has nominated cryptocurrency advocate Paul Atkins to serve as SEC chairman. The current SEC chairman, Gary Gensler, has been inconsistent and confusing in the regulation of crypto as property or a security and how it should be regulated. With Trump and Atkins at the helm, we would expect some clarity in the Cryptoverse soon.

Microstrategy's Bitcoin Vacuum:

- A Double Entendrical Appliance -

Microstrategys ("MSTR") has been in the limelight lately due to their bullish bet on Bitcoin. This article explores exactly how MSTR is leveraging their company's assets through traditional financial tools implemented in untraditional ways, by simultaneously sucking up fiat currency and debt and equity markets and Bitcoin. This article is not financial advice and should not be relied on as such. It is meant to sensitize the reader to financial uses of Bitcoin by promoters of investments. It is intended to provide insight into one company, and one man who was its founder, that is designed to enhance the value of shareholder's interest by creating a Bitcoin treasury.

The Goal

MSTR, and its founder Michael Saylor, have implemented a strategy whereby the company issues "at-the-market" share offerings and convertible debt instruments to raise billions of dollars. It is currently raising $42 billion over a 3-year period: $21 billion through at-the-market share offerings and $21 billion through convertible debt. However, these dollars are not being saved or invested in currency-backed investments that may lose value over time (sovereign <u>fiat</u> dollars, which can be infinite and vulnerable to currency exchanges and markets), but rather the money raised is being converted to a <u>finite</u> asset that a small percentage of speculators cannot get enough of, "Bitcoin." The term Bitcoin may make most scoff by simply hearing the forbidden word, but antics aside it's the best performing asset of this past decade and should at least receive a glance before being automatically axed from consideration:

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MSTR's mission is to own 5% of the Bitcoin (think gold) that will ever exist, if not more. (Note: Only 21 million Bitcoin will ever exist and as of the date of this article, MSTR currently owns 2.13% of the Bitcoin supply). And by own, Michael Saylor means to own indefinitely, as he is incessant to never sell Bitcoin.

At the Market Offering

Companies that issue at-the market share offerings do so through a placement agent or designated sales agent. The agreement between the agent and the company will specify the number of shares to be sold and the time period over which the sale will take place. In theory, the share offering is not meant to influence the market price; the offering is meant to be as ghostly as possible. However, one would be foolish to think increased buy or sell pressure cannot go undiscovered. Further, MSTR has raised $13.25 billion of the 21 billion in roughly 3 months, through at-the-market offerings. MSTR share price has increased in value by 150% since the implementation of this strategy, which is why MSTR has moved so quickly in selling shares.

Convertible Debt

Convertible debt can be summarized as a person or company making a loan to MSTR in exchange for an interest payment over a period (currently at an average rate of 0.67%), after which the loan value becomes convertible to equity in MSTR at a premium. There are many caveats to these agreements, such as a forced early call to convert and or payoff of the loan by MSTR, but these terms and conditions are beyond the subject of this article. Its potential is self-fulfilling in supporting higher prices, but risk remains to the treasury if Bitcoin falls in value.

Is it Attractive?

Bitcoin is as volatile as any asset. MSTR, owning a lot of Bitcoin, is as volatile as any stock. It is this aspect of the stock that makes it attractive to those buying the at-the-market offerings and

Continued on page 12

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)

Year	Amount	Rate
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%
2025	$13,990,000	40%

This exemption is set to be cut by 50% in 2026 under current law, unless extended by Congress and the Trump administration.

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.

Melissa D. Lazarchick, Esq.
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The Consequences of Asset Titles

- Phase I(b) of Estate Planning -

The creation of a base estate plan, that includes a will and revocable trust, is what we commonly refer to as Phase I (A), which reflects one's desires on death and perhaps after the death of others. Phase I (B) involves asset titles and beneficiary designations, which if not carefully addressed can result in the terms of a will and revocable trust becoming meaningless. Phase 2 through 4 involve advanced tax planning and are discussed elsewhere in this Client Update.

It is important to verify that titles to your assets and beneficiary designations are consistent with your estate plan and ultimate wishes. For example, in a second marriage, spouses often want their assets held in trust for the surviving spouse and upon the surviving spouse's death, the balance to pass to their children from their first marriage. However, if assets are titled jointly with your second spouse, they will automatically pass to the surviving spouse, notwithstanding the terms of your will or revocable trust. In addition to the example above, as discussed in further detail below, there are various factors to consider when determining how to title assets.

Joint ownership- To avoid probate or assist with bill paying, parents will often add a child as a joint owner to their bank accounts. However, serious consideration should be given to titling assets jointly, as there can be negative implications. With accounts owned as joint tenants, both the owners have equal control over the assets and one person can claim ownership over the entire account, no matter who contributed the assets. More importantly, property that is held as a joint tenancy with the right of survivorship can be garnished by a judgment creditor of one of the joint owners to satisfy the judgment debt. In addition, if the joint owner were a child and they divorced, assets in the joint account would be considered assets of your child and divided in the divorce. There are many potential consequences and it is important to open a joint account with caution. If the joint ownership is being created to help with bill pay, etc., you should consider: (1) possibly having the individual added as a power of attorney or signer on the account instead of as owner; or (2) limit the consequences by always maintaining a small balance in the account to reduce the potential impact.

Tenants by the Entireties - In Florida, married couples have the option of holding assets as tenants by the entirety, which is a powerful shield against collection efforts from creditors where the creditor only holds a judgment against one of the spouses. It is similar to joint ownership with survivorship rights, but is only available to married couples and offers unique benefits. The most important benefit is liability protection against claims by one spouse's creditors. To qualify for tenants by the entireties and have creditor protection, the assets must satisfy technical rules on creation of the joint ownership that are referred to as the "unities," described as follows:

(1) Unity of possession (both spouses must have joint ownership and control);
(2) Unity of interest (each spouse has an identical interest in the property);
(3) Unity of title (the interests in the real property must have originated in the same document or transaction);
(4) Unity of time (the interests must have commenced simultaneously);
(5) Survivorship (on the death of one spouse, the surviving spouse becomes the sole owner of the property); and
(6) Unity of marriage (the parties must be married at the time the property was titled in their names).

One spouse can't simply label the account as joint, as the unity of time will be absent. As a recent Florida court did not find the unity of time existed when a husband added his wife to an account he owned individually. Instead, they should have jointly opened the account using one spouse's assets, and both subsequently contributed assets to a new, tenancy by the entireties account.

POD or Totten Trust ("in trust for") Designations- To avoid an individual's assets having to pass through probate, bankers and brokers often suggest adding a pay or transfer on death designation on accounts. This is often referred to as a Totten Trust. The assets in the account remain the owners during their life, but upon their death the balance automatically passes to the named beneficiary. This defeats what benefits and planning is inherent in one's will and trust, which could be designed to provide divorce, creditor, and tax protections to heirs. Furthermore, if all your assets pass to joint owners or designated beneficiaries, there are no estate assets remaining to pay for ongoing administrative expenses, which could include funeral costs, outstanding taxes, the costs to maintain a residence, etc., resulting in possible conflicts amongst heirs. For example, if one of the beneficiaries or joint owners isn't willing to contribute funds needed to pay those costs, the executors of your estate may have a very difficult time clawing-back money needed to cover those expenses and various gift tax implications can arise.

In summary, this is a reminder to frequently review and consider the ownership of your assets and whether there are listed beneficiaries, and the consequences of that ownership and those beneficiaries. It is the title and potential beneficiaries that ultimately control who has rights to those assets on your death and how they will pass, notwithstanding what your will and revocable trust say.

FinCEN Reporting, Will We Ever Know What To Do?

- Like Ping-Pong, on a Daily Basis -

The Corporate Transparency Act ("CTA") took effect in 2024 and requires all existing business entities (Corporations, Limited Liability Companies, and Partnerships, etc.) to file Beneficial Owner Information Reports ("BOIR") prior to Jan. 1st, 2025 (extended by 6 months for certain individuals affected by Hurricane Milton). Newly formed entities in 2025 have thirty (30) days to submit their reports. On Dec. 3rd, 2024, a Federal District Court in Texas declared the CTA likely unconstitutional, preliminarily enjoined the Treasury Department from enforcing the Act, and stayed the Jan. 1st, 2025, compliance deadline, pending further orders from the Court.

On Dec. 23rd, 2024, the U.S. Court of Appeals for the Fifth Circuit granted the government's motion for a stay on the nationwide preliminary injunction issued by a Texas District Court on Dec. 3rd, 2024. With the injunction stayed, reporting companies were again required to file their Beneficial Owner Information Reports ("BOI"). FinCEN granted an extension for existing company reports due Jan. 1st, 2025, to file by Jan. 13th, 2025. However, the ninety (90) day filing period for newly formed entities in 2024 was not extended.

In the evening of Dec. 26th, 2024, the U.S. Court of Appeals for the Fifth Circuit u-turned on their prior December 23rd ruling. The Fifth Circuit Court of Appeals ruled that in order to preserve the "constitutional status quo" while the parties' substantive arguments are considered, the stay issued on Dec. 23rd, 2024, is vacated until the appeal process is finalized.

As a result and at this moment, this brings us back to where we were on Dec. 3rd, 2024, with reporting company submissions being voluntary until the appeal is finalized. The government has asked the Supreme Court to lift the injunction, however this may change again before you finish reading this!

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Tuck Business Bridge, Dartmouth
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Will Trump Repeal The Estate Tax

(continued from cover)

skipping tax exemptions is not a certainty, but it is likely unless the need for revenues within the 10-year reconciliation budget window requires it. The GOP's roadmap plans for the TCJA extension to occur within 100 days of claiming their power. Whether the estate and gift tax system will ultimately be repealed is not a certainty, but Trump has supported replacement of the system with a capital gains recognition tax at death, much like Canada imposes. Bolstering this possibility, two political leaders who have advocated for the repeal of the estate tax are in key leadership roles. Congressman Billy Long has been nominated by Trump to head the IRS and Senator John Thune has been selected as Senate majority leader. A revamp and replacement of historic systems, however, will take much more time and involve much more work.

The revenue raised through the estate and gift tax regimes has been steadily declining to a level where they have little significance, while estate tax return filings are increasing and burdening the IRS, who will likely face budget cuts during a Trump administration. Of the estate tax returns filed (based upon the most recent data available from 2022), 61% were not required because the estate values were below the filing threshold- $13.61 million in 2024. Filings have become more common, even on smaller estates, to make elections to preserve wasted estate tax exemptions of deceased spouses and, often more importantly, to reduce capital gains taxes. Some are filed to set values and to bar the IRS from future adjustments, but most are filed to elect what is known as "portability." For example, if a couple has a $10 million estate that is evenly divided and the husband died in 2024 leaving his estate in a non-"QTIP" trust (See article two on the cover concerning the advantages of QTIP trusts) for his wife, the husband ostensibly would have $8.61 million of unused exemption that would go wasted unless an estate tax return is filed and a "portability" election is made. The election results in a "DSUE"- a deceased spouse unused exemption- passing to the surviving spouse. See the last article on the cover of our Winter 2023-2024 Client Update, *Leaving Your Spouse (or Not) a DSUE…*: https://kempelaw.com/wp-content/uploads/2023/12/Newsletter-Fall-Winter-2023-24.pdf This election would cause that $8.61million unused exemption to pass to the surviving spouse, permitting her estate to use it on her death, while receiving a cost basis adjustment eliminating capital gains tax on what is taxed in her estate. Could we also obtain an additional basis step-up on the husband's assets as they grow over the wife's lifetime that are now held in a trust that qualifies for a QTIP election? The answer is, Yes! If a full QTIP election had been made, rather than applying the decedent's $5 million exemption to the assets in the "non-QTIP" trust, the DSUE would be the husband's full unused $13.61 million exemption, which added to the surviving spouse's exemption in 2024, would exceed $27.2 million. This amount would be available to not only shelter the couple's taxable estate, including growth from the husband's date of death, but it would also cause all of their assets to be included in the wife's estate where the cost basis of those assets would receive a step-up to fair market value, thus potentially eliminating both estate and capital gains taxes. Should the Canadian system be adopted, as discussed herein, filings for these purposes would be eliminated but it would create even more filings as that system would likely affect far more people.

As a result of the above and the gamesmanship inherent in estate planning and areas where the estate, gift, and capital gains tax systems are not in sync, there has been a push to replace the estate tax system with a deemed recognition of capital gains at death. Trump has supported such a system, with a $5 ($10 for couples) million gain exclusion. So has Billy Long and John Thune. This system would seem more progressive, capturing more taxpayers, but as proposed at lower and likely flat capital gains rates of 20%. Where does that leave us? Our Country needs revenues, with the exact amount dependent on the spending cuts Trump and DOGE (Trump's proposed "Department of Government Efficiency") can achieve. Tax revenues are raised most easily using existing systems, while raising rates or decreasing exemptions. Decreasing deductions has been inherent in our most recent tax reform, while increasing rates. Should revenues be needed, decreasing exemptions while making the current estate tax system more progressive, with increasing marginal rates, would seem to be an easy way to accomplish that objective. A lot depends on DOGE and Congress!

Many of the same planning tools commonly used to avoid estate taxes, can be used to avoid capital gains tax. For example, various gifting strategies, such as qualified personal residence and gifting trusts; valuation reduction strategies, such as fractionalization and use of shares of family partnerships; and other wealth shifting techniques remove asset value and their appreciation from both taxing systems. As a result, most commentators and planners suggest continuing to implement these dual-purpose planning measures, because the estate tax system still exists and is likely for the foreseeable future (and potentially beyond in future administrations), while many of these traditional planning tools offer both estate and capital

Continued on page 14

Good Morning
Total Value
$51,763,719.79

Accounts

Account	Value	Date
-- No Name Available --	$26,442,165.58	12/01/2023
-- No Name Available --	$10,406,899.44	12/04/2023
-- No Name Available --	$5,660,512.62	12/01/2023
-- No Name Available --	$3,620,494.17	12/01/2023
-- No Name Available --	$1,586,550.07	12/01/2023
-- No Name Available --	$1,585,642.89	12/01/2023
-- No Name Available --	$1,585,258.54	12/01/2023
-- No Name Available --	$518,138.23	12/01/2023
-- No Name Available --	$358,058.25	12/01/2023

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My Financial Team
Joseph Kempe, Attorney
Conner Kempe, Attorney
Colby Kempe, Attorney
Aaron Flood, Analyst

Top Holdings

Holding	Value
FBJ Inv Trust TR PR	$3,231,828.00
SHW	$2,762,599.05
GOFXX	$2,442,344.57
MSFT	$2,345,181.62
AAPL	$2,264,855.32

Our teams of accountants and attorneys assist families on a multi-generational basis and fill the gaps that a full-scale family office would often achieve, but at a fraction of the cost through an annual fixed fee.

Bookkeeping and Bill Payment- our staff of bookkeepers assist with reconciliations, accountings, cash flows, bill payments, and with security authentications, under the supervision of lawyers and CPAs.

Tax Planning and Compliance- teams of CPAs and tax attorneys collaborate on client tax minimization and assure legal structures are followed, which oftentimes is lacking. Furthermore, we file 1000s of tax returns a year for our clients and proper tax compliance mitigates exposure to penalties and reduces risks.

Wealth Management and Reporting- we often work in conjunctions with investment advisors as a team member who verifies cost and performance, while mitigating the tax effects on transactions and cash needs. We also assure investments are being made in protective and proper legal structures and that cash flows are proper. Aiding clients with transitions is often achieved with oversight and reporting, not only to the client but other family members that live in distant states. Periodic reporting conferences bring everyone together to assure optimum results and effective communications. Our reporting uses virtual family office software systems which we helped develop as a beta user for major public companies.

Legal - true wealth management begins with legal foundations and relationships with legal meaning and consequences. That means lawyers created the foundation and when not monitored by those who understand legal structure, the best laid plans can fail. The client typically must assure this by bringing professionals together, which is often neglected. We commonly assume that role!

Projected Increases in Estate, Gift, and GST Exemptions and Exclusions for 2025

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 $13.61 million in 2024) increases to $13.99 million in 2025. The GST exemption will likewise increase by the same amount.

- The annual gift tax exclusion will increase from the current $18,000 to $19,000 in 2025.

- The gift tax exclusion amount that can be given annually to a non-citizen spouse is increasing from $185,000 up to $190,000 next year.

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Client Name:	Jane Doe
Client #:	999.281
Date:	12/30/2024
Reporting Period:	November 2024
Legal Assistant:	Sonya Mochegova
CPA:	Chris Bourdeau
Advent Analyst:	Aaron Flood
Lawyer:	Joseph C. Kempe

Client Snapshot

CURRENT

Total Family Wealth:	$101,928,000
Tax Exempt Trusts & Entities	75,305,000
Husband's Estate Size:	-
Wife Estate Size:	26,623,000
Joint Estate Size:	-
Current Estate Tax:	10,014,707
Percent of Current Estate:	10%
*Projected Gross Estate:	117,465,000
*Projected Estate Tax:	14,113,000
Percent of Projected Estate:	12%
Estate Tax Bracket:	40%
IRA (Roth) Portfolio:	403,000
*Total Family Partnership	29,759,000

Based upon a 3% return, net of expenses over life expectancy and no valuation discounts. The current Estate Tax estimate assumes a $13,610,000 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:	**16.30%**
S&P 500:	28.10%
Barclays Agg:	2.90%

Last 3 Years

Portfolio:	**7.20%**
S&P 500:	11.50%
Barclays Agg:	-2.00%

Current Year Realized Gains and Estimated Tax Status

2024 Gains/(Losses):	$1,021,682
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 2023

Total Income:	$ 768,902
Tax Free Income:	69,582
Adjusted Gross Income:	699,320
Taxable Income:	682,608
Marginal Tax Bracket:	24%

Gift & GST Exemption Used

Husband Gift:	N/A
Wife Gift:	12,023,612
Husband GST:	N/A
Wife GST:	11,273,170
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:	Consider gifting to granchildren to use exemption/GST	
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?:	5/10/2024
RBD Date: H/W	N/A 12/2005
RBD Compliance:	N/A N/A
RMD Compliance:	N/A - Roth

Legal Developments

The annual estate, gift, and generation skipping tax ("GST") exemptions will be increasing to $13.99 million and the annual gift tax exclusion to $19,000. It appears the Trump administration and Congress are focused on extending the 2017 Trump tax cuts, which will extend or make permanent those laws foreclosing the reduction of the estate, gift, and GST exemptions by 50% in 2026.

Economic Developments

Personal consumption expenditures (PCE)
Monthly Change
0, 0.1, 0.2, 0.3, 0.4, 0.5, 0.6
Nov-22, Mar-23, Jul-23, Nov-23, Mar-24, Jul-24, Nov-24

Observations

The Fed recently cut rates by 0.25% while demonstrating hawkishness on further reductions which the financial markets disliked, causing a sell-off. Later that week, a lower than expected and favored measure of inflation (PCE) offset the Fed's hawkishness providing some optimism rates could still be reduced to fight a slowing economy, causing markets to rebound. The week's volatility may be a micro view of the volatility that can be expected in 2025, particularly while digesting Trump's policies and threats of tariffs.

Economic Statistics

	Reported	SGS
Consumer Inflation	2.75%	10.54%
Unemployment	4.25%	26.80%
GDP	2.66%	-0.63%

Source: BLS, ShadowGovernmentStatistics

Benchmark Returns YTD

0%, 5%, 10%, 15%, 20%, 25%, 30%
S&P 500 TR, Dow Jones TR, Russell 2000, MSCI EAFE, MSCI Emerging
Source: Morningstar. Total Returns. Data through 12/19/2024

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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.

Stefanie Delrusso, LA
Estate Planning

Alison Overton, LA
Estate Planning
Wealth Management

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Loans to Junior Family Members

(continued from page 3)

Treasury Greenbook seek to treat loans from trusts as distributions to "divorce the [beneficiary's] ability to benefit from trust assets from the receipt of income for tax purposes, thereby allowing them to inappropriately avoid income and GST taxes[?]." Why not gift tax too? Because trusts don't make gifts, trusts are created by gifts and a tax would be due at the time of creation of the trust, if at all. If a distribution from the trust could be made without these taxes, why can't a trustee benefit the beneficiary while protecting wealth with a below market interest rate loan or no interest at all? The answer is that it should be able to and can!

The loophole the Biden Administration sought to close exponentially increases multigenerational wealth creation without customary tax charges under our income, estate, gift, and generation skipping tax regimes. Wealth has already been gifted to the trust, with a tax charge or application of various exemptions, and the borrowing family member is a beneficiary. If a trustee can distribute property to the family member as a beneficiary, why can't they lend money and allow use too without another level of adverse taxes? The answer is that they can under most state laws and provided that the trust is drafted and administered properly. Under F.S. § 736.0816, loans to beneficiaries of trusts are expressly authorized under Florida law on terms and conditions that are fair and reasonable under the circumstances. As long as the "principal" purpose of the interest free loan is not the avoidance of federal tax, the applicable statute supports the position sough to be closed by the 2024 *Greenbook*- there is no adverse income, gift, or generation skipping taxes incurred. See IRC § 7872. There can be many important and proper reasons to loan funds rather than distribute them, some of which are explained in this Client Update.

What Happens to the Loan on Death?

- The Good and Bad of Lending to Family Members -

As the article above mentions, lending money between family members can be very beneficial in shifting wealth tax free to junior family members. It also suggests that loans are often better coming from a trust in which the borrowing family member is a beneficiary. In other cases, a trust may not exist, and the loan may have been made by a senior family member because of other planning or circumstances. But what happens to the loan (promissory note) on the death of the holder? Or was it really a gift?

A loan will be considered a loan and not a gift if it was intended as a loan and, if made as consideration for a sale of property between family members, a sale was truly intended. In other words, if a loan was simply masquerading as one where a gift was truly intended, the IRS will treat the loan as a gift, in the year the loan was made. As such, this can be serious if the loan exceeds the lenders available gift tax exemption in the year of the loan, resulting in a 40% or higher tax on the excess. See Rev. Rul. 77-299. This should be distinguished from a bona fide loan that is later forgiven. Rev. Rul. 81-264. Whether the loan was serviced with interest payments or others is an important factor in evidencing that a true loan exists. Furthermore, if the junior family member had no means to service the debt, this would strongly evidence the absence of a bona fide loan and that a gift was intended.

When a person dies holding a promissory note, it becomes a part of their taxable estate, as property passing pursuant to their will or revocable trust. It becomes subject to estate tax at its date of death value if the estate's value exceeds the available estate tax exemption. Often these loans were made years prior and produced beneficial wealth transfer to junior family members, through the leverage it created. As part of the taxable estate, it must be valued, and the IRS assumes the value will be its unpaid balance. However, the unpaid balance isn't true fair market value and discounts to the unpaid balance may be available because of the interest rate environment, absence of collateral, and borrower's ability to pay. (In one notable case, we secured a 70% discount to face within an audited estate, resulting in a substantial estate tax reduction.) Furthermore, it is at this point that the IRS can question whether the promissory note represented a true loan many years ago and whether an unpaid gift tax, with interest and penalties, exists since the date the loan (gift) was made. A substantial liability could exist if the loan wasn't properly handled when made and no payments were made on the loan, or they were consistently forgiven.

The forgiveness of a loan at death does not necessarily evidence the absence of a true obligation, but it can be supportive of that argument by the IRS if no meaningful payments were made since the loan was made. Cancellation of debt is generally taxable income to the obligor, unless forgiven by gift or at death. See discussion on Rev. Rul. 77-299 and 81-264 above. Nevertheless, any unpaid or accrued interest may have income tax consequences. As a result, many clients desire to forgive obligations at death by expressly saying so in wills and trusts. Often, however, it is beneficial for the obligation to be passed to a trust in which the obligor is a beneficiary, for the beneficiary's own planning purposes and as a means to equalize the distribution of an estate among the inheriting generation.

Unfortunately, intrafamily loans are often misused or used too casually. They can be considerably beneficial, but unfortunately often create bad consequences if not handled properly.

Newest Members of our Tax Compliance Department

Sharon Howard, CPA, CMA, MST

Ms. Howard joins us from the West Palm Beach, FL office of Divine Blalock Martine & Sellari, having built her career working for various international and national accounting and financial firms, including Pricewaterhouse Coopers, Bank of America, CBIZ, and Duke Energy. She holds Certified Public Accountant, Certified Management Accountant, and Masters of Accounting designations or degrees. Sharon's BA degree in Accounting, with honors, is from Belmont University and her MST is from the University of Baltimore. She also held positions at Robert Half, recruiting senior level accountants.

Ms. Howard is proficient in passthrough entities, corporate, and individual tax planning and compliance. She was also a senior tax manager with a large REIT, where she assisted in the establishment of an in-house compliance and accounting department to aid transition from Deloitte Tax, LLP. She joins our Tax and Wealth Management Departments, where she will become an integral member of our teams of attorneys, accountants, legal assistants, and analysts.

Joshua Abel

Mr. Abel joins us from the national accounting firm, Carr, Riggs & Ingram's, Stuart, FL office where he was a senior tax accountant, working on tax planning and compliance for pass-through entities and individuals. Prior to his accounting work, he was a financial analyst at Equitable Advisors, Orlando, Florida, and S&P Global, New York, New York.

Mr. Abel attended Lyon's College in Arkansas, where he received Finance and Economics degrees while captaining the varsity football team, as a running back. His academic achievements garnered him membership in the President's List, All-Conference Academic Team, and the National Football Foundation Hampshire Honor Society.

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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.

Benjamin Devlen, CPA
Tax Accountant and
Wealth Management
f/w WTAS LLC (Arthur Andersen)
Notre Dame, Masters of Accounting

Denise Alpert, CPA
Tax Accountant and
Wealth Management
f/w LKD and Deloitte Tax, LLP
Barry U, Masters of Accounting

Chris Bourdeau, CPA
Tax Accountant and
Wealth Management
Operation Desert Shield
USS Independence

Owen Bradley, CPA
Tax Accountant and
Wealth Management
f/w Deloitte Tax, LLP
Combat Infantry, Afghanistan

Michael Hersey, CPA
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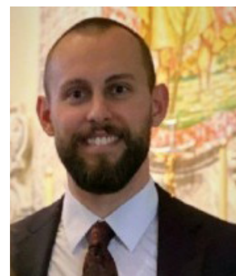

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Supreme Court Justice
Louis E. Brandeis

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
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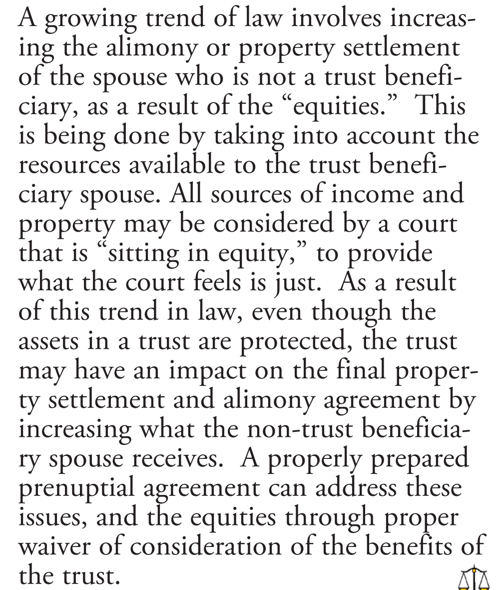
A Divorcing Child And A Trust

(continued from cover)

remain in trusts indefinitely, until needed. Need can be defined and often is as a standard for distribution, such as "health, education, maintenance, and support" ("HEMS"). Such a standard can be exercised by your heirs without risk of estate tax inclusion, but often in a divorce a divorce attorney may recommend resignation and appointment of another person to police distributions- perhaps a sibling or grandchild. Nevertheless, the focus here is on whether a divorcing spouse may reach in the trust to satisfy a property settlement and claim the assets as marital property of the marriage. Generally, this will not be the case with an inherited or irrevocable trust, which is properly written and protective. But, what about alimony or other forms of property settlement?



A growing trend of law involves increasing the alimony or property settlement of the spouse who is not a trust beneficiary, as a result of the "equities." This is being done by taking into account the resources available to the trust beneficiary spouse. All sources of income and property may be considered by a court that is "sitting in equity," to provide what the court feels is just. As a result of this trend in law, even though the assets in a trust are protected, the trust may have an impact on the final property settlement and alimony agreement by increasing what the non-trust beneficiary spouse receives. A properly prepared prenuptial agreement can address these issues, and the equities through proper waiver of consideration of the benefits of the trust.

MicroStrategy's Bitcoin Vacuum

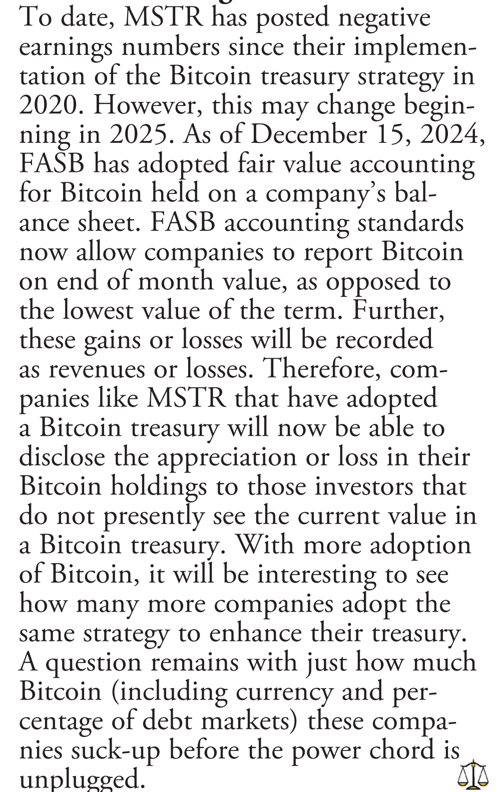
(continued from page 6)

the counter-party to the convertible debt instruments.

Further, insurance companies have become counter-parties to the convertible debt instruments because they want exposure to Bitcoin and were unable to leverage Bitcoin on their balance sheet when calculating their counter-party risk. MSTR, along with other companies that have adopted such a strategy, are converting billions of dollars of fiat currency into Bitcoin. (Fiat currency is potentially infinite in quantities, whereas Bitcoin is finite in amount like gold.)

Dilution

A common question with the enormous amount of shares sold and convertible debt issued is dilution of current shareholder value. However, all capital raised is used to purchase Bitcoin. This only bolsters MSTR's balance sheet and the Bitcoin value further through self-perpetuating demand, which only time will tell whether the growth of Bitcoin outweighs the dilution on debt maturity or equity conversion. The market prices securities on anticipated future return on investment. There are many factors at play with the market cap of MSTR, as it is currently priced at roughly 2x its Net Asset Value and has reached a high of 3.41. This premium has been dubbed the "Saylor Premium." It cannot be objectively measured whether the market will overprice the future value of a Bitcoin treasury as new shares are



issued. With convertible debt, however, the convertible shares are almost always a wash, at higher strike prices, but this doesn't have to be the case. The issuer of the convertible debt will hedge the convertible debt instrument by opening a short position. Therefore, if the debt is converted to shares, the shares are used to fill the short position.

FASB Accounting Standard

To date, MSTR has posted negative earnings numbers since their implementation of the Bitcoin treasury strategy in 2020. However, this may change beginning in 2025. As of December 15, 2024, FASB has adopted fair value accounting for Bitcoin held on a company's balance sheet. FASB accounting standards now allow companies to report Bitcoin on end of month value, as opposed to the lowest value of the term. Further, these gains or losses will be recorded as revenues or losses. Therefore, companies like MSTR that have adopted a Bitcoin treasury will now be able to disclose the appreciation or loss in their Bitcoin holdings to those investors that do not presently see the current value in a Bitcoin treasury. With more adoption of Bitcoin, it will be interesting to see how many more companies adopt the same strategy to enhance their treasury. A question remains with just how much Bitcoin (including currency and percentage of debt markets) these companies suck-up before the power chord is unplugged.

New Florida Laws See Substantial Increase In Use

- Income Tax Elimination and Florida Situs for Nonresidents -

As first written about on the cover of our Fall 2022 Client Update, the benefits of community property trusts and Florida trust protectors (trust directors) can be substantial. See https://kempelaw.com/wp-content/uploads/2022/10/Newsletter-FALL-2022.pdf Florida residents, as well as non-residents who choose a Florida administrative trustee subject to the direction of family members, may gain the tax advantage of the Florida community property law. As the cited article explains, the advantage is 100% capital gain elimination on the death of the first spouse, rather than what is often just 50%. Properly structured, the capital gain elimination of non-Florida real property can be achieved.

Families are also choosing to use Florida administrative trustees to avoid income taxes of foreign states. For example, heirs living in New York, Connecticut, Illinois, California, and others may inherit trusts that become subject to state income tax. These are often created by parents who were Florida residents at the time of the trust's establishment, which enhances their connection to Florida that satisfies common state statutory rules on "nonresident trusts" (those not resident for tax purposes). Maintaining situs through administration in Florida can be accomplished with an administrative or directed trustee, with family members or committees directing investment and distributions. Doing so has also proven beneficial for clients who sometimes migrate north to be closer to family, after the death of a spouse.

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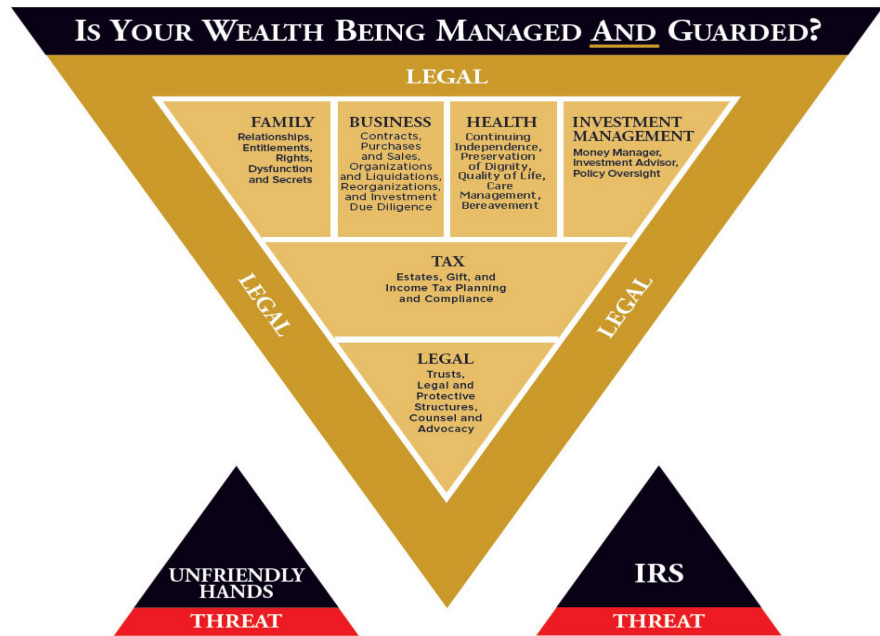
What Wealth Management Should Look Like But Popularly Doesn't!

- Don't Confuse Investment Management with Wealth Management -



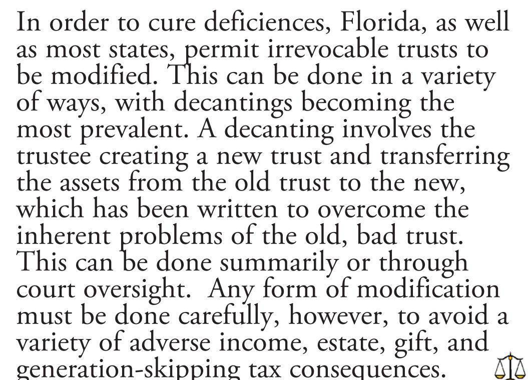
Is Your Insurance Or Gifting Trust A Mess?

(continued from cover)

("GST") exemption to the gift causes the entire $1 million to be GST exempt, thus avoiding the trust assets from being taxed in your children's estate and better asset protected. Tremendous leverage of the GST exemption is accomplished, particularly with insurance trusts. Each year that premiums payments or other gifts are made to irrevocable trusts, a return should be filed to track the use of one's GST exemption and to assure the inclusion ratio of the trust is zero. There are some exceptions, but we commonly must verify the status of gifts to trusts since inception to know whether the trust is 100% GST exempt (also known as bearing a zero-inclusion ratio). Furthermore, often proper procedures using "crummey notices" aren't followed and appropriate records aren't maintained to avoid loss of annual gift tax exclusions.

Most clients desire wealth to be exempt from unfriendly hands, such as those in a divorce, of a creditor, or of a taxing authority. Therefore, trusts should be drafted to avoid these threats and to secure the benefits of the GST exemption. Often irrevocable trusts fail to do so and, as a result, they may be wasting GST exemption that has been affirmatively or automatically allocated under rules that are not widely understood by tax return preparers. For example, it is now antiquated to see trusts written to distribute outright and free of trust at ages, such as 30, 35, and 40, which would waste GST exemption. Again, it is common for us to review the history of gifts to trusts to uncover these types of planning deficiencies.

Last are trusts that interject third party trustees. As discussed on the cover of our Winter 2019 Client Update, *Designing Trusts*, it is not necessary for third parties to be trustees of trusts for your children and grandchildren. See https://kempelaw.com/wp-content/uploads/2021/12/Newsletter-2019.pdf A properly drafted trust for the benefit of each of your children can provide that each child serves as trustee over a trust for themselves and their children. Many trusts we review require "independent trustees" who control the trust, where they are not desired or needed. Sometimes this is a result of trusts having been created when children were young, and without children succeeding as trustee when they reach given ages. Sometimes it is a result of a lack of familiarity with the law or overreaching by a drafting attorney. Rather than distributing to children as they mature, they can become co-trustee and later sole trustee of their trust, while maintaining the protections of the trust.



In order to cure deficiences, Florida, as well as most states, permit irrevocable trusts to be modified. This can be done in a variety of ways, with decantings becoming the most prevalent. A decanting involves the trustee creating a new trust and transferring the assets from the old trust to the new, which has been written to overcome the inherent problems of the old, bad trust. This can be done summarily or through court oversight. Any form of modification must be done carefully, however, to avoid a variety of adverse income, estate, gift, and generation-skipping tax consequences.

Transferring Digital Assets

- Passwords, Bitcoin, Et al. -

As cryptocurrency and other digital assets become a broader asset class, and digital storage is increasingly relied upon, like passwords and other digits and bits, there is a need for safeguards and secure transition. Incorporating digital estate planning into one's broader planning, family members as executors can assure seamless transfer to loved ones. Bitcoin wallet passwords are unique to you and if lost, or misplaced, they cannot be recovered. Creating inventories of digital accounts and passwords is the starting point but be careful who has them and how they are secured.

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The Trust Protector

(continued from page 3)

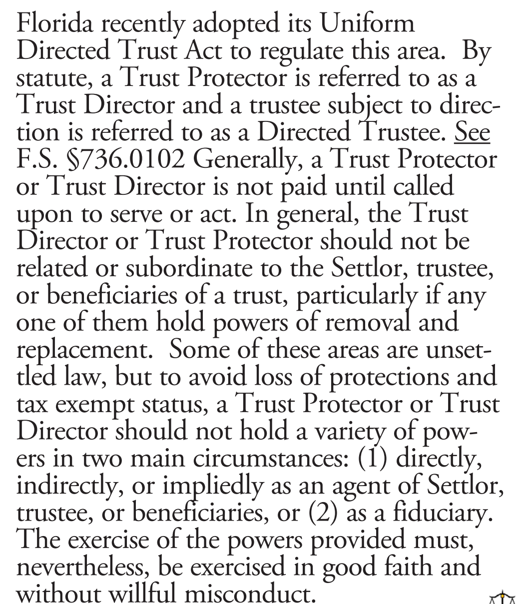
A Trust Protector, not subject to fiduciary standard, can avoid these issues. Several recent examples provide illustrations of super-hero results, though there are many occasions where modifying a trust would be beneficial, but it can't be without violating fiduciary duties or creating adverse estate, gift, or generation skipping tax results.

In the first case, the trust settling senior family member (the "Settlor") desired to benefit a former daughter-in-law who retained a strong family relationship for the good of the Settlor's grandchildren, but she was not a beneficiary. If the children of the Settlor consented to distributions of property or did not seek to curtail it, they could (would) be viewed as making a taxable gift to the daughter-in-law. In this instance, a Trust Protector that is not held to a fiduciary duty would be able to accomplish this family goal without self-risk of liability, provided the actions were in good faith and pursuant to the powers provided in the trust.

In a second case, our client, a Settlor, passed away with a wife and two sons, by a prior marriage. During the course of settling his estate, we received a letter from an attorney professing to represent a third son born from an alleged previous relationship. This alleged son is 27 years old and has been raised by his mother and what he believed to be his biological father, along with his two siblings. Apparently, all family members had blue eyes, but this brown eyed child wondered why he was different in this and other respects. The attorney demanded the Settlor's two sons undergo a DNA test. Luckily, the trust involved had us as a Trust Protector and it was summarily explained to the attorney that the document was clear on who was to inherit, and that any argument to the contrary would be resolved by the authority of the Trust Protector to exclude his client. The trustee would be in a position of conflict and as a fiduciary would not be in a position to exclude a possible descendant of the Settlor. Similarly, resolving intrafamily conflicts can be resolved by a Trust Protector as a binding arbitrator.

Certain trusts have provisions or involve circumstances that cause them to be "grantor trusts," where the Settlor is deemed to recognize the income earned by the trust for income tax purposes. This can be very beneficial, or there are occasions where this status is no longer desirable. Turning grantor trust status on or off can deem the beneficiaries to be making gifts to the Settlor or the Settlor to be making additional gifts to the beneficiaries. If the power were held by a Trust Protector in a nonfiduciary capacity, the threat of inadvertent gifts occurring when turning on or off grantor trust status can be eliminated.

Last, there are many cases where families have some members that may have taxable estates while other family members may not. The less wealthy family members may be wasting exemptions that can be used to benefit the wealthier members. Giving the nontaxable family members powers that can cause assets in trust from the wealthier family members to be included in the less wealthy member's estate, can provide capital gain and estate, gift, and generation-skipping tax benefits. However, providing these powers would often be a breach of fiduciary duty by a trustee or a potential gift by the other family members. Again, a Trust Protector can come to the rescue!



Florida recently adopted its Uniform Directed Trust Act to regulate this area. By statute, a Trust Protector is referred to as a Trust Director and a trustee subject to direction is referred to as a Directed Trustee. See F.S. §736.0102 Generally, a Trust Protector or Trust Director is not paid until called upon to serve or act. In general, the Trust Director or Trust Protector should not be related or subordinate to the Settlor, trustee, or beneficiaries of a trust, particularly if any one of them hold powers of removal and replacement. Some of these areas are unsettled law, but to avoid loss of protections and tax exempt status, a Trust Protector or Trust Director should not hold a variety of powers in two main circumstances: (1) directly, indirectly, or impliedly as an agent of Settlor, trustee, or beneficiaries, or (2) as a fiduciary. The exercise of the powers provided must, nevertheless, be exercised in good faith and without willful misconduct.

Will Trump Repeal The Estate Tax

(continued from page 8)

gains tax reduction benefits. Furthermore, historic use of capital gains tax avoidance and deferral strategies, such as charitable remainder trusts; basis shifting "Rushing" transactions; and partnership basis shifting strategies would increase. Which tools are used may not even be known at this time, as they will be developed based upon laws that are not yet known. One thing that has been proven worthwhile to date, however, is that shifting wealth to trusts and family partnerships (family offices) is not just for tax reasons, but for long-term wealth preservation and protection. Tax threats are marginal, while liability risks can be complete and total. Be careful out there!

7520 Rate History

	2025	2024	2023	2022	2021
Jan	5.2	5.2	4.6	1.6	0.6
Feb		4.8	4.6	1.6	0.6
Mar		5.0	4.4	2.0	0.8
Apr		5.2	5.0	2.2	1.0
May		5.4	4.4	3.0	1.2
June		5.6	4.2	3.6	1.2
July		5.4	4.6	3.6	1.2
Aug		5.2	5.0	3.8	1.2
Sept		4.8	5.0	3.6	1.0
Oct		4.4	5.4	4.0	1.4
Nov		4.4	5.6	4.8	1.4
Dec		5.0	5.8	5.2	1.6

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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Irrevocable Trusts Are Changeable!

- The Words Can Change With A Statute or Common Law -

Most irrevocable trusts can be changed and doing so is commonly beneficial. There can be a host of reasons for doing so, some of which are explained in this Client Update. Confronting prior error or neglect; distancing one trust from another created in close proximity of time that could violate the "reciprocal trust doctrine;" or addressing a change in circumstances that time has caused, are all reasons to consider changing the words in an irrevocable trust, often by decanting.

Modifying an irrevocable trust is easiest using the words that exist. Often powers are contained in trusts that are possessed that can be exercised by those holding those powers. Sometimes the powers should not be possessed or exercised. Alternatively, most states and common law provide the means for modification, and the most prevalent is through decanting. A decanting is a means by which a current trustee for good reason creates a new trust, as the settlor of that trust, and transfers the assets of the old trust to the new trust. Alternatively, modification may be achieved by a trust protector or a trust director. When modification is desired, the method and approach used can create adverse income, estate, gift, and generation skipping tax consequences, so the utmost care should be taken when doing so. For example, if beneficiaries allow a trustee to decant when their rights to property or income are being impacted and shifted to others, they may be making gifts to those others if they do not object. State laws, in Florida for example, have been drafted to confront these circumstances, but are not perfect. Furthermore, if the statute doesn't expressly permit the modification, use of common law to accomplish the objective may be appropriate, but a court order is often recommended to help curtail potential adverse results.

The QTIP Trust

(continued from cover)

choosing the best capital gain, estate, or generation skipping tax results for a family. The law on portability, that permits a decedent's unused estate and gift tax exemption to pass to a surviving spouse, enhances this flexibility. See *Will Trump Repeal the Estate Tax*? on the cover page.

QTIP's can be created during life (intervivos), and in recent history have been a favorite for pre-tax legislation and Presidential election tax reform planning, particularly where taxable estates will likely exist. Commonly referred to as an "income trust" for a spouse or a type of "SLAT," they allow for deferral of use of one's estate tax exemption, providing time to assess the prospects for tax reform. Rather than using the settlor spouse's gift and estate tax exemption ($13.99 million in 2025), they allow for the decision to be temporarily deferred, which may be beneficial in a variety of cases. Later, the decision can be made to either use the settlor spouse's exemption or to consider it as a gift to a spouse, whose exemption would be used at a later date. Most clients have elected to use their exemption and not make the further deferral election.

For the 99% who won't have a taxable estate, a QTIP trust offers significant wealth building opportunities in a form that is protected from a couple's creditors. As we have mentioned elsewhere in this Client Update, taxes are marginal, but a creditor liability can be total. If, however, a wealthy spouse (perhaps the older who owns or is transferred the bulk of a couple's assets) creates a QTIP trust for the less wealthy or younger, healthy spouse, the trust can be drafted to use or not use the donor spouse's exemption and to receive a cost basis step-up and avoidance of capital gains tax on the death of both spouses. If the donor spouse survives, the trust can continue for the donor spouse's life too, all the while avoiding estate taxes and being creditor-protected, while receiving a second cost basis step-up and capital gains tax avoidance after the death of the surviving spouse. In the end, for those who are unlikely to have a taxable estate, proper planning using an intervivos-QTIP trust can build tax exempt wealth over a couple's joint lifetime in a creditor-protected structure, while passing wealth exempt from estate, gift, and capital gains taxes after each death and for future generations.

Kylie Layne Kempe

- Commits To #2 Georgetown Tax Law, LL.M. Program -

The Kempe's are pleased to announce that their youngest daughter, Kylie Layne, was granted admission to the top 5 tax law programs in the U.S. and chose #2, Georgetown Law, in Washington D.C. She graduates from Stetson Law in May, and recently won the book award for the highest grade in Evidence. She is the youngest Kempe child and the last of their 4, who all pursued post-doctorates: Kirby Catherine, after pursuing a postdoctorate Stanford fellowship, is currently a tenured endowed economics professor at CalTech and three are lawyers, two of which hold post doctorate tax law degrees (Conner and Colby) and work at this Firm. Will Kylie join them? Regardless of the answer, we all wish her continued success in whatever she decides to do!

Can Your Home Really Be "Stolen"?

- Not If You Are Wary -

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Financial security is at the forefront of everyone's minds, given the heightened awareness we all have to the use of technology by some to commit financial crimes and exploitation. We have all heard the dire warnings about title theft and how one day the sheriff could appear at your door advising you to vacate your property, as you no longer are the owner because without your knowledge the evil title thieves have stolen your home. To say that this is an exaggeration of the risk is an understatement. Legally your home or other real estate cannot be stolen by title thieves; however, they can create a situation that can be a costly matter to correct.

Property owners most likely to be victimized are non-resident, absentee owners of vacant land. This is done by the thief advertising the property for sale in a local paper or by contacting a realtor posing as the actual owner who lists the property for sale. An unsuspecting buyer signs a contract and the impersonator using fake identification, forges the owner's name on the deed, closes, and pockets the purchase price. You weren't aware.

Title has not legally been conveyed in this situation, but the buyer who thinks he owns the property finds out he owns nothing. If the buyer was issued a title insurance policy, he or she is protected up to the policy limits, but the owner does have to deal with the buyer and title company to resolve the cloud on their title. It is imperative that the owner acts immediately upon learning of the fraud.

Our firm has represented property owners who live in foreign countries who own valuable waterfront land. They learned their property was listed for sale by a local real estate agent who had been contacted by someone impersonating them. We were able to intervene before the lots were sold and the actual owner had signs posted on the lots stating that the lots were not for sale and to contact our firm if anyone was attempting to sell them. This becomes similar to a two party authentication, like we are all becoming accustomed.

Title "theft" is highly unlikely when you reside in your home because very few people would purchase a home without a personal inspection. A purchaser will not have access to your home to inspect it without your knowledge, making it difficult for a fraudster to sell owner-occupied homes.

There is action you can take to make sure you are notified of any land record that is recorded with respect to your property. Effective July 1, 2023, in Florida every clerk of the court must create a free recording notification service open to all persons wishing to register for the service. When a "land record" is recorded involving a name or parcel identification number submitted by a registrant for the service, a recording notification must be sent within 24 hours to the registrant. The recording notification must contain, at a minimum, the recording date, the ORB/page or instrument number, instructions for viewing the land record electronically, and a phone number for the clerk's office where questions can be asked. "Land record" means a deed, mortgage, or other document purporting to convey or encumber real property.

In Palm Beach County go to the following website to register your property for fraud alert: https://www.mypalmbeachclerk.com/services/property-fraud-alert. In Martin County, the website is: https://or.martinclerk.com/LandmarkWeb/FraudAlert. Once registered, if anyone records a land record affecting your property you will be immediately notified and can take action. The only risk to your title is to discover that someone has "taken your title" and then you do nothing. Be wary!

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