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Brooks & Brooks, LLP

Estate Planning with Certainty

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Time To Review Your Estate Plan

Each January we remind our clients that now is a good time to review their estate plans to be sure their assets are titled correctly. This is the time of year that 1099's are issued by financial institutions and that information, in addition to being necessary for income taxes, is also helpful for estate plans. For those clients who have assets title to a trust, whether revocable or irrevocable, 1099's are a good confirmation that assets are titled properly... or not!

For instance, if one has a revocable trust, all financial accounts should be titled to the name of the trust and all 1099's should reflect the name of the trust as the owner. If one has an irrevocable trust and a financial account is titled to the trust, the 1099 from the financial institution should be issued in the name of the trust and have the trust's taxpayer identification number listed as the payee's tax number.

Additionally, because tax season forces all of us to take stock in our investments, it would also be a great time of year to review your estate plan to see if any changes have taken place in your finances, or your family, in the last year that may warrant an update of your estate plan documents. Please remember that estate plans evolve over time because families change, laws change, and our personal circumstances change. Change is a constant in life and everyone's estate plan must necessarily evolve and change to keep up.

To review your estate plan with one of our attorneys just call to schedule an appointment, so that we work with you to be sure that your plan is keeping up to date.

The Cost of an Extended Period of Long Term Care

A recent report from the U.S. Department of Health and Human Services (HHS) indicates that seven out of ten people over the age of 65 will require long term nursing home care. The average length of a long term care stay is approximately three years, although HHS indicates that 20% of nursing home residents will need care for longer than five years.

According to the Alzheimer's Association, one in nine people age 65 and older and about one in three 85 and older have Alzheimer's Disease. The duration of this disease is generally four to eight years after diagnosis, but has been known to last as long as twenty years. Who will it affect? Who knows? There are certainly family hereditary indicators that may suggest a greater possibility of developing the disease for an individual; however there is no guarantee that any of us will not get it just because the disease is not apparent in our own family history. *Continued on Page 2.*

Free Workshops

<u>*February 7, 2017*</u>

Goode's Family Restaurant
Gowanda, NY with
Andersen Cuddihy, Inc.

6:30 to 8:30 p.m.

<u>*February 21, 2017*</u>

Jamestown Hampton Inn
6:30 to 8:30 p.m.

<u>*March 7, 2017*</u>

Chanderson's Steak & Seafood
Yorkshire, NY

6:30 to 8:30 p.m.

<u>*March 21, 2017*</u>

Dunkirk Clarion Hotel with
Luke Buehler, Summit Wealth Management

The Cost of an Extended Period of Long Term Care, contd.

We at Brooks & Brooks have assisted hundreds of clients over the past fifteen years to proactively plan to protect family assets from the threat of the Medicaid spend down rules and the extremely high cost of long term nursing home care. Because the current "Look Back" period is sixty months (5 years), it is far better to engage in asset protection planning now while health is good rather than wait until its too late. Feel free to call to make an appointment with one of our attorneys to see how asset protection planning for long term nursing home care can benefit you and your family.

Charitable Giving —
The Importance of the Language in the Receipt of the Charitable Donee,

A recent Tax Court case (*15 West 17th St, LLC, 147TC No. 19*) is a huge punctuation mark for following the exact letter of the law. In that case, a limited liability company (LLC) donated a conservation easement allegedly worth $65 Million to a qualified charity. The donee charity sent a letter to the LLC acknowledging receipt of the easement, *but failed to say that no goods or services were given to the donor in consideration of the gift,* so the IRS **denied** the deduction. The Tax Court upholds the IRS decision.

The Rule: Gifts made to charities have to be discounted by whatever amount of the gift is for goods or services provided by the charity to the donor. For instance, you make a donation of $50 to a charity for a charity dinner. The actual cost of the dinner has to be deducted from the $50 gift and you only get to deduct the difference, perhaps $35 or $40. If a donor is given back anything of value in relation to the gift, that value must be subtracted from the amount of the gift.

In the above case, it is probably unlikely that the charity gave anything of value in return for the $65 Million easement gift. However, since it did not state so in its receipt, the entire $65 million gift is non-deductible. That is a lot of deduction wasted!

The takeaway? If you are deducting charitable gifts on Schedule A of your income tax return, be sure that your charitable gift statements from the donee charity or charities contain a statement that no goods or services were by it to you.

Continuing Care Community Contracts– A Revisit

A November 2015 New York case, *Good Shepherd Village at Endwell Inc. V. Yezzi* (N.Y.SUP.CT., APP. DIV., 3rd Dept., No. 520621) again addresses the effect of a Continuing Care Community (CCC) contract on a resident's right or ability to give away his or her own money.

The facts: Hazel & Peter Yezzi moved into the CCC after signing an admissions agreement in which they disclosed their assets. A clause in the agreement provided that the Yezzis could not transfer their assets for less than fair market value, if it would impair their ability to pay the monthly fees.

Mrs. Yezzi entered the nursing home within the CCC , transferred her assets to Mr. Yezzi, and applied for Medicaid. The CCC refused to accept the Medicaid payments and sued Mr. Yezzi (Mrs. Yezzi had died in the nursing home) for breach of contract and fraudulent conveyance, It argued that the Yezzis were obligated to use the funds disclosed in the CCC agreement *before* applying for Medicaid. The trial Court granted the CCC summary judgement, and Mr. Yezzi appealed the decision

The New York State Supreme Court Appellate Division, **affirms** the decision, holding that Mrs. Yezzi's transfer of assets constituted a breach of contract. The Court held that under Federal and State law, the CCC had a contract right (nothing to do with Medicaid) to require to a resident to first spend the resources identified in the agreement before applying for Medicaid, because "The essence of the [Continuing Care Community's] financial model requires a trade off between the resident and the facility, in which the resident must disclose and spend his or her assets for the services provided, while the facility must continue to provide those services for the duration of the resident's lifetime even after private funds are exhausted and Medicaid is the only source of payment."

The attorneys at Brooks & Brooks recommend that anyone considering moving to a CCC have the agreement thoroughly reviewed by a competent attorney who understands these types of contracts before signing one. The consequences for not doing so could be substantial, just ask the Yezzis.