NEWSLETTER

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Should the Latest Federal Budget Proposal Cause Concern?

The short answer is no. While President Biden's latest budget proposal, released on March 9, includes provisions that would affect high-net-worth individuals, the proposed budget and its contents are far from final. The budget must still go through the legislative process, where the prospects for passage in its current state are dim.

Our attorneys regularly monitor wealth-related tax proposals and report on developments of interest. We are also available at any time to discuss planning strategies.

MAKING LEMONADE: PLANNING IDEAS FOR A DOWN MARKET

BY LINDA KOTIS AND LESLIE WOOD BRADENHAM

The stock market suffered dramatic losses in 2022, and the recent bank failures are contributing to investors' woes in 2023. There is a bright side to all this instability, however, for those currently invested in the market. For example, the owner of a traditional Individual Retirement Account (IRA) may want seize this moment to convert the account to a Roth IRA. The account owner pays income tax now in return for future tax-free growth and tax-free withdrawals. Taxes due on converting a lower value IRA will be less than they would have been when the account was worth more.

Another idea is to give stock to a family member to reduce one's taxable estate. A gift of depreciated assets presents an opportunity to leverage the use of the donor's federal gift tax exemption. The gift will be valued at the current low stock price, and when the market later improves, the donee will benefit from the appreciation on the stock without using any more of the donor's gift tax exemption.

An additional area where a down market can be a positive from a wealth transfer perspective is in estate administration for taxable estates. For estate tax purposes, a decedent's gross estate is normally valued as of the date of death. However, an executor can make an election to instead value the estate assets as of the date that is six months after the date of death (or such earlier date on which an estate asset is sold, exchanged, or distributed), if doing so would result in a decrease of both (i) value of the decedent's gross estate and (ii) the transfer taxes payable. The executor cannot pick and choose assets for this election, but if the collective value of the assets of the gross estate drops between date of death and the alternate valuation date, the down market will allow the decedent's heirs to save on transfer taxes. The tradeoff of

this election, however, is that the basis the heirs will receive in the estate's assets will be the lower, alternate valuation date value, likely resulting in higher income taxes if and when the heirs later sell the assets received.

Individuals should consult an attorney, accountant, and/or financial advisor about their specific situation before making a Roth conversion, giving gifts to use gift tax exemption, or using alternate valuation for an estate.

TAX RESIDENCY AND VACATION HOMES: MATTER OF OBUS V. NEW YORK STATE TAX APPEALS TRIBUNAL

BY LESLIE WOOD BRADENHAM

New York taxes its residents on their worldwide income, and a person is considered a New York resident for tax purposes if he (i) is domiciled in New York (a "NY domiciliary"), or (ii) maintains a permanent place of abode in New York and spends more than 183 days of the tax year in New York (a "statutory resident"). In *Matter of Obus v. New York State Tax Appeals Tribunal*, 206 A.D.3d 1511 (N.Y. 2022), the taxpayers were domiciled in New Jersey, but the husband spent more than 183 days at his job in New York City during each of the tax years in question. As such, whether the taxpayers were subject to New York income taxes on just the New York earned income, or on their income from all sources, turned on whether their New York vacation home in the Adirondack Mountains was a "permanent place of abode."

Determining the state or states where an individual will be subject to taxes involves a determination of the individual's "domicile" and "residency." These terms are not synonymous, and while a person can only have one domicile, she can have more than one residence. Indeed, with remote work on the rise, this may often be the case, and the analysis is increasingly complex. Read our previous article, "Home, Sweet Home."

The vacation home was a five-bedroom, three-bathroom home with year-round utilities and climate control, and the taxpayers had "free and continuous access" to the home throughout the year. However, the taxpayers used the vacation home for "at most" three weeks during each tax year. It was located over a "four-hour drive each way" from the husband's job in New York City, and was not used at all for that purpose. The Court also noted that the taxpayers "do not keep personal effects" in the vacation home, but

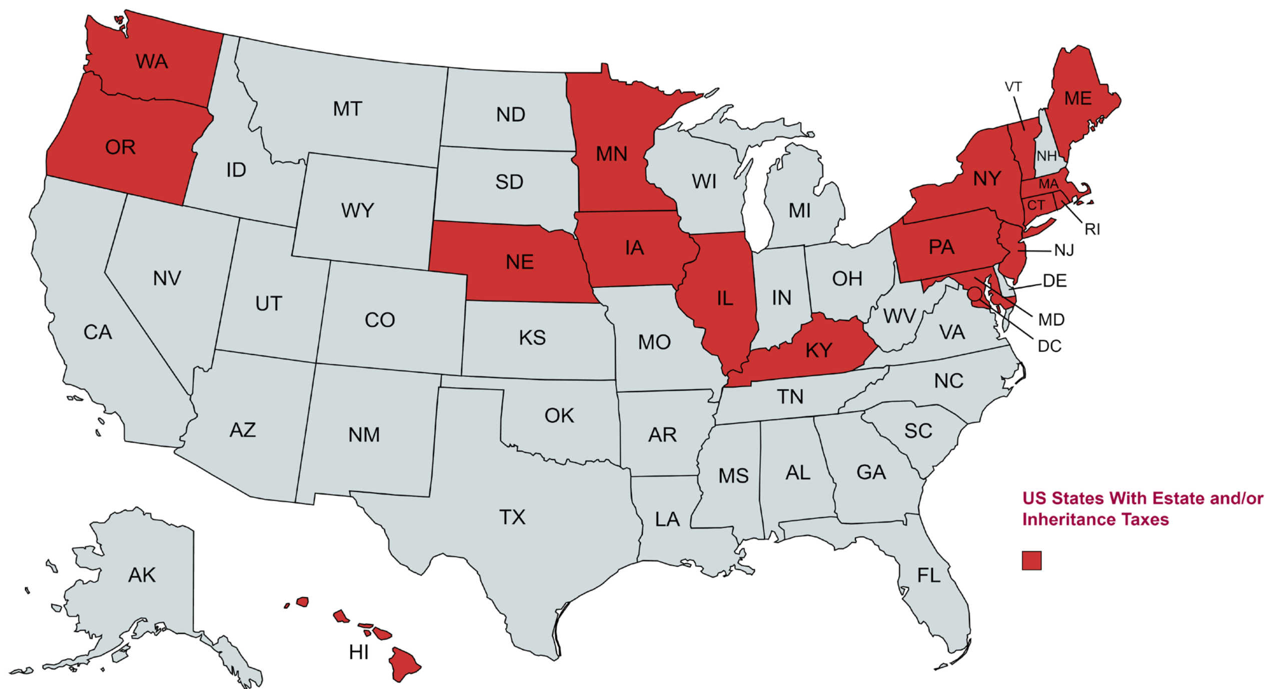
rather bring with them what they need for each visit. Given these factors, the Court concluded that the vacation home was not a "permanent place of abode" and that the taxpayers "fall outside of the purview of the target class of taxpayers who were intended to qualify as statutory residents."

STATE INHERITANCE AND ESTATE TAXES

BY CHAIM HERBSTMAN

When it comes to estate planning, individuals and families often focus on Federal transfer taxes. However, it is important to keep in mind that in many cases, there may also be state-level taxes as well.

Twelve states and the District of Columbia impose an estate tax, and in almost all cases, the state exemption amounts are significantly lower than the Federal amount. These state estate taxes will affect not only taxpayers domiciled in the state, but also taxpayers owning real estate or other property located within the state, which can catch executors off guard.



Six states impose an "inheritance tax" which is a tax imposed on an estate's beneficiaries rather than the estate itself. In most states that impose an inheritance tax, the close relatives of the decedent, such as

spouses and children, are either exempted from the tax altogether or subject to a lower tax rate.[1] Only one state, Connecticut, currently imposes a gift tax.

Tax attorneys and financial planners can advise on specific situations.

State	Estate Tax Exemption Amount	Estate Tax Rate	Inheritance Tax Exemption Amount	Inheritance Tax Rate
Connecticut*	$12,920,000	12%	n/a	None
District of Columbia	$4,528,800	11.2% -1 6%	n/a	None
Hawaii	$5,490,000	10%-20%	n/a	None
Illinois	$4,000,000	0.8% - 16%	n/a	None
Iowa	n/a	None	None	2% - 6%
Kentucky	n/a	None	None	4% - 16%
Maine	$6,410,000	8% - 12%	n/a	
Maryland	$5,000,000	0.8% - 16%	$1,000	10%
Massachusetts	$1,000,000	0.8% - 16%	n/a	None
Minnesota	$3,000,000	13% - 16%	n/a	None
Nebraska	n/a	None	$10,000 - $100,000	1% - 15%
New Jersey	n/a	None	$25,000	11% - 16%
New York	$6,580,000	3.06% - 16%	n/a	None
Oregon	$1,000,000	10% - 16%	n/a	None
Pennsylvania	n/a	None	None	4.5% - 15%
Rhode Island	$1,733,264	0.8% - 16%	n/a	None
Vermont	$5,000,000	16%	n/a	None
Washington	$2,193,000	10% - 20%	n/a	None
*Connecticut also assesses a gift tax, at a current rate of 12%.				

DC'S NEW POWER OF ATTORNEY ACT

BY LINDA KOTIS

The District of Columbia recently enacted a new power of attorney act, effective February 23, 2023. According to the legislative history, its purpose is:

> "To amend Title 21 of the District of Columbia Official Code to enact the Uniform Power of Attorney Act, to repeal the Uniform Durable Power of Attorney Act and the Uniform Statutory Form Power of Attorney Act, to provide clear statutory guidance to individuals creating powers of attorney and to agents acting under powers of attorney, to clarify the fiduciary duties of agent to their principals, to protect individuals creating powers of attorney against fraud or other abuse by agents, to protect third parties who deal with agents exercising powers of attorney, and to provide a statutory power of attorney form that is easy to use, comprehensive, and legally effective."

[1] Maryland is the only state that imposes both an estate tax and an inheritance tax.

The new law is based on the 2006 Uniform Power of Attorney Act. Accordingly, many of its provisions will be familiar to those who have dealt with powers of attorney in other states also based on that uniform law. One such notable provision is the requirement imposed on financial institutions to accept the power of attorney or face potential liability for refusal to do so.

While generally the agent's authority should be interpreted broadly, the new law provides that a general grant of authority will not empower an agent to perform certain acts, such as making gifts or engaging in estate planning transactions. Rather, the principal must explicitly grant these specific powers, set forth in D.C. Code § 21-2602.01, to the agent. A new statutory form found at D.C. Code § 21-2603.01, contains a section specifically granting these powers when such powers are initialed by the principal. The new law also contains a requirement of specific language for engaging in real estate transactions, found at D.C. Code § 21-2602.04, which is similar, but not identical, to the required language under the previous power of attorney act.

HOW TO LOSE A GIFT IN 10 WAYS

BY HARRISON RICHARDS

Charitable donors may already be aware of the substantiation requirements for a charitable deduction. These substantiation requirements are strict, and a taxpayer is not eligible for a charitable deduction without meeting them. Recent tax court rulings, highlight how strict, and uncharitable, these requirements can be, are highlighted below.

Substantiation Requirements

Code § 170(f)(8) provides that no contribution of more than $250 will be allowed unless the donor has a "contemporaneous written acknowledgment" provided by the donee organization. A written acknowledgment is contemporaneous if it is received by the taxpayer on or before the earlier of when the taxpayer files their original tax return or the due date (including extensions) of the taxpayer's original return year. The written acknowledgement must also state (1) the amount of cash the taxpayer paid and a description of any property transferred to the donee, (2) a statement of whether the donee organization provided any goods or services in consideration for the transferred property, (3) if the donee provided goods or services, a description of the goods or services provided and good-faith estimate of their value, or, if such goods or services consist solely of intangible religious benefits, a statement to that effect. Property donations over $5,000 must also include a "qualified appraisal" prepared by a "qualified appraiser."

Albrecht v. Comm'r

In *Albrecht v. Comm'r*, T.C. Memo. 2022-53 (T.C.M. 2022), the tax court denied a taxpayer's charitable deduction for not including an ancillary document. In *Albrecht*, the taxpayer donated a large collection of Native American artifacts to a museum. The taxpayer attached a "Deed of Gift" to her tax return. The Deed of Gift stated that the taxpayer's donation was "unconditional and irrevocable . . . [and] all rights and interests . . . [were] included in the donation, unless otherwise stated in the Gift Agreement." However, the taxpayer did not attach the Gift Agreement to the return as no agreement was ever made.

The court, in denying the deduction, noted that the Deed of Gift did not constitute the entire agreement. The Gift Agreement's absence created ambiguity as to whether there were any additional terms, such as whether the museum offered any services in exchange for the property. The court noted that, while the taxpayer had made a good-faith effort to substantially comply with the substantiation requirements, "[s]ubstantial compliance . . . does not satisfy the strict requirements of section 170(f)(8)(B)."

Furrer v. Comm'r

Furrer v. Comm'r, T.C. Memo. 2022-100 (T.C.M. 2022) addresses an unusual situation where an IRS examining agent approved an unsubstantiated charitable deduction which was later disallowed by the Service. In *Furrer*, the taxpayers, farmers, donated crops to a CRAT without receiving an appraisal. Despite the lack of an appraisal, the examining agent agreed with the taxpayers' valuations.[1] Later, the IRS challenged the deduction, arguing the examining agent erred. The tax court agreed, noting that to receive a charitable deduction, a taxpayer must attach a "qualified appraisal" to their tax return and maintain records substantiating the deduction. The taxpayers' failure to comply with the "strict substantiation requirements" meant, therefore, that they were not entitled to any charitable deduction for the crops donated to the CRAT.

Schweizer v. Comm'r

In *Schweizer v. Comm'r*, T. C. Memo. 2022-53 (T.C.M. 2022) the court denied the taxpayer the opportunity to avail himself of the "reasonable cause" exception to compliance for his donation of African artwork. Here, the taxpayer's professional tax return preparers filed an incomplete Form 8283 with his tax return. The Form 8283 referenced an attached document that was never attached and had incomplete fields, including date of acquisition, the manner of acquisition, and signature lines. Furthermore, while the taxpayer procured an appraisal, he did not procure a "qualified appraisal." The taxpayer claimed that his failure to comply was due to "reasonable cause" because of poor advice from his professional tax return preparers.

In denying the taxpayer's deduction, the court stated that taxpayer could not have reasonably relied on the poor professional advice. The court noted that the return was facially incomplete and that no reasonable

person could think that an incomplete return would permit them to receive a deduction. Furthermore, the taxpayer had made three prior tax-deductible contributions of art and, for all of those, the taxpayer had filed complete Form 8283s and secured qualified appraisals.

Conclusion

These cases indicate that the tax court is moving towards a "strict compliance" regime. This means that small errors, like those in *Albrecht*, could lead to the disallowance of significant charitable donations. Finally, these cases serve as a helpful reminder to consult a tax professional when receiving an appraisal, making, and filing for a charitable contribution deduction.

OUR ESTATE PLANNING ATTORNEYS

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