SmolenPlevy
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Report From Counsel

Insights and Developments in the Law **Spring 2022**

Understanding Federal Estate Taxation

When a loved one passes away, it is important to ensure that all of his or her affairs are in order. This includes paying off any debts, as well as paying any necessary federal and state taxes required on an estate. There is an estate tax, which taxes the transfer of assets from the decedent to the beneficiaries, as well as an income tax on income generated by the assets of the estate.

Jason Smolen

Daniel Ruttenberg

What is the Estate Tax?
In simple terms, the estate tax is a federal tax placed on all estates over a certain total valuation. As of 2022, that amount is $12.06 million for unmarried individuals, and $24.12 million for married couples. Once they exceed that base valuation, the federal government will impose a graduated tax rate on all assets from the estate, up to a maximum of 40% on all assets that exceed the exemption by $1,000,000. "This can have a substantial effect on your estate if your total estate valuation goes above the federal exemption, and significantly reduce the inheritance your heirs will receive when you pass away," explains Jason Smolen.

How Can Someone Know if the Estate Tax Will Affect Them?
Determining whether you may qualify for the estate tax is not as simple as you think. "Certain types of assets are not counted towards that limit, and there are deductions you can make to reduce the overall value of your estate," explains Daniel Ruttenberg. These deductions include, but are not limited to:

- Certain outstanding debts
- Legal and administrative fees
- Funeral costs
- Charitable bequests
- Money paid towards satisfying state taxes

What Other Tax Issues Can People's Estates Face?
In addition to the estate tax, there is also a gift tax, which has an annual limit of how much money or property

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SmolenPlevy In the Community

SmolenPlevy is pleased to announce that Principal Kyung (Kathryn) Dickerson is recognized as *Virginia Business Magazine*'s "2021 Legal Elite." This is the sixth year Dickerson is named for her work in Family Law & Domestic Relations.

Five Things to Know about Equitable Distribution

One of the most stressful aspects of divorce is how a couple's marital property will be divided up. This process, known as equitable distribution, is not as simple as just splitting a couple's assets in half and awarding one half to each spouse. Here are five things you should know about equitable distribution:

Alan Plevy

Equitable does not mean equal – When people hear the words "equitable distribution," they may mistakenly believe that it means the same thing as "equal distribution." However, this is rarely the actual case, because "equitable" is closer to meaning "fair" than "equal." Put simply, the court will divide property consistent with the law in whatever way it determines is most fair based on the facts between the two spouses, which can potentially be quite lopsided in one spouse's favor.

There is a distinction between personal and marital property – Equitable distribution is specifically the division of marital property, which is the property acquired of the marriage between both spouses. Separate property from outside the marriage is untouched. "Where complications can arise is when a spouse intermingles their separate property with marital property, giving rise to disputes over whether it should be included in the distribution," explains Alan Plevy.

A prenup is persuasive – If you and your spouse signed a valid prenuptial agreement (also known as a prenup), that can have a substantial bearing on how equitable distribution goes forward. A prenup can address alimony, retirement, and property distribution.

Kyung (Kathryn) Dickerson

A spouse's conduct during the trial can affect the distribution – It is not merely how someone acts prior to the divorce that matters in the equitable distribution process. "During a divorce, any alleged misconduct on the part of a spouse can potentially affect the equitable distribution calculation," explains Kyung (Kathyrn) Dickerson. Thus, it behooves spouses involved in a divorce to be on their best behavior, or else find themselves literally paying the price.

The judge gets the final say – While there are plenty of things divorcing spouses can do to affect the equitable distribution process, the ultimate decision is left to the judge. The time for negotiation or settlement is before the judge makes his or her rulings.

A divorce is a difficult time for everyone involved, but you don't have to go through it alone. If you have additional questions, contact Alan Plevy at abplevy@smolenplevy.com and Kyung (Kathryn) Dickerson at kndickerson@smolenplevy.com.

The Probate Process: Authenticating the Last Will and Testament

Coping with the death of a loved one is always difficult. To help ease the challenges that may come with the legal processes surrounding their estate, it is important to understand the probate process, how it works, and in what circumstances it is required.

Probate Defined

The word probate refers to the process of proving that a last will and testament of a deceased person is genuine before the court. It includes locating and determining the value of the person's assets, paying their final bills and taxes, and distributing the remainder of the estate to their rightful beneficiaries. If the deceased person has a valid will, probate begins when the executor named in the will presents the document in the county courthouse. If there's no will — in legal parlance, the deceased has died "intestate" — the court will appoint someone to administer the estate. Thereafter, this person becomes the estate's legal representative.

It's important to note that the exact details and length of the probate process vary from state to state. On average, the process takes between six to nine months, but it can run longer for complex situations. Also, some states exempt small estates or provide a simplified process for surviving spouses.

The Process

Here's how the process generally works. First, a petition is filed with the probate court, providing notice to the beneficiaries named in the deceased's will. Typically, this notice is also published in a local newspaper for the

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Compiling a Marital Balance Sheet in Divorce

When thinking about divorce or entering the divorce process, organizing your financial documents is a smart way to be prepared and help the process move along smoothly. The first step is to compile a marital balance sheet. This document shows the assets and liabilities owed by the couple, whether individually or jointly.

Typical assets include the money in savings and checking accounts; retirement; vehicles and equipment; investments; and principal residences, vacation homes and other property. The balance sheet will also show 401(k) accounts, IRAs, pensions and other retirement savings, as well as marketable securities. In addition, jewelry, artwork, furniture and other personal assets will be listed. If either of the couple (or both) own private business interests, those will be reflected as well.

Examples of marital liabilities include:

- Credit card debt
- Student loans
- Home mortgages
- Lines of credit
- Vehicle loans
- Retirement account loans

Values must be assigned to the assets and liabilities cataloged. The value of bank accounts, retirement accounts and debts can be taken from the latest account statement. But other items, such as real estate, collectibles and private business interests, may require an independent outside appraisal.

If the parties own an interest in a closely held business, selling usually isn't an option. Instead, a business valuation expert should be used to determine its "fair value." Any value not attributable to net tangible assets and identifiable intangible assets is considered "goodwill." The treatment of goodwill in divorce varies from state to state.

It's important to talk to an experienced divorce attorney to help you determine what should and shouldn't be included in a marital estate.

The Probate Process: Authenticating the Last Will and Testament

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general public's benefit. If someone wants to object to the petition, they can do so in court.

The executor takes inventory of the deceased's property, including securities, real estate and business interests. In some states, an appraisal of value may be required. Then the executor must provide notice to all known creditors. Generally, a creditor must stake a claim within a limited time specified under state law. The executor also determines which creditor claims are legitimate and then meets those obligations. He or she also pays any taxes and other debts that are owed by the estate.

Ownership of assets is then transferred to beneficiaries named in the will, following the waiting period allowed for creditors to file claims. If the deceased died intestate, state law governs the disposition of those assets. However, before any transfers take place, the executor must petition the court to distribute the assets as provided by will or state intestacy law.

Ways to Avoid Probate

Certain assets, such as an account held jointly or an IRA for which you've designated a beneficiary, are exempt from probate. But you also may be able to avoid the process with additional planning. The easiest way to do this is through the initial form of ownership or use of a living trust.

A revocable living trust may be used to avoid probate and protect privacy. The assets are typically transferred to the trust during your lifetime and managed by a trustee that you designate.

Property that has joint ownership with rights of survivorship will automatically pass to the surviving joint tenant upon the death of the deceased joint tenant. This form of ownership typically is used when a married couple buys a home or other real estate.

Protect Your Privacy

The reason so many dread the word "probate" is the fact that it's a public process. But, by using the right strategies, you can protect your privacy while saving your family time, money and hardship. Our experienced estate planning attorneys can help you implement the right techniques for your situation.

How Do You Avoid Double Taxation?

You may have heard the phrase "double taxation" before, but what does it really mean and how do you avoid it as a business owner? Double taxation is when taxes are paid twice on the same dollar of income, regardless of whether that's corporate or individual income. In effect, the income made by many corporations is taxed twice: first, when it is earned by the corporation as part of their business, and, second, when the profits are transferred to shareholders in the form of dividends. As a result, shareholders often lose much of the money they would've made from ownership of a corporation than they would have if they were not subject to both forms of taxation.

Why Does Double Taxation Exist?

Double taxation exists because corporations are normally not subject to personal income tax. Instead, they are subject to corporate income tax. Then, when the profits are spread to shareholders as a dividend, those profits are taxed again as personal income for the shareholders. This creates a situation in which corporate income is effectively taxed at a much higher rate than it would be if they were structured as a different type of business.

How Can You Avoid Double Taxation?

While standard "C-Corp" corporations are subject to the corporate income tax, the special "S-Corp" corporations are not. Instead, they are considered "pass-through" entities, where their profits pass on to their owners as pure personal income without being subject to corporate income tax. A similar situation occurs with limited liability companies (LLCs), which are also considered pass-through entities. There are also other types of business structures, which may be better than a conventional corporation in some situations.

Should I Reorganize My Business to Avoid Double Taxation?

Reorganizing to avoid double taxation may not always be a good idea. Business reorganization can come with many benefits, but also many drawbacks and every business has its own unique circumstances. Plus, your tax situation may not necessarily improve after restructuring. It's important to speak to an experienced business lawyer before making any significant changes to your corporate structure.

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can be gifted to any one person. For 2022, that amount is $16,000 per person. If the decedent made gifts in excess of the annual exclusion amount, it will reduce the lifetime exemption amount. In addition, all estates are subject to the tax laws of whatever state the estate was established in, meaning you may need to face additional tax liability.

How Can One Minimize the Effect of the Estate Tax?

There are a number of ways that people can potentially protect their estates from the estate tax if they are in danger of being subjected to it. A common method is to place money or property from the estate into a trust designed to remove it from your estate, where it may be protected from both taxation and debt collection to a significant extent. To find a solution that best fits your needs, contact Jason Smolen at jdsmolen@smolenplevy.com or Daniel Ruttenberg at dhruttenberg@smolenplevy.com.

Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.