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# HALES & GEORGE

## ATTORNEYS AT LAW

N E W S L E T T E R

Devoted to Estate and Business Planning Law and Trust Administration Since 1972

# FEDERAL ESTATE TAX LAW NOW AND IN THE FUTURE

| Year | Lifetime Gift Tax Exemption | Total Gift and Estate Tax Exemption* | Generation Skipping (GST) Exemption taxes/Top Rates | Tax Gift, Estate, and GST |
|---|---|---|---|---|
| 2009 | $1 million | $3.5 million | $3.5 million | 45% |
| 2010 | $1 million | Unlimited | Unlimited | 35% |
| 2011 | $1 million | $1 million | $1 million | 55% |

**The estate tax exemption amount is reduced for lifetime taxable gifts.*

The jokes about 2010 as the best year to "throw momma from the train" to avoid paying Federal Estate Tax are getting stale. We've been hearing the jokes ever since the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) of 2001 passed which repealed the estate tax in 2010 for one year. On January 1, 2011, the estate tax returns and all assets exceeding a value of one million dollars ($1,000,000) will be taxed at up to fifty-five percent (55%). For close to ten years, virtually all estate planning professionals have expected modifications to the EGTRRA legislation but 2010 is here and nothing has changed.

This is not to say that attempts have not been made to change the legislation. As recently as December 3, 2009, the House of Representatives voted to permanently extend the 2009 forty-five percent (45%) federal estate tax rate and the three and one-half million dollars ($3,500,000), per person exclusion from estate tax. For a married couple, this excluded, with proper planning, up to seven million dollars ($7,000,000) worth of assets from federal estate taxes. This did not sit well with the Senate. Democrats, in general were ready to approve the House version, while some Republicans preferred a lower tax rate of thirty-five percent (35%) and a higher exclusion of five million dollars ($5,000,000). Not surprisingly, no compromise was reached and the Senate has not passed any changes to the EGTRRA legislation.

What is going to happen now? Most estate planning experts think one of three options are most likely to occur:

1. President Obama and Congress will not agree on any compromise and nothing will change and the estate tax will come back on January 1, 2011 with a one million dollars ($1,000,000) exemption and a fifty-five percent (55%) tax rate.
2. President Obama and Congress, having allowed the estate tax to disappear on January 1, 2010, will act prior to September 2010, when the first Federal Estate Tax Return is due, to reinstate the estate tax retroactively back to January 1, 2010. Of course, it is speculative whether the reinstatement of the estate tax will be at the 2009 exemption and tax levels or possibly higher (or lower). If retroactive legislation is passed, prior court cases suggest that restoring the tax retroactively is legal but some experts have suggested that a retroactive tax is unconstitutional. With an estimated fifteen (15) Americans dying with estates larger than three and one-half million dollars ($3,500,000) every day, lawsuits brought by people with much at stake are sure to follow which will further delay resolution.
3. President Obama and Congress will act in 2010 to reinstate the estate tax but only apply it to the estates of decedents who die on or after the effective date of the new law. This option could potentially provide a huge windfall for wealthy decedents who die during the period between January 1, 2010 and the date the new law is passed.

What should our clients do? If you haven't met with us for the last several years, we recommend you schedule a visit. We can review your estate plan and discuss how the current law and potential changes affect you and your planning. We can verify your Exhibit A, which contains your titled assets, is current, and that your Durable Powers and Advance Health Care Directives contain accurate information. Additionally, let's confirm that your estate (and children) are managed by the correct people and your assets are distributed correctly. We know that estate planning, especially with constantly changing laws can be confusing, so let's meet and tune-up your estate plan and make sure you are clear about its provisions.

**CAPITAL GAINS TAX LAW HAS CHANGED!!!**

*Please see page 3*

**OTHER REASONS TO REVIEW YOUR ESTATE PLANNING WITH HALES & GEORGE**

*Please see page 2*

# OTHER REASONS TO REVIEW YOUR ESTATE PLANNING WITH HALES & GEORGE

## All Clients Must Review and Update Exhibit A When Assets Change

Remember, the Exhibit A on which you have listed your assets, is the document that funds your Living Trust. At your death, the general rule is that any assets on the Exhibit A are included in your Trust. Therefore, you must periodically look at your Exhibit A and update it. Two important exceptions exist to this rule. One exception, all of your real property must have a Trust Transfer Deed prepared, and notarized in addition to being listed on the Exhibit A. If the property is outside of CA, this Deed must also be recorded. The other exception is an asset with a beneficiary designation. Examples of assets with beneficiary designations are life insurance, IRA's, 401k's, etc. If you want the asset to be part of your Trust, the beneficiary designation must be titled in your Living Trust. Please call us for a meeting to review your assets and Exhibit A and ensure that all is current.

## Beneficiary Designations

Any of your assets that have a beneficiary designation must be reviewed. You must verify that you are satisfied with the beneficiaries you have designated. For example, even if your IRA is listed on your Exhibit A, it is not in your Living Trust unless your beneficiary designation IS your Living Trust. In many instances, your spouse is the best beneficiary of your IRA and other pension type plans and in some cases, your children should be listed as the contingent beneficiaries. Your life insurance must be reviewed also and if you want your Living Trust to be the beneficiary (which is correct in some cases) you must be sure that the Living Trust is listed as the beneficiary, i.e., you must do more than just list your life insurance on the Exhibit A. It is important you understand the tax ramifications of who your beneficiary is and please make an appointment to discuss this with us if you are unsure.

## Durable Power of Attorney and Advance Health Care Directives for Your Young Adult Children

Our son, Christopher just started college and he executed a Durable Power of Attorney (DPA) naming us as his Agents to act on his behalf for any legal actions if he is unavailable. He has also executed an Advance Health Care Directive (AHCD) that names us as his Agents for any health care decisions if he is incapacitated. Before he attained age eighteen (18), we as his parents could act for him. However, when he became an adult, without the AHCD or DPA, if he became incapacitated, a conservatorship proceeding would be required to have a court appoint who will act on his behalf. Obviously, all adults should have also the above documents and a wallet card to prevent a time consuming and expensive conservatorship proceeding.

## HIPAA Statements

In California, we have been able to execute Advance Health Care Directives (AHCD) for several years. However, until recently, our Agents named in the AHCD were unable to review our medical files and our doctors couldn't discuss our prognosis due to Doctor/Patient confidentiality. Obviously, it is ridiculous to have an Agent who cannot be informed about medical issues before they make decisions regarding your health care. The California state legislature finally fixed this problem with the AHCD and passed a law (Health Insurance Portability and Accountability Act (HIPAA) which allows us to sign with our AHCD, a HIPAA Statement which waives the Doctor/Patient confidentiality for our Agents. If you do not have an AHCD or have an AHCD which was not executed recently and does not have a HIPAA Statement (a two page notarized document attached to your AHCD), please contact us.

## Life Insurance is Federal Estate Taxable

Unless you have created an Irrevocable Trust (in addition to your Revocable Living Trust) and you own your life insurance, it is part of your estate when you die and subject to federal estate tax. For example if your estate is valued at two million dollars ($2,000,000) and you have a one million dollar ($1,000,000) life insurance policy, you are really worth 3 million dollars ($3,000,000) for estate tax. This can have an especially dire effect on your loved ones if the estate tax law remains unchanged and we are taxed at up to fifty-five percent (55%) on our assets exceed-

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## HALES & GEORGE WEBSITE AND E-MAIL ADDRESS

Hales & George Website is at
www.halesgeorge.com
Please visit our site for interesting articles and more information about our law firm.
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## No Contest Clause

**California has recently adopted new language that can be added to your Living Trust which puts additional "teeth" in the "No Contest Clause". The No Contest Clause paragraph disinherits any beneficiary who challenges the provisions of your estate plan.**

## DO YOU OWN A BUSINESS OR ASSET WITH FAMILY OR PARTNER?

One of the biggest reasons for the failure of a business to transition to the next generation or for the disintegration of a family relationship or a friendship is the lack of a plan for distribution when someone dies, becomes incapacitated or wishes to sell their interest. We have time tested ideas of how to be sure that when your business Partner dies, you are not in business with their spouse (or worse with their children) or when an unfortunate event occurs in your business you have developed a plan. Please call our office for a meeting to discuss these issues.

## OTHER REASONS TO REVIEW YOUR ESTATE PLAN

*Continued from page 2*

ing one million ($1,000,000) beginning 2011. Please call us to discuss creating an Irrevocable Insurance Trust which removes your life insurance from your taxable estate but still allows you to have your spouse and children as beneficiaries.

### Limited Liability Companies (LLC's)

Many of our clients are placing their businesses or rental properties into LLC's to shelter liability. For example, if a problem occurs in your business or rental property and you are sued and lose, all of your assets could be lost without the protection of a LLC. If your business or properties are in a LLC and you lose in a law suit, the only assets subject to the lawsuit are the assets in the LLC, not your total estate.

### Change Your Successor Trustees and Agents in Your Durable Power of Attorney (DPA) and Advance Health Care Directive(AHCD)

Please review who you have named in your Trust as your Successor Trustees. Please also review your DPA and AHCD to verify that you are still satisfied with whom you have named to act as your Agents. Children may be old enough now to step into these roles or parents who you previously named may no longer be the best choices.

### Start to Gift Assets to Loved Ones Now

With 2011 looming in the future when we only get 1 million dollars ($1,000,000) Federal Estate Tax free and all assets exceeding 1 million dollars ($1,000,000) are taxed at up to fifty-five percent (55%), clients are looking for ways to reduce their taxable estates and transfer some of their wealth to their loved ones before death. Remember, you can gift anyone thirteen thousand dollars ($13,000) per calendar year in 2010 with no Gift Tax ramifications. However, other uncomplicated methods are available allowing you to transfer during your life some of your estate much quicker than the standard annual exclusion of thirteen thousand dollars ($13,000). Please call for an appointment to discuss gifting a small percentage of an asset and thereby saving as much as forty percent (40%) in estate tax on your retained interest.

### Other Considerations Requiring a Meeting with Hales & George

- Death of a Spouse, Trustee or Beneficiary
- Marriage or Remarriage
- New Children/Grandchildren
- Separated/Divorce
- Purchase of new real property
- Children with special need issues
- Changes in financial net worth
- Executed a Living Trust before 1982
- Lost Original Documents

## CAPITAL GAINS TAX LAW HAS CHANGED

Adding to the confusion created by the Federal Estate Tax laws, the long-standing rules that the tax basis of inherited assets is "stepped-up" to the fair market value at the date of a decedent's death has been suspended for 2010. During 2010, heirs will have to use the original price paid for an asset when computing their tax liability, instead of the value upon the owner's death. For example, if you inherit shares of Microsoft that your father accumulated over many years, you might be stuck hunting for all his transaction slips and adjusting for stock splits along the way and when you sell any shares, you may owe capital gains tax on the appreciation. However, the Executor of the Will or Trustee of the Trust will have the right to increase the decedent's tax basis, on an asset-by-asset basis but this is limited to one million three hunderd thousand dollars ($1,300,000) or if married, by up to three million dollars ($3,000,000) of assets transferred either outright or in trust to a surviving spouse. After 2010, as the law is currently written, unlimited step-up in assets will again be available.

## CAN WE TALK?

Do you have a business, club or group who would like to hear a presentation on estate and business planning? Bill George and Jan Marie Hales give interesting and humorous seminars to audiences of 10 to 500 or more. Please call or email our main office for further information or to schedule a seminar.

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HALES & GEORGE, a family-owned law firm with offices in Saratoga and San Francisco, California, specializes in Estate and Business Planning as well as Probate and Trust Administration. Each partner of Hales & George is a member of the State Bar of California, the Santa Clara Bar Association, and the Silicon Valley Bar Association. This issue of the Hales & George Newsletter was written & edited by attorneys William P. George and Jan Marie Hales. Any questions raised by these articles can be addressed by simply writing the law firm at 19040 Cox Avenue, Suite 3, Saratoga, CA 95070 attention: H&G Newsletter. This newsletter is intended to be a source of information for our clients and associates and should not be considered personal legal advice. Laws can change frequently and rapidly. Please consult your attorney before relying on any information contained in this publication. (408) 255-6292, Fax - (408) 865-1904, e-mail: postmaster@halesgeorge.com


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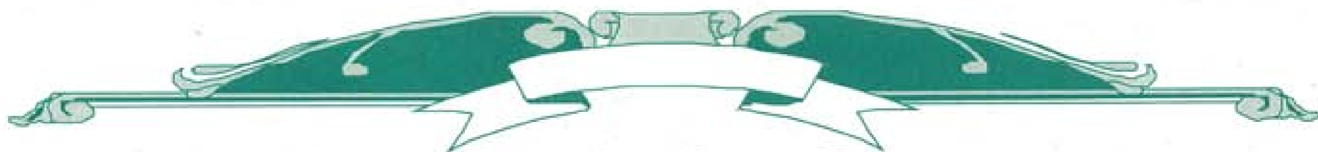

## *Estate Plan Up-Date Certificate*

As a service to our existing clients who have received this NEWSLETTER, this certificate entitles you to a meeting with an attorney from HALES & GEORGE to review your estate plan and the impact of current tax laws for a fee of $250. This meeting will be a review of all your estate planning documents including your Exhibit "A". If any additional documents or changes to existing documents are required, an additional fee will be quoted during your scheduled appointment.

Please complete the information below and return this certificate with a check for $250 payable to HALES & GEORGE. Upon receipt, we will contact you to arrange a convenient time to meet with you or please feel free to call us at (408) 255-6292 to schedule an appointment.

NAME:________________________________________

ADDRESS:________________________________________

DAYTIME OR CELL PHONE:____________________ HOME PHONE:____________________

EMAIL ADDRESS:____________________