3 IMPORTANT TRUST & ESTATE PLANNING TAKEAWAYS FROM THE 2020 HECKERLING CONFERENCE

March 6, 2020

The Heckerling Institute on Estate Planning conference held annually in January provides an ideal opportunity for our team to hear from legal, tax and other experts about a multitude of topics centered around the latest strategies for individuals and families to meet their estate planning goals.

Topics at the conference, the nation's premier event for estate planning professionals, covered the SECURE Act, elder law, charitable giving and several sessions about trust and estate taxation. Based on the comments on the panels and in the hallways, here are three important issues that we believe will have a significant impact in 2020:

Estate tax exemption and anti-clawback provisions

With 2020 being an election year and the Trump administration considering a new round of tax cuts, many attendees were talking about the future of the federal estate tax exemption. The amount – as set forth in the Tax Cuts and Jobs Act of 2017 (TCJA) – was increased this year to $11.58 million per person ($23.16 million for married couples) from $11.4 million (double for couples) in 2019. The threshold, however, reverts to pre-TCJA levels ($5.5 million for individuals) in 2026.

Our takeaway: The IRS has confirmed there will not be a "clawback" to exemption levels in effect prior to January 1, 2016. We believe that now is the perfect time for advisors and individuals to review gifting strategies and overall estate plans so clients can take advantage of the historically high tax exemption for their family and legacy. (Read more about how individuals can use a dynasty trust to benefit from the current tax exemption.)

Incomplete non-grantor trusts

A common topic during panel discussions was about how a series of rulings by the courts and IRS over the past few years (including a handful in 2019) have provided a general framework for the taxation of incomplete-gift non-grantor (ING) trusts. These rulings put a magnifying glass on states that do not have an income tax and have strong asset protection laws – and how trust and administration professionals can properly structure trusts to avoid states that levy high income and capital gains taxes.

Our takeaway: Tennessee has some of the lowest taxes and most progressive trust laws in the country. When Tennessee's dynasty trust laws are coupled with an ING (in the case of Tennessee, a TING), individuals and families can avoid high state taxes for many generations. (Learn more about the 10 advantages of Tennessee's trust laws.)

Trusts and state income taxes

While the ruling was handed down more than six months ago, attendees were still discussing the ramifications of the US Supreme Court's decision in the case of the North Carolina Department of Revenue v. The Kimberley Rice Kaestner 1992 Family Trust (the "Kaestner case"). The high court determined that in-state residency of a beneficiary by itself cannot be the basis upon which a state can impose an income tax on a trust. The ruling, however, was narrow in scope, as the Court ruling noted that it "did not decide what degree of possession, control, or enjoyment would be sufficient to support taxation."

Our takeaway: This topic is closely related to state taxation of INGs, but is also a separate issue. By properly establishing an irrevocable trust (for out of state beneficiaries) in a favorable tax jurisdiction like Tennessee), a trustmaker may avoid state-level taxation on the trust. (For more about the Kaestner case, read our article titled "Why Families With Trusts Should Care About the Kaestner Trust Case."

Each person will be affected differently for each of the topics discussed. We always urge individuals to meet with their accountants, attorneys, financial advisors and tax specialists to ensure their estate plans are structured properly to achieve their near- and long-term financial goals.