Northwest Bank
& Trust Company
Investment Management Group

Attorney/CPA Corner

Estate Planning Update

July/August 2018

Greetings

Northwest Bank's Investment Management Group would like to help you stay informed on the issues shaping your clients' financial and estate planning needs.

If we can be of any assistance please contact one of our estate and financial planning professionals. We look forward to working with you.

Permanence on the agenda

At a July press conference House Ways and Means Committee Chair Kevin Brady (R-Texas) promised action on “phase 2” tax legislation. “We anticipate the House voting on this in September and the Senate setting a timetable as well,” he said.

The focus of phase 2 is expected to be on making the TCJA personal tax reforms permanent, eliminating the expiration date. Further lowering of the corporate tax rate, which President Trump has advocated, will be left for the future. The Wall Street Journal reported that the Retirement Enhancement and Savings Act (H.R. 5282) promoting retirement savings may be gaining traction in Congress, so it might be included as well. Apparently TCJA technical corrections will not be included. Draft legislation was promised by the end of July.

On the other hand, Sen. Martin Heinrich (D-N.M.) has introduced S. 3018, the “Degrees not Debt Act of 2018.” The bill would expand access to Pell grants, and it would fund that spending by repealing the increases in the AMT exemption and the federal estate and gift tax exemption.

Ambiguity removed on executor’s fees

Following the enactment of the Tax Cuts and Jobs Act in 2017, there was considerable concern that fees for administering trusts and estates might no longer be deductible on fiduciary income tax returns. New IRC §67(g) eliminates miscellaneous itemized deductions, and there were concerns that it might affect administration expenses in IRC §67(e). In Notice 2018-61, issued July 13, the IRS said that the fears were groundless. Non-grantor trusts and estates will continue to be able to deduct expenses under §67(e), including the appropriate portion of a bundled fee, the IRS said.

However, the question of what happens when the trust or estate has excess deductions is not settled, and the IRS asked for comments on that question. Should the beneficiaries be able to claim any unused deductions? These have been treated as miscellaneous deductions in the hands of the beneficiary in the past.

New scrutiny of conservation easements

In tax year 2016, total deductions for conservation easements came to $6 billion, according to a letter sent to the Senate Finance Committee by Acting IRS Commissioner David J. Kautter. There is a real concern about syndicated conservation easement transactions, in which investors in a pass-through entity are promised charitable deductions for conservation easement donations that are substantially larger than their investments. The value of the deduction may be premised upon a valuation statement that significantly overvalues the property.

Accordingly, of the 248 entities that claimed the $6 billion in deductions in 2016, 40 are already being audited, according to the letter.

Tom Wolfe's trust

Celebrated author and journalist Tom Wolfe died in May at the age of 88. He wrote The Electric Kool-Aid Acid Test and The Bonfire of the Vanities, among many other notable works.

Wolfe was survived by a wife and two children. His will left his tangible personal property to his wife, and his residuary estate to a revocable living trust. The wife was named executor, and successor executors were also identified.

That is all we know about the Wolfe estate, and all we are likely to know. The revocable trust can do many things, and one of the most important—especially for celebrities—is to provide a zone of financial privacy.

The case of the missing computer

The IRS IT inventory is estimated to be worth $612 million. According to the Treasury Inspector General for Tax Administration (TIGTA), a lot of it has gone missing. Specifically, 5,808 laptop computers, 4,813 network printers, 4,089 desktop computers, and more than 1,000 each of personal digital assistants, computer servers, and switches could not be accounted for in a recent inventory check.

TIGTA made a number of recommendations to improve the management of IT assets. The IRS reportedly accepted all the recommendations, contingent upon getting more funding to implement them.

Speaking of security

The IRS has provided advice for tax professionals on steps for keeping client tax data secure (IR-2018-150). There isn't much news in the advice, but nevertheless it is sound, worth careful consideration.

The "security six" safeguards recommended by the IRS are:

- anti-virus software;
- firewalls;
- two-factor authentication;
- backup software or services;
- drive encryption; and
- a written data security plan.

Refund anticipation loans tripled

According to Federal Reserve research, the number of taxpayers who obtained refund anticipation loans more than tripled in 2017, growing from 470,000 such loans in 2016 to 1.7 million in 2017. The change in taxpayer behavior may be traced to legislation enacted in 2015 to give the IRS more time to evaluate claims of the earned income tax credit, which was being claimed improperly about 25% of the time. Tax refunds were statutorily delayed until at least February 15. Some attribute the increase in the number of loans to reliance by the working poor on the refunds to meet their daily expenses.

However, the research reported that EITC recipients spend just 14% of their refund within two weeks, with the balance going for longer-term purchases.