

## ESTATE PLANNING CLIENT ADVISORY Fall 2024

The Law Office of Robert H. Eardley, P.A. is pleased to provide this *Estate Planning Client Advisory*.

**Tax Updates & Recent Developments:** In 2017, Congress enacted legislation which affected the federal estate tax system and other taxes. Most significantly, the 2017 Tax Act temporarily increased each of the estate, gift and GST tax exemptions to a \$10 million base subject to annual adjustments for inflation. However, the increased exemptions expire on January 1, 2026, and revert to the prior \$5 million base (adjusted for inflation).



1. **2024 Exemptions Increased to \$13.61 Million.** On January 1, the base estate, gift and GST exemptions adjusted upward to \$13.61 million apiece – a \$690,000 or 5.3% hike from 2023. This means that a married couple may exclude more than \$27 million before triggering estate tax.

**PLANNING OPPORTUNITY:** *Individuals and married couples with a net worth in excess of roughly \$10 million and \$20 million, respectively, should consider making significant, tax-free gifts to their heirs before the exemptions expire in 2026.*

2. **2024 Annual Tax-Free Gifting Amount Increased to \$18,000.** The base tax-free gifting amount of \$10,000 is adjusted periodically in increments of \$1,000 to reflect inflation. On January 1, the tax-free amount adjusted from \$17,000 to \$18,000. Very importantly, gifts are not taxable income to the beneficiary.

3. **Vice President Harris' Estate & Wealth Tax Proposals.** Kamala Harris recently endorsed tax "reforms" in Senator Elizabeth Warren's proposed *American Housing and Economic Mobility Act* as well as the proposed tax increases in President Biden's most recent budget. Importantly, Harris supports (a) reducing the estate tax exemption to \$3.5 million, (b) raising the tax rate to 55% (topping out at 65%), and (c) an annual tax on the unrealized capital gains of taxpayers with a net worth in excess of \$100 million. However, tax experts question the constitutionality of the latter (see Moore case discussion below).

4. **Supreme Court Cracks Open Door to Tax on Unrealized Stock Gain?** In 2017, Congress enacted a 1-time tax for retained earnings of U.S. shareholders of American controlled foreign corporations. The tax's target was large U.S. multinationals with foreign subsidiaries. However, the tax also hit small investors like Charles and Kathleen Moore who invested \$40,000 in a friend's machine-tool company in India. The company's accumulated earnings triggered \$132,000 in taxable income and a \$15,000 tax bill. The Moores asserted the tax violated the 16th Amendment taxing power.

In a 7-2 split in June with the majority opinion authored by Justice Kavanaugh, the Supreme Court upheld the tax because the Indian parent company had earned the income. According to the *Wall Street Journal's* editorial board, 5 of the majority Justices potentially opened the door to a tax on unrecognized stock appreciation. Justice Barrett concurred in the decision but sought to negate that concern in opining as to whether the government may tax unrealized income: "The answer is straightforward: No." And the *Tax Foundation* sounded an optimistic note: "The government won in Moore. However, given the narrow opinion of the court and the reasoning in the Barrett concurrence and the Thomas dissent, it seems likely that future rulings under other facts and circumstances could favor taxpayers instead."

### **IRA Qualified Charitable Distribution Increased to \$105,000 for 2024:**

In 2022, Congress passed its \$1.7 trillion omnibus bill which included the SECURE 2.0 Act. This legislation supplemented benefits from previous legislation, including (1) raising the IRA RMD beginning age to 73, and (2) indexing for inflation the base \$100,000 RMD amount payable directly from an IRA to charity (a "Qualified Charitable Distribution" or "QCD") without reporting this as income on the tax return.

For IRA owners age 70½ or older, the 2024 QCD maximum is now \$105,000. A QCD saves income taxes as compared to withdrawing IRA funds and then giving the funds to charity. This is because the QCD amount is not included in taxable income, thereby avoiding deduction limits on charitable donations and penalties that arise if IRA income is included on the 1040 – such as increased Medicare Part B and D premiums.

### **A New Option to Organize Your Estate Information – the Nokbox:**

Maria Fraietta, of Littleton, Colorado, lost her father in 2021 and she and her brothers headed to New York to settle their dad's estate – and it proved to be more than they had bargained for. Ms. Fraietta notes: "[we] had to close bank accounts and investments, we had to find them all, leaving us digging through his phone, his laptop, cardboard boxes, file cabinets, drawers, and closets of his home to find statements and bank/credit cards. We spent hours at my brother's kitchen table guessing passwords. Then we had to find the physical stuff. We hunted for a camper in Florida (his friend said 'just find Susie at the campground, she knows where it is!'). We looked for the boat in New Jersey ('ask Bob, we think he owns half!'). We found a golf cart and a snowmobile trailer too, but no keys for either!... We created a system for what we collected (checklists for what we'd find, then checklists for what we had to do with it) and this helped us work our way through probate."



From that experience, Ms. Fraietta launched Nokbox, a company manufacturing and marketing her estate organizer – the "Nokbox." We have heard rave reviews about the Nokbox and suggest you consider it or another organizing system. The Nokbox company website is [thenokbox.com](http://thenokbox.com)

**Use "Granny-Cam" to Protect Loved Ones?:** Several years ago, sisters Rebecca and Danielle Hinsley became suspicious when their grandmother, Beryl Wall, who suffered from dementia, had unexplained bruising and exhibited strange behavior after being with professional caregivers. And so, as if reading the script from Netflix's blockbuster *Fool Me Once*, the sisters bought a photo frame with a hidden camera and planted it in their grandmother's room. To their dismay, a few days later it showed the caregivers shouting at Ms. Wall, hitting her and pinching her. The granddaughters immediately took the photos to the police and thankfully, in early 2024, four of the caregivers (all from the same agency) were convicted and sentenced to prison.

**PLANNING POINTER:** *Safeguarding loved ones is critical. However, please note that recording laws vary from state to state and depend on the recording venue (public or private) and the recording medium used (e.g. audio, video or photographic). Therefore, one should consult with a qualified attorney before taking action.*

**State & Local Updates:** The following is a survey of noteworthy issues unfolding across the country.

1. **Red vs. Blue State Economic Disparities Continue.** A recent *Wall Street Journal* op-ed piece entitled “The Blue-State Wealth Exodus Continues” discussed the IRS’s most recent data on state-to-state adjusted gross income (“AGI”) taxpayer migration. Nationally, California came in 1st place as the biggest loser, with \$23.8 billion in net AGI migration to other states. Not surprisingly, the next 4 hardest hit states were New York, Illinois, New Jersey and Massachusetts, with a combined net AGI exit of \$33 billion. The biggest AGI recipient was Florida at \$36 billion.

The article cited primary drivers of California’s AGI loss as (a) soaring electricity costs, (b) high gasoline prices, (c) unaffordable starter home prices (median price of \$861,000), and (d) excess income tax on the middle class (e.g. California’s marginal rate on a \$70,000 salary is 9.3%).

2. **California & Governor Newsom – No More Taxes?.** Earlier this year, Governor Gavin Newsom promised that he would not raise taxes to balance California’s current \$45 billion deficit. However, a recent *Wall Street Journal* editorial board article noted that the \$45 billion deficit fix is addressed primarily by tax-like “accounting gimmicks,” such as suspending carry-overs of business net operating losses, boosting the sale of cap-and-trade permits and removing the \$145,600 wage ceiling on the state’s employee payroll tax.

Also, the introduction earlier this year by progressive California legislators of Bill 259 is unlikely to help matters. Although not likely to become law any time soon, the Bill imposes (a) an annual wealth tax of up to 2% of net worth, and (b) an exit tax on residents departing the Golden State.

3. **New York City – Rent Control Continues.** About 25% of New York City rentals are covered by rent control, and on June 17 the New York City Rent Guidelines Board voted to limit rent increases to a 2.75% maximum. Nevertheless, the Board recognized that this did not keep up with landlord projected expenses of 4%. A recent *Wall Street Journal* editorial board article noted that New York’s rent control causes multifamily housing values to plunge, discourages developers from new construction and ultimately is counter-productive.

4. **New Jersey Governor Phil Murphy Violates “No New Taxes” Promise – Twice!.** After his razor thin re-election in 2021, Governor Murphy promised no new taxes – but has failed to deliver. On May 15, Murphy signed into law Bill A4161 to allow certain school districts to raise the local property tax up to 9.9% instead of the statutory 2% limit which was one of Governor Chris Christie’s highlight accomplishments. The new law’s biggest supporter was the New Jersey teachers’ union.

And then on June 28, Governor Murphy signed into law a 2.5% surtax on businesses with over \$10 million in net income. This surtax is on top of the state’s current 9% corporate tax rate – making New Jersey’s 11.5% rate the highest in the nation.

5. **Floridian Jeff Bezos Saves Tax on Stock Sale.** According to *Yahoo!finance*, Amazon founder Jeff Bezos plans to sell approximately 50 million shares of stock before January 31, 2025. As a newly minted Miami resident, Bezos will avoid Washington state’s 7.5% capital gains tax, saving him \$600 million.

6. **Elon Musk’s X, SpaceX & Chevron Leaving California for Texas.** In July, billionaire entrepreneur Elon Musk announced that the headquarters of both X Corp. and SpaceX would be moving to Texas. According to the *Wall Street Journal*, the “final straw” for Musk was a new state law prohibiting local schools from requiring parental notification with regard to a minor’s identification as gay or transgender – along with other anti-family and anti-business laws. X’s headquarters will move to Austin and SpaceX’s to the Brownsville area.

Chevron also recently announced that it would be moving its headquarters to Houston. Chevron CEO Mike Wirth told the *Wall Street Journal*: “We believe California has a number of policies that raise costs, that hurt consumers, that discourage investment and ultimately we think that’s not good for the economy in California and for consumers.”

7. **Oregon’s Drug Decriminalization Reversal.** In 2020, Oregon significantly decriminalized drug use – but abruptly changed course earlier this year – and with good reason. In 2019, Oregon had only 280 fatal opioid overdoses – but the 2023 fatality estimate is 1,250, with 628 confirmed fatalities in the 1st half of 2023. In response, on April 1st Governor Tina Kotek signed Bill 4002 into law to recriminalize drug possession.

**Law Student Blake Evans Joins Law Firm:** We are pleased to announce that Blake Evans has joined the firm as a Law Clerk. Blake is a native of Geneva, New York, and currently is a student at Ave Maria School of Law in Naples. He is also a 2017 graduate of Alfred University, Alfred, New York, earning a B.A. in Criminal Justice Studies and separate Minors in Public Law and Business Administration, finishing Cum Laude with a 3.51 GPA. During his time at Alfred University, Blake co-captained its rugby team to an undefeated regular season and to the 2017 National Small College Rugby Organization Upstate Championship title. Also, Blake was a Jonathan Allen Scholarship recipient for 4 years, a member of International Honors Society Phi Gamma Mu and the Criminal Justice Club.



As a young man, Blake worked extensively in the trades, including pouring concrete and building elevator shafts, served as an EMT and fireman, and instructed EMT classes at Finger Lakes Community College. In 2019, Blake moved to Sarasota where he owned and operated Evans Painting, LLC, a high-end finishing company specializing in hand-crafted finishes in painting, staining and epoxy. Also, while in Sarasota, he served as an assistant basketball coach at Sarasota Middle School.

Blake is engaged to be married, a devout Christian and an active member of Faith Bible Church in Naples.

**2024 Naples Daily News Article:** The Sunday March 3rd edition of the *Naples Daily News* featured an article Robert authored entitled “The Second Marriage Estate Planning Dilemma – Spousal Inheritance Rights for the Surviving Spouse.” The article explains the legal rights a surviving spouse has to a significant portion of the deceased spouse’s estate and discusses planning options to address those rights. For a complimentary print copy or PDF, please contact Julie Yamin at (239) 216-1819 or [julie@swflorida-law.com](mailto:julie@swflorida-law.com).

**Words of Eternity:** For God so loved the world that he gave his one and only Son, that whoever believes in him shall not perish but have eternal life. John 3:16

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