

**HECKERLING INSTITUTE 2001
REPORT #1**

As we did in January of the last four years, and again with the permission of the University of Miami School of Law Center for Continuing Legal Education, we will be posting to this list throughout the coming weeks highlights of the proceedings of the 35th Annual Philip E. Heckerling Institute on Estate Planning that is being held January 8-12, 2001 at the Fontainebleau Hilton Resort and Towers in Miami Beach, Florida.

Our on-site local reporters there in Miami this year will include:

Steve Leimberg Esq. of Bryn Mawr, PA - leimberg@home.com
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Again this year a complete listing of the proceedings and speakers is available on the Institute's Web site. The new URL for that site is <http://www.law.miami.edu/heckerling>
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REPORT NO. 1 - Monday, January 8, 2001

First, our super-sluth when it comes to the vendors and things technical, Reporter Gene Zuspenn, has filed the following Report on his Monday visits to the Exhibit Hall:

As the size of the institute grows, so do the number of vendors. 99 vendors are now listed in the Registration list. There are multiple vendors in almost all categories.

The categories that are apparent are:

Administration support services such as deed preparation
Appraisal and valuation companies
Auction houses
Book and reference material sales
Missing person locators
Software sales - these include software for planning and administration.
Trust departments/companies and other companies managing assets

And now for some highlights:

ProDoc is one of the popular document preparation system. The do forms for several practice areas in Texas and Florida and the Probate Court forms in Colorado. ProDoc uses a proprietary engine and most programming in the past has been by ProDoc. They are currently working on an update for all of Colorado's pending new Guardianship and Conservatorship forms now that the new Uniform Act became law there effective 1/1/01, and they just recently shipped their most recent update of all of the Colorado Probate Court forms for the new required caption format as of 1/1/01.

ProBATE Software, from Greeley Colorado has a fully integrated estate and trust administration package. The package includes programs for estate planning calculations and presentations, Forms 706, 709 and 1041, and trust accounting, plus a new NAPTA Web link. This suite of programs is a competitor to Zane & Associates, Lackner 6-in-1, TeDec and West Group. Lee Zane, Vince Lackner and West Group are also exhibiting, although Tedar Brooks is just finishing his windows product and it is only available thru their TeDec web site. Faster Systems is also here exhibiting its Faster fiduciary accounting package this year.

Most of the regulars are also here, including:

Nicole Splitter, with U.S. Trust, with their new EPLAN Software. This was reviewed in the October, 2000 issue of Estate Planning Magazine.

EVP valuation systems, which has just released the CapWatch product. This can be downloaded from their Web site and is included in the current version of the EVP product. We'll report on some of the other valuation companies later.

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Next, and as an add on to the above re LawOnTheWeb, Reporter Gene Zuspann also reports the following about Natalie Choate's Monday morning three-hour "Fundamentals" program:

I attended the Monday morning presentation by Natalie Choate on "The fundamental of Estate Planning for Qualified Retirement Plan Benefits and IRAs: What to do in real life."

As normal, the materials are quite extensive - 93 pages of materials with another 27 pages of appendices. Two sections of the materials - Understanding the Minimum Distribution Rules and Case studies are from her book "Life and Death Planning for Retirement Benefits." The other two sections were written just for this institute. There were a large number of attendees at this presentation, even though it is supposedly a fundamentals program, so the interest in the program was quite high.

Her first topic was "Ten Things that make Planning for Retirement Benefits Different from Estate Planning for Other Assets." This one of the new topics not in her book. She said that this follows the "Dummies" how to books, however, it actually consisted of 16 so she stuck 6 topics in other #10 - Special Planning Opportunities. She started the presentation with a caveat: Never be in business with your spouse.

In the first part of the session - from 9:00 to 10:30 - she covered the differences in Section I of her outline and the general rules. She extensively discussed the Minimum Distribution Rules for the various possible scenarios, i.e. participant alone, participant and spouse, participant and non-spouse individual, etc. She also covered the Required beginning Date rules.

One recommendation: where the younger generation beneficiaries are already wealthy, and do not need the money, and the client is not using the money in the IRA, leave it to a foundation and avoid both the death taxes and the income taxes.

After the break, she covered several of her 26 case studies. She finished with the results of a survey of the methods used by a number of the experts in the area in planning for distributions from large plans. These include:

-Use fixed term for both the spouse and the participant. This method ensures certainty regardless of the timing and order of death between the spouse. However, this feels this may be a disservice to the client, especially if the actual life expectancy of the client and spouse are considered. Taking into account the family history of the client, and the fact that non-smoking, well educated persons in good health will often outlive the tables, there may be better methods. Several alternatives are:

-Use recalculation of lives on the spouses and a charitable remainder trust as a contingent beneficiary.

-Use the split method - a fixed term on the participant and recalculate the spouse.

-Hedge your bets under Notice 88-38. Split the money into 3 IRAs and use a different option on each of the IRAs. When the client is ready to take money out each year, evaluate which IRA would be best to deplete. This gives the client the flexibility to choose the best alternative taking into account the facts and circumstances at the time of the withdrawal during each year in the future.

All in all, a very good presentation. As always, her presentation included some good humor and kept the audience interested.

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Third, Reporter Steve Leimberg has filed the following Report regarding Jonathan Blattmachr's portion of the Monday afternoon "Recent Developments" presentation.

Here's to the Lossers! That's a line from an "Old Blue Eyes" tune. Jonathan Blattmachr and Professor Mitchell Gans put a new twist on it - just when it appeared everything that could be said about the subject already had. I'm referring of course to the subject of Wealth Transfer Tax Repeal. Jonathan and Mitchell's perspective, presented as part of the Recent Developments opening segment at the 35th Annual Heckerling Institute makes the following interesting points that perhaps many folks missed in the crunch of the sound bites on both sides of this important issue:

The proposal to repeal the estate tax can't be justified on the basis of a slowing economy (even assuming fiscal stimulus is both a necessary and effective tool to warm up a cooling economy) since it would do nothing to produce an immediate tax savings for taxpayers with a propensity to consume most, if not all, of their tax savings.

Repeal goes beyond merely the estate tax. Its triple whammy would include the gift and GST as well. And coupled with a proposed significant reduction in income tax rates, the result is likely to produce four major losers: (1) the life insurance community, (2) charities, (3) spouses, and (4) states. Life insurance companies would be hurt because of what is called "adverse selection". In other words those who perceived they no longer needed insurance because of a repeal - but who were healthy - would drop their coverage - while those who were sick would retain the coverage - thus taking away from the insurers the (already counted upon) advantage of a pool of healthy insureds who continue to pay premiums. (On the other hand, Jonathan mentioned that, the enhanced relative advantage of the tax-free build up inside the policy would encourage high-net worth high income individuals to retain or purchase cash value life insurance and to some degree, counterbalance the policies lapsed because of repeal).

Charities would be hurt - badly - because both estate tax and income tax incentives would be removed. With a reduced income tax furthering the loss of incentive to make charitable gifts, direct bequests at death as well as lifetime giving will likely diminish. Worse yet, according to Jonathan, charities would have to depend on the federal and state governments to make up some of the difference. He fears this would result not only in shortfalls in operating revenues but more importantly in an expanded role of the government(s) in "picking winners". In other words he worries that philanthropy may become controlled by governments to the point of being "rampantly politicized". And of course, with respect to religious charities, direct governmental financial assistance is probably unconstitutional.

Spouses will lose because the state legislated protection for surviving spouses which provides a minimum share of a deceased spouse's estate (e.g. right of election) serves as a protection only to the extent there's something to share (typically 1/3) IN THE ESTATE. Without a gift tax, it will be easy (and less expensive) for a moneyed spouse to give away assets and thwart the intention of protective state laws.

Of the three major loses, states would suffer most. As a recent Tax Analysts article suggests, states stand to lose a lot of money - year after year. Jonathan estimated over \$100 billion over the next 10 years would be lost. He noted that it may be politically impossible for the states to adopt independent estate tax systems to make up the loss and few would have easy mechanisms to replace the revenue lost if the states could no longer impose a death tax equal to the state death tax credit (which EVERY state currently does).

Perhaps the most interesting part of the Blattmachr/Gans commentary, the impact of the repeal of the gift tax, has been the least commented on by other authorities - and may prove to be the most important issue of all - because of its implications on both federal and state income taxes - and because of the significant

increase in the real cost of repeal. Think about the following:

First, it would be easy - without a gift tax - for a taxpayer in one state to shift income to a trusted relative in another state, one with no or a lower state (and/or local) income tax - and at some "old and cold" date - that trusted relative gives the income producing property back. Likewise, a gift tax free gift of appreciated property to a lower bracket relative - say a daughter - or retired parent - who sells the property and pays a much lower tax than the donor would have paid - followed by a conservative period of time - followed by a gift back to the donor of the net proceeds.

Second, trusts - deliberately created in states which do not impose a state income tax on trust income (such as Alaska, Delaware, Florida, Nevada, South Dakota, Texas, Wyoming, or Washington) could be "packed" with income producing assets to eliminate state income taxes.

As Jonathan put it, "Little tricks" will be developed to minimize income tax on the return of that money to the grantor. So just as taxpayers will try to avoid federal income tax once the barrier of gift tax is removed, so will they try to reduce their state income tax through various income shifting methods. Jonathan pointed out that this potential to "GAME THE SYSTEM" will be difficult to police or to create laws that would prevent or minimize the loss of either state death or income tax revenue.

The conclusion of the Blattmachr/Gans Heckerling Current Events commentary is that the loopholes and deficiencies inherent in current law can - and should - be fixed. But they feel "repeal would be the wrong remedy." They suggest instead a substantial upward revision in the size of the exemption or exemption equivalent available to all taxpayers and a significant increase in the size of the GST exemption.

That is it for Report No. 1. The full text of all the Reports will be posted on the ABA RPPT Web site at http://www.americanbar.org/groups/real_property_trust_estate.html beginning early next week.

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