TABLE OF CONTENTS

ARTICLES

1. Changes in the Estate Tax and What They Mean for You and Your Clients
   Author: Mikail O. Clark

2. E-recording: a Brief Summary
   Author: Thomas J. Bourguignon

3. IRS Issues Notice Regarding Estate Closing Letters
   Author: Rob Maloney

NEWS AND ANNOUNCEMENTS

1. Call for Article Submissions

2. Teleconferences and Webinars

3. Upcoming Events
ARTICLES

Changes in the Estate Tax and What They Mean for You and Your Clients

By: Mikael O. Clark

Among the many changes in the newly enacted House Resolution 1 (the new federal tax law formerly known as the Tax Cuts and Jobs Act) is the doubling of the threshold at which the estate tax applies. In 2017, the federal estate tax exemption was approximately $5.5 million for individuals and $11 million for married couples. This resulted in the need for many wealthy persons and couples to utilize trusts to protect their assets at death. However, under H.R. 1, the estate tax exemption is now $11.2 million for individuals and $22.4 million for married couples. Like prior law, these exemptions apply also to lifetime and testamentary transfers.

Additionally, H.R. 1 lowers the federal tax rates and simplifies the tax brackets for the taxable income of trusts and estates. H.R. 1 condenses the tax brackets for trusts and estates from five to four, lowers the minimum tax rate from 15% to 10% (for trusts and estates with taxable income of less than $2,550), and lowers the maximum tax rate from 39% to 37% (for trusts and estates with taxable income of more than $12,500).

As with anything, attorneys can construe these changes either positively or negatively. On one hand, under the new law, clients with a high net worth will save more money. This will result in more business and investment opportunities for those clients and might create more business for corporate and transactional attorneys. On the other hand, the spike in the exemption might hamper the demand for trusts, thus resulting in less business for trust and estate attorneys. In any case, attorneys with clients who might be affected by these changes (1) should become well-versed in the law’s scope and impact, (2) should inform their clients of these changes and help the clients plan accordingly, and (3) should devise creative ways to pivot their clients’ tax savings into income-producing opportunities.

Author Biography: Mikael O. Clark, Esq., MBA, is a corporate attorney at Spilman, Thomas, and Battle, PLLC. His areas of practice include corporate and business law, consumer finance law, bankruptcy, real estate, and taxation. He is a 2017 graduate of Washington & Lee University School of Law, where he assisted low-income clients with reducing their federal tax liabilities. Mikail lives in Charleston, West Virginia with his wife Brittany, his one-year-old son Keanan, and a four-year-old dachshund named Panda. In his spare time, Mikail loves watching and playing sports, playing board games, and reading. For more information about Mikail and his practice, please visit https://www.spilmanlaw.com/people/mikail_clark/details or feel free to connect with Mikail on LinkedIn.

E-recording: a Brief Summary

By: Thomas J. Bourguignon

Real estate practitioners should be aware that electronic recording (“e-recording”) of real estate documents at county clerk and recorder offices (“recorders”) is becoming more widespread and poses legal and practical issues.

Before the advent of e-recording, most recorders accepted only notarized “original” documents with wet signatures on paper—not photocopies or facsimiles. Documents are time-stamped and

© 2017 by the American Bar Association. Reproduced with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.
recorded in the order in which they are presented to the recorder. Documents are then archived by property. Landowners, buyers, and others are charged with “constructive notice” as to the contents of all relevant recorded documents.

Three laws have enabled the rise of e-recording:

1. Uniform Electronic Transactions Act of 1999 (“UETA”). Enacted by forty-nine jurisdictions, UETA provides default rules for contracts prepared or signed electronically, so long as the parties agree to use electronic documents. UETA clarifies that documents transmitted or signed electronically are legally enforceable and are admissible in court proceedings. Although UETA does not expressly authorize e-recording, UETA allows state agencies to elect to use electronic signatures.

2. Federal E-Sign Act of 2000. The E-Sign Act clarifies that electronic records satisfy federal statutes or regulations requiring that information be provided in writing, so long as the users or consumers consent to electronic records. Also, the E-Sign Act states that electronic records may not be denied effect simply because the records were signed or transmitted electronically.


As of this writing, more than half of all counties nationwide allow some version of e-recording. A recorder that accepts e-recording never receives an “original” document; instead, the recorder accepts an electronic image of a signed, acknowledged document as equivalent to an original document.

Many recorders outsource some aspects of e-recording to e-recording companies, such as Simplifile or CSC. For instance, an escrow agent electronically submits a deed to Simplifile and pays recording fees and Simplifile’s surcharge. Simplifile then submits the deed to the recorder, which ensures that the deed meets statutory requirements, such as the inclusion of a legal description and notary acknowledgements. If the deed meets the recorder’s requirements, the deed is recorded immediately. The recorder adds an electronic recording stamp to the deed, and the deed is entered into the recorder’s archive. Finally, the escrow agent receives confirmation, usually by e-mail, that the document has been recorded.

The move to e-recording might spawn various legal issues, such as whether states that have enacted UETA but not URPERA have properly authorized recorders to utilize e-recording; whether e-recorded documents satisfy the statute of frauds; whether issues relating to forgery or fraud in e-recording will emerge; whether e-recorded documents provide constructive notice; and how to handle a “race to the courthouse” involving e-recorded documents.

As e-recording becomes more widespread, real estate practitioners should learn more about the laws, procedures, and issues involved in e-recording.
IRS Issues Notice Regarding Estate Closing Letters (Notice 2017-12, 2017-5 I.R.B. 742 (January 6, 2017))

By: Rob Maloney

Personal representatives (or executors) might be personally liable for federal estate taxes. However, an estate tax closing letter or an account transcript can serve as a confirmation of the closing of the IRS’s examination of the estate tax return and can also provide some assurance to the personal representative (or executor) that assets can be distributed, and the probate closed.

Estate Tax Closing Letter

In a change of policy, for estate tax returns filed on or after June 1, 2015, the IRS will issue an estate tax closing letter only if the representative of the estate requests it. In addition, the representative must wait at least four months after the estate tax return has been filed to make the request for the closing letter.

Account Transcript (in Lieu of an Estate Tax Closing Letter)

Alternatively, the representative of the estate may request an account transcript. An account transcript with a transaction code of “421” serves as a substitute for an estate tax closing letter. The representative of the estate can request an account transcript by filing Form 4506-T Request for Transcript of Tax Return.

Note that an estate tax closing letter or an account transcript with a transaction code of “421” is not the same thing as a closing agreement. For instance, the IRS can reopen its examination of the estate tax return to determine the amount of the transfer tax liability of the surviving spouse if portability was elected or if other certain circumstances exist.

Author Biography: Rob Maloney, Esq., practices in the Estate & Trust Department at Boulay, assisting clients with estate and tax planning matters. Rob prioritizes learning about client stories and believes building lasting client relationships based on trust are at the center of successful estate planning.

NEWS AND ANNOUNCEMENTS

Call for Article Submissions

We Need Authors! The YLD RPTE Committee’s quarterly newsletter and 101/201 articles provide young lawyers a unique opportunity to have articles published and distributed to thousands of other young lawyers across the country. If you are interested in submitting an article for publication for 101/201 articles or for the upcoming spring 2018 newsletter, please
submit a brief description of your proposed article topic by March 30, 2018, to Content Editors Andy Peluso (andy.peluso@hwhlaw.com) and Daphna Davidovits (ddavidovits@ecjlaw.com). For article topics that are approved, authors must submit draft articles by April 13, 2018. Articles for the newsletter should discuss recent legal developments and be 200 to 600 words in length.

**Teleconferences and Webinars**

The YLD RPTE Committee will be hosting teleconferences and webinars in the near future. Be on the lookout!

**Upcoming Events**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>February 1–3, 2018</td>
<td>ABA Midyear Meeting; Vancouver</td>
</tr>
<tr>
<td>May 9–12, 2018</td>
<td>30th Annual RPTE Spring Symposia &amp; Leadership</td>
</tr>
<tr>
<td></td>
<td>Meeting; Orlando</td>
</tr>
<tr>
<td>May 10–12, 2018</td>
<td>Spring YLD Conference; Louisville</td>
</tr>
<tr>
<td>August 2–7, 2018</td>
<td>ABA Annual Meeting; Chicago</td>
</tr>
</tbody>
</table>