C.A.R.E.™ PROGRAM LEGAL UPDATE

I have received a number of phone calls and emails over the past week or so about an article in Kiplinger's regarding a new interpretation of the treatment of capital gains for assets in (certain) Irrevocable Trusts. I was aware of this change at the beginning of the year. I did not bring it up as it does not affect any of our clients. However, after the news reports and the client concerns, it seems a good time to address the issue.

The short answer is don't worry, your trusts are not impacted. The longwinded lawyer answer as to why, is listed below.

Point #1 – the term Irrevocable Trust is a generic term covering many different types of trusts. The various tax implications for any particular Irrevocable Trust are dependent on what's inside: what does the Trust say?

Point #2 – the Trusts which the new IRS rule speaks to are Irrevocable Trusts which are designed to keep the assets in the Trust outside of the Grantor's (the creator of the Trust) taxable estate. These trusts are used for people who have estates which are large enough to be subject to state and/or federal estate taxes.

Point #3 – New York residents do not have to pay an estate tax for NY unless they die with over $6,000,000.00 in assets. The federal estate tax does not start unless you have over $12,000,000.00 in assets. Therefore, you have no estate tax problem.

Point #4 – Because our clients do not have estate tax concerns, our Irrevocable Asset Protection Trusts are designed to keep the assets in the Trust in your estate for estate tax purposes. That is why, in the legal world, they are known as Grantor Trusts. They are designed so that the IRS considers the assets in the Trust to be yours. (That is why the interest income, etc., from the Trust assets is reported on your personal 1040, and not a separate Trust Tax return.) This is the <u>exact opposite</u> of the design of the Trusts that the IRS rule was addressing.

Point #5 – You want your assets to be included in your estate for tax purposes because any assets with appreciated value will receive a "step-up" in "basis" upon your death. (The new rule by the IRS removes this "*step-up*" in "*basis*" for assets in the "other" Irrevocable Trusts.)

Point #6 – How does this apply? Imagine you paid $100,000.00 for your house. That is your "*basis*." Imagine that when you die, your house is worth $200,000.00. That profit represents your "*gain*" on the "*capital*" you invested in the house. Your children (or other beneficiaries) decide to sell the house after you die.

a) Under the Trusts that the IRS ruled on, the basis remains unchanged. Therefore, your children will have a capital gain of $100,000.00. (Sales price $200,000.00 – basis $100,000 = capital gain ($100,000.00).
b) Under your Safe Harbor Irrevocable Asset Protection Trust, your house receives a step-up in basis upon your death. The new basis is the value of your home on your date of death.

> Therefore, when the home is sold, there is no capital gains (Sales price $200,000.00 - Stepped up basis $200,000.00 = $0.00 capital gain).

In hindsight, perhaps I should have contacted you all when the new rule came out, but I did not want to muddy the waters with something that does not impact you. However, rest assured that if a change came out that did adversely impact you, we would reach out right away.

Thank you all for your continued support and membership in our C.A.R.E™. Program.   As always, if you know any friends or family who need assistance with estate planning, asset protection, Medicaid, or Probate, we would appreciate a referral.

I look forward to seeing you in the fall at our next C.A.R.E.™ event. From what I am hearing, this one will be a blast.

I will discuss this matter again, at that time.

Sincerely,

John