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Estate taxes: What's a taxpayer to do?

After almost a decade of changes in the federal estate tax laws – and many states shifting their tax structure in response to the federal changes – clarity appears to be on the horizon. Congress's recently passed budget resolution would make the current estate tax rules permanent, taxing only estates over $3.5 million in value with the tax rate set at 45 percent. Although no legislation has yet been voted on, the nonbinding budget resolution sets guidelines for Congress to follow when writing tax and spending legislation later this year.

In light of this and other changes, taxpayers need to review their estate plans with the following issues in mind:

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- **Simplify if possible.** The increase in the tax threshold from $600,000 at the beginning of the decade to $3.5 million today, coupled with the drop in most taxpayers' net worth over the past year, means that many people who once had taxable estates no longer do. They may be able to significantly simplify more complicated estate plans that were necessary in the past to eliminate or decrease taxes due at death.
- **Beware state tax laws.** In the past, most states had very similar estate tax laws that were tied to the federal laws. As a result of changes in the federal estate tax, though, many states that were tied to the federal system found that their estate tax revenue was dropping to zero. To increase their revenue, these states

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Tips for preventing financial abuse of the elderly

As the economy worsens, reports of elder financial abuse are on the rise. The elderly are particularly vulnerable to scams and to financial abuse by friends, acquaintances, caregivers and family members in need of money.

A recent MetLife study, *Broken Trust: Elders, Family and Finances,* found that up to one million older Americans may be targeted yearly. Family members and caregivers are the culprits in 55 percent of cases, although financial losses are usually higher with investment fraud scams.

While it is impossible to guarantee that an elderly loved one is not the victim of financial abuse, there are some steps you can take to reduce the chances. One option is to have more than one family member involved in caring for the loved one. You can also encourage the elder to get involved in community activities to ensure that he or she has a wide range of support. Using direct deposit as much as possible is also helpful. And of course you should always screen caregivers carefully and verify references.

Financial abuse can be very difficult to detect. Here are some signs that a loved one may be a victim of this kind of abuse:

- The disappearance of valuable objects.
- Withdrawals of large amounts of money, checks made out to cash, or low bank balances.
- A new "best friend" and isolation from other friends and family.
- Large credit card transactions.
- Signatures on checks that look different.
- A name added to a bank account, or newly formed joint accounts.
- Indications that the elder is afraid of a caregiver.

If you suspect someone of being financially abused, there are several actions you can take:

- ▸ Report the possible crime by calling your local Adult Protective Services and state attorney general's office. File a police report.
- ▸ Explore options at your local probate court if your state has such courts. The court can intervene if someone in the family is misusing a power of attorney or their role as guardian or conservator.
- ▸ Contact advocacy organizations. The National Center on Elder Abuse offers guidance on how to investigate and seek justice for elder abuse. State laws vary, but some have elder abuse statutes and you may be able to use these laws to help an elder get restitution for breaches of fiduciary duties.
- ▸ Try to get a temporary restraining order from a court while building your case.

Online services offer estate planning for digital assets

A small online industry has sprung up to help people pass on the digital keys to their online lives should they die or become disabled. Call it 'digital estate planning' or creating a 'virtual executor.'

Once upon a time, the key to a safe deposit box was all loved ones needed to unlock the secrets of a life recently ended. Today, many aspects of our lives – both financial and personal – are lived in places accessible only by password. We have e-mail addresses, online brokerages and banks, Facebook and MySpace profiles, and accounts with PayPal, eBay, and more. In addition, many people have formed relationships with people they know only through game or social networking sites.

When a person dies, access to these accounts and contacts can be lost or extremely difficult to retrieve. As a result, a small online industry has sprung up to help people pass on the digital keys to their online lives should they die or become disabled. Call it "digital estate planning" or creating a "virtual executor."

On a typical site, users sign up and pay an annual fee to upload everything from crucial online passwords to locker combinations into a private account. Upon the user's death or disability, the individuals they have designated to receive this private information are told how to open the account and access the information. These people may also receive final wishes and a farewell e-mail from the deceased. Some sites even allow users to store estate planning documents such as wills and advance directives.

For example, a company called AssetLock offers a "secure safe deposit box" to hold such things as digital copies of important documents, final messages for family and friends, passwords, and information on hidden accounts. Once a minimum number (set by the owner) of recipients sign in and confirm the owner's death, the account is unlocked after a time delay (which also can be set by the owner). Similar services are offered by LegacyLocker and by companies with intimidating names such as Deathswitch and Slightly Morbid.

Other services focus on assisting people in sending important messages to loved ones. GreatGoodbye allows users to store e-mails, photos and videos that will be sent to those closest to them in the event of their confirmed death. Similar services are offered by companies called EternityMessage and Last Post.

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Probe finds nursing homes are 'dumping ground' for mentally ill

Elderly nursing home residents are increasingly living alongside young and middle-age people with mental illness, with sometimes tragic results, according to a 50-state investigation by the Associated Press.

It appears that in many cases this potentially dangerous trend is a violation of federal law.

According to the AP, nearly 125,000 non-elderly adults with serious mental illness were living in U.S. nursing homes in 2008. This is a 41 percent increase from 2002. Younger mentally ill people now account for more than 9 percent of the nation's nearly 1.4 million nursing home residents.

The AP concluded that nursing homes have become "dumping grounds" for the mentally ill. This seems to be happening for a combination of reasons: state mental institutions are closing, there is a shortage of hospital psychiatric beds, and nursing homes have more room because today's elderly are healthier and states are increasingly encouraging potential nursing home residents to continue living in the community. Also, it can be advantageous for states to place mentally ill people in nursing homes because of quirks in how the federal government pays for mental health services.

Although no government agency tracks violence by mentally ill residents against elderly residents, the AP article cites a number of recent cases, including one in which a 77-year-old Alzheimer's patient died when his roommate, a mentally ill man 30 years his junior, allegedly smashed him in the face with a clock radio.

A 1987 federal law says that patients suffering from mental illness other than dementia cannot be admitted to Medicaid-certified nursing homes unless they need the high level of care a nursing home can provide. But this clearly hasn't slowed the influx of the mentally ill into nursing homes.

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Estate taxes: What's a taxpayer to do?

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"decoupled" from the federal system and established their own estate tax plans. Taxpayers need to learn what the law is in their state and whether their existing plan is up-to-date. This is especially true for taxpayers who have moved from one state to another since signing estate planning documents.

- **Review life insurance.** All consumers should have their life insurance policies reviewed if they have had them for more than a few years. Some universal life policies that were based on projections made when the economy was stronger may be "underwater" and may need more robust premium payments to sustain them over the long term. The premiums of other policies may be based on old tables measuring life expectancy. Here, consumers may be able to lower premium payments or increase the death benefit.

  Finally, policyholders should never simply drop policies they no longer need or can afford. They may be giving up a large benefit for their heirs and they may be able to sell the policy for a larger return than the policy's cash surrender value.
- **Refocus estate planning.** The threat of the estate tax had the beneficial effect of prompting many consumers to do estate planning. But it also sometimes diverted them from the real purpose of estate planning: to leave the legacy they want. The estate plan people leave can benefit children and grandchildren for decades to come, or it can cause familial strife that tears a family apart. The choice of executor and trustee and the terms under which heirs will receive property are vital issues that deserve your full consideration, regardless of whether taxes are an issue.

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Be aware of the dangers of joint accounts

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Many people believe that joint accounts are a good way to avoid probate and transfer money to loved ones, and such accounts are sometimes referred to as "the common person's estate plan." But while joint accounts can be useful in certain circumstances, they can have dire consequences if not used properly.

Adding a loved one to your bank account can affect your eligibility for Medicaid as well as expose your account to the loved one's creditors.

When a person applies for Medicaid long-term care coverage, the state looks at the applicant's assets to see if the applicant qualifies for assistance. While a joint account may have two names on it, most states assume the applicant owns the entire amount in the account regardless of who contributed money to the account. If your name is on a joint account and you enter a nursing home, the state will assume the assets in the account belong to you unless you can prove that you did not contribute to it.

In addition, if you are a joint owner of a bank account and you or the other owner transfers assets out of the account, this can be considered an improper transfer of assets for Medicaid purposes. This means that you could be ineligible for Medicaid for a period of time, depending on the amount of money in the account. The same thing happens if a joint owner is removed from a bank account. For example, if your spouse enters a nursing home and you remove his or her name from the joint bank account, this can be considered an improper transfer of assets.

Another problem with joint accounts is that the account is vulnerable to all the account owners' creditors. For example, suppose you add your daughter to your bank account. If she falls behind on credit card payments and is sued, the credit card company can use the money in the joint account to pay off your daughter's debt.

Finally, you need to be sure you can trust the joint account holder because he or she will have full access to the account. Either account owner can take money out of the account regardless of who contributed to it.

There are better ways to conduct your estate planning. A power of attorney will ensure family members have access to your finances in the case of your disability. If you are seeking to transfer assets and avoid probate, a trust may make much better sense.

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