

LEGAL-EASE

Legal Writing You can Understand

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A Taxing Situation

One of the oldest and most common forms of taxation is the taxation of property held by an individual at the time of their death. Although we have had a federal estate tax since 1915, the current estate tax law began in 2001 and had increasing exceptions until this year. Beginning January 1, 2010, there is NO FEDERAL ESTATE TAX in effect.

If Bill Gates or Warren Buffett died right now, his heirs would inherit his entire fortune without owing a penny of federal estate tax.

While some may argue that this is a good thing, the actual effect of this may increase taxes on people who are not as wealthy as Bill Gates or Warren Buffett and who would not have had any federal estate tax due anyway under last year's exemption amount of \$3.5 million per person.

Another problem with the current situation is that it is temporary and totally uncertain. Congress could pass a law at any time reviving the estate tax and it could even give retroactive effect to January 1.

If no new law is passed, the really

bad news is that the old estate tax law will be resurrected as of January 1, 2011 and the exemption will be back to \$1,000,000 per person. Tax rates will be 55 to 60%. This lowered exemption will greatly increase the number of people who will pay estate taxes especially in many areas of Connecticut where property values are still higher than the national average and where people still have 401ks which have recaptured some of the value lost over the last two years.



BARBARA W. REYNOLDS

One of the biggest impacts of this current lack of estate tax is the increased likelihood of capital gains tax.

Previously, when someone received an inheritance, the basis of each asset became the date of death value. This meant that no capital gains taxes were due if you sold an asset immediately after inheriting it. If your father bought IBM stock at \$10 a share and it was worth \$150 a share upon his death, you would inherit the stock with a tax basis of \$150.

But today's law no longer has an automatic basis increase for a decedent's assets. Now, you may inherit an asset with the decedent's original tax basis. For many people, this could mean paying capital gains taxes upon the sale of inherited items where under the previous estate tax law, no tax would have been due. In the example of the IBM stock, the beneficiary would have \$140 per share of capital gains.

Many of you may be wondering if your documents should be changed because of this situation. Because of the temporary nature of the law (only 1 year) and because it could be changed at any time, it is probably better to sit tight and see what happens this year.

Meet Priska Ellenberg

One of the things I love most about elder law is the opportunity I have to get to know some of our very special elders who have lived 8, 9 or even 10 decades and are still actively engaged in the world around them.

Priska Ellenberg is such a client. She celebrated her 100th birthday on January 3. It's hard to imagine the many experiences, events and things that Priska has experienced over her lifetime. Priska is a very independent lady who does not like to be a "bother" to anyone or be beholden to anyone. She gave up driving 2 years ago and she moved to the Village at Brookfield Commons 8 years ago. She has a wonderful apartment there and is surrounded by a lifetime of treasures from the many places she has been but what is most important to her are friends and family. She loves to have visits from good friends and she maintains her connection with friends at the New Fairfield Senior Center.

She was born and educated in Germany, arriving in the US by ship in 1927 to become a Nanny. She met her husband Carl on the ship during that journey but he wanted to travel before getting married and he went on

to Shanghai where he was an engineer. After a couple years, Priska returned to Germany to wait to hear from Carl.



Finally, she could wait no longer and returned to the US, beginning an Odyssey throughout the country to board a ship in San Francisco for Shanghai. She and Carl married there on October 3, 1933. They returned to Germany and lived in Nuremberg and then Berlin during the war. Each feared for the safety of the other. She recalls the tough

years with shortages, bombings and hiding from the Russian soldiers. In 1953, they returned to the US.

Priska and Carl lived in New York state and then New Fairfield where Carl died in 1995 after 61 years of marriage.

During one conversation, Priska's disclosed that she regretted above all else not telling her husband Carl how special he was and how much she appreciated and respected him. This resonated deeply with me. It reminded me to tell my friends and family how much I love them, how much I value them, how important they are in my life.

As a former English teacher, I fell in love with Henry David Thoreau. He made some powerful observations that have guided me though much of my life. He wanted to live life fully and not when he came to die, discover that he had not lived. To live our life without regrets – how many of us will achieve that? Perhaps we have a better chance if we listen to the experiences of others and learn from their mistakes.

Why do You Need an Estate Planning Attorney?

Twenty room mansion, fleet of cars and a yacht, butler, maid and chauffeur, wide lawns, pool and tennis courts. Is this what your mind conjures up at the mention of "estate planning."

While the word "estate" may suggest such opulence, in fact, your "estate" is anything of value which you may own: your furniture, clothing, jewelry, bank account, savings bonds, car, house.

Each person has an estate. While the value of your estate may or may not match the image above, it is what you have worked hard for and you should be the one deciding who receives the fruits of your labor.

An estate planning attorney will ask you many questions about your assets: the actual title, the fair market value and even what you paid originally. No attorney can prepare a proper Will for you without knowing this information.

An estate planning attorney will also ask you about your goals and wishes for distribution of your assets. Perhaps you are parents of minor children. Have you planned properly for the use of your assets in the event of your death? Minors cannot inherit more than \$10,000 without Probate Court control of the assets. If you have minor children or if you are a grandparent who wishes to leave a gift to minor children, it is important to have your Will make the proper provisions to avoid the use of such assets being restricted by the Probate Court.

Perhaps you are single, divorced or married with no children. Do you know what will happen to your assets? If a parent is still alive, your parent will inherit your assets if you do not have a Will. If your parent is in ill health or even in a nursing home on Title 19, your assets could be subject to recovery by the State and totally used up in nursing home costs.

An estate planning attorney will also address the issue of living trusts and whether your situation requires one. There are companies today whose sole business is to sell living trusts – whether you need one or not. They often use scare tactics, suggesting you will pay more taxes, have a drawn out probate proceeding or other horrible results if you do not have a living trust. An estate planning attorney is not in the business of selling living trusts and she will explain the benefits and drawbacks of the trust and advise you about the best documents to meet your own needs.

In today's society in law, as in medicine, you need to seek an attorney who is very familiar with the kind of work you need done. Above all, do not settle for a prepackaged form. Wills do not come in a "one size fits all." Make sure your documents are tailored properly to meet your needs.

Seminar Schedule

**Friday, April 30 at 6:00 pm.
Newbury Village in Brookfield.**

Barbara will join John Taylor and Gianni Cordoza from Union Savings Bank to discuss do's and don'ts of estate planning and why trusts are useful.

**Wednesday, May 19 at noon:
Bridgewater Senior Center.**

Barbara will discuss major areas of Elder Law including whether to have a Will or Living Trust, probate issues, Living Wills, Powers of Attorney and asset protection. She will explain everything you need to know about Wills and Trusts and what legal documents need to be in place in order to have a comprehensive plan in place and she will answer any questions you may have about long term care or estate planning issues.

For more information on these and other seminars, please call our office at 860-350-0055.

Need a Speaker for your Group?

Barbara continues to be available to speak to your group or organization without charge. Attendees are eligible for a free initial consultation offered at each seminar. Please do not hesitate to call our office at 860-350-0055 to arrange an educational and informative presentation by Barbara.

We're Still on the Move to End Alzheimer's

The New Milford Alzheimer's Association Memory Walk this year is on May 1 at 10:00 am at Harrybrooke Park in New Milford.

Please call if you would like to join us in order to make a difference in the fight against Alzheimer's. We welcome your support either by joining us for the walk or donating to our team.

You may call our office or email me at
bwr@barbarareynoldslaw.com.

Here's Freddie

Our children surprised us with Freddie in December (something which I do **not** recommend you do to an elderly parent—a dog is a lot of work and an expense!) He's a Golden Retriever and looks a lot like Flossie.

He's not quite 6 months old and he weighs about 50 pounds—Freddie's going to be a rather large lad!

Fear not, though, Freddie has a very mellow personality and his favorite thing (even above food!) is to be around people who will scratch behind his ears.

Whether Freddie will come to the office is still uncertain—right now, he gets carsick. We're hoping this will change soon!



Ask Barbara

Question: My accountant told me that I am allowed to give each of my children \$13,000 each year. Is this true? Should I do that?

Answer: Your accountant is describing a gift tax law. Such a gift will be exempt from gift taxes and it will not count toward your lifetime gift tax exemption or your lifetime estate tax exemption.

It will cause you problems if you think you or your spouse may need Title 19 or Medicaid assistance

for home or nursing home care in the next 5 years. If your assets are in excess of the estate tax exemption in Connecticut (\$3.5 million per person), making gifts like this is a way to decrease your estate and avoid estate taxes.

If your assets are less, then it is a question of whether you are likely to need the funds for your own comfort and care.

If you are thinking of doing such gifting, I urge you to speak with me first to see how such a gift might impact you.

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Did you Know?

- . . that Barbara has been named a Connecticut Super Lawyer for 2010 for the 4th consecutive year by Law & Politics of Connecticut Magazine?
- . . that Connecticut's exemption from estate tax is now \$3.5 million per person?
- . . that Barbara's son Parker has an internship at The Library of Congress and is actively seeking a position on Capitol Hill?
- . . That Beth's son, U.S. Army Captain Chris Kennedy has returned from Iraq and Germany and is now serving at Fort Knox, KY?
- . . That Sue's daughter Katrina ran her first half marathon in Surf City USA, Huntington Beach, CA in February?

