YOUR FUTURE DESERVES
FORETHOUGHT
Published by Fendrick & Morgan, LLC
Winter 2014 / Volume 1

2014: An Estate Tax Update

Finally, we have a new year without any major changes to the federal or New Jersey estate taxes. Beginning in 2001, we saw increased federal estate and gift tax exemption amounts through the year 2009—and an all out repeal of the estate tax for the year 2010—coupled with reduced estate and gift tax rates. However, the all-out repeal of the federal estate and gift taxes in 2010 was temporary and on January 1, 2011, the federal estate and gift taxes were scheduled to return and the exemptions were to be reduced to $1,000,000 (down from $3,500,000 in 2009) and a flat 55% rate of tax assessed on everything over that amount. On December 17, 2010, President Obama signed into law new tax legislation (the "2010 Tax Act"), which increased the federal estate and gift tax exemption amounts to $5,000,000. It also stabilized the estate tax rate at 35% and, for the first time, added the concept of "portability" to the estate tax world. "Portability" allowed a surviving spouse to take advantage of a deceased spouse's estate tax exemption amount merely by making an election on the deceased spouse's federal estate tax return. The 2010 Tax Act was scheduled to sunset on December 31, 2012, and with its expiration, we were to have fallen off the proverbial "fiscal cliff." However, on January 1, 2013, Congress passed the American Taxpayer Relief Act of 2012 (the "2012 Act"), which President Obama signed it into law on January 2, 2013. The 2012 Act provided for $5,250,000 estate and gift tax exemptions and increased estate and gift tax rates to 40%. Additionally, the 2012 Act made the portability provisions permanent.

For 2014, the federal estate and gift tax exemptions have been indexed for inflation up to $5,340,000. The rate of tax remains at a flat 40% rate. Also, the portability provisions continue to exist in the federal estate tax. However, it is important to remember that in order to take advantage of those provisions and, effectively, carry over the unused estate tax exemption of a deceased spouse, the survivor must file a federal estate tax return on the death of the first spouse.

Even with these increased federal estate tax exemption amounts, our New Jersey clients need to remember that the New Jersey estate tax is still imposed on all estates which exceed $675,000. Many of you have not revisited your estate planning documents since the laws changed and, as a result, the language in your wills and trusts may need to be updated. Failure to do so could result in triggering an unnecessary New Jersey estate tax at the death of the first spouse.

Also, there is no such thing as "portability" for New Jersey estate tax purposes. Therefore, tax planning remains a critical component of your estate plan. In such cases, New Jersey Credit Shelter Trusts or Disclaimer Trusts should be considered.

For our Pennsylvania clients with estates that do not exceed $5,340,000 (or, $10,680,000 for married couples), your estate planning documents may be unnecessarily complex in light of the revisions to the estate tax and the permanent adoption of the portability provisions. You should consider revisiting your estate planning documents and simplifying them, as appropriate.

If you have specific questions regarding your current estate plan, or if you believe, based upon the above, that a change to your estate plan may be appropriate, please call our office to schedule an appointment to discuss the same.

Fendrick & Morgan Welcomes Rachel Shaffer, Esquire!

We are pleased to announce that Rachel Shaffer, Esquire, has joined us as an associate, and we look forward to you meeting and working with her. Rachel is bright, warm and engaging. She graduated from Loyola College in Maryland in 2008, and from Drexel University School of Law in 2012. She then served as Law Clerk to the Honorable Richard J. Geiger in the Law Division in Cumberland County. Rachel is admitted to practice law in Pennsylvania and New Jersey. She now resides in Collingswood and spends much of her free time exploring the restaurants and shops along Haddon Avenue.

New Jersey Legalizes Same-Sex Marriage: What It Means to You

In 2009, after the death of her same-sex spouse, Edie Windsor was hit with a $363,000 federal estate tax bill because the federal government did not recognize her same-sex marriage. Had they been a heterosexual married couple, Edie would not have owed a dime in taxes upon her spouse's death. Edie appealed the tax. In doing so, she was forced to take on the Defense of Marriage Act (DOMA). DOMA was passed in 1996 by Congress and signed into law by President Bill Clinton. DOMA forbid the federal government from recognizing same-sex marriages, and denied same-sex couples the same taxation and Social Security benefits enjoyed by heterosexual married couples.

On June 26, 2013, Edie won her battle against DOMA when, in a sharply divided 5-4 decision, the U.S. Supreme Court struck down a key provision of DOMA, declaring it unconstitutional. *United States v. Windsor*, 570 U.S. 12 (2013). The Supreme Court's decision clears the way for same-sex couples in states that legally recognize same-sex marriages to receive 1,138 federal benefits and protections that were previously denied them. These benefits include estate and inheritance tax benefits, Social Security survivor and spousal benefits, Medicare spousal benefits and Medicaid's long-term care spousal impoverishment protections.

Same-sex marriages in New Jersey only became legal on October 21, 2013 after the U.S. Supreme Court's ruling in Windsor. As a result of the Windsor decision, a New Jersey trial court invalidated New Jersey's restriction of marriages to persons of the same-sex. Governor Christie's administration requested that the New Jersey Supreme Court grant a stay of such decision pending appeal. However, the New Jersey Supreme Court denied that request on October 18, 2013 and three days later the trial court ruling went into effect, paving the way for same-sex marriages in New Jersey.

Pennsylvania is the only remaining state in the Northeast region where same sex couples cannot legally marry, although legislation there is pending.

WHAT DOES THIS MEAN TO YOU?
For starters, it means that our New Jersey same-sex clients should consider marriage, as opposed to the civil union or domestic partnership that they may now enjoy. While the civil union or domestic partnerships might avail you to certain New Jersey benefits, they will not afford you the same benefits for federal purposes. You must be married to enjoy the federal benefits.

As married persons, same-sex couples now can enjoy the unlimited marital deductions for New Jersey and federal estate tax purposes. That means that when one spouse passes away, the assets which pass to the surviving same-sex spouse will not result in a federal or New Jersey estate tax, regardless of the amount. Also,

continued on page 4

Make Sure Your Life Insurance is Not Taxed at Your Death

Many of us are worth more dead than alive. You may not feel like someone with an estate tax problem, but if you are a New Jersey resident and you own assets which, when you add in the death benefit of a life insurance policy, exceed $675,000, you do. Although your life insurance policy may pass to your heirs income tax-free at your death, it can nonetheless affect your estate tax. If you are the owner of a life insurance policy, the death benefit payable on such policy will be a part of your taxable estate when you die. You should make sure your life insurance does not impact your estate's tax liability.

If your spouse is the beneficiary of your policy, then the life insurance proceeds will pass to the surviving spouse tax-free at your death. Spouses can transfer assets to each other tax-free at death thanks to something known as the "unlimited marital deduction." However, upon your spouse's death—when assets pass to your heirs—the size of your spouse's estate would be increased by the life insurance they inherited from you and, at that point, additional estate taxes could be due.

Similarly, if the beneficiary of your insurance is anyone other than your spouse (i.e., your children and grandchildren), the death benefit will be included in your estate and could trigger an estate tax at your death. For example, suppose you buy a $1 million life insurance policy and name your child as the beneficiary. When you die, the life insurance death benefit ($1 million) will be included in your taxable estate. Because, in that case, the total amount of your taxable estate exceeds the $675,000 New Jersey estate tax exemption, an estate tax will be due at your death. It may have been possible to avoid the New Jersey estate tax altogether.

In order to avoid having your life insurance death benefit taxed, you might transfer ownership of the policy to an Irrevocable Life Insurance Trust ("ILIT"). Once you transfer a life insurance policy to a trust, you are no longer the owner of the policy. That means that you can no longer change the beneficiary or exert any other control over it. Because you no longer possess any "incidents of ownership" over the policy, when you die, the death benefit is no longer included in your estate. Note that you should also change the beneficiary of the insurance to be the trust. If you decide to transfer an existing life insurance policy, do it right away. If you die within three years of transferring the policy, the policy's death benefit will still be included in your

continued on page 4

Long-Term Care Benefits for Veterans and Their Spouses

With approximately one million servicemen and women over the age of 65 is in the United States, and forever-shrinking Medicaid benefits, it makes sense to consider alternative forms of income and assistance to pay for long-term health care costs.

Many veterans, and their spouses, do not realize that they can receive additional monthly income to help pay for home health care, assisted living and nursing home care. The Veterans Administration (VA) has an underused pension benefit called "Aid and Attendance," which provides a monthly check to those who need assistance performing everyday tasks and meet certain income and asset limitations. The Aid and Attendance benefit can pay up to $2,085 a month for a veteran and their spouse, up to $1,759 a month for a single veteran with no spouse or dependants, and up to $1,130 for a veteran's widow. Even a veteran whose income is above the legal limit for the VA pension may qualify for the Aid and Attendance benefit if they have large medical expenses for which they do not receive reimbursement.

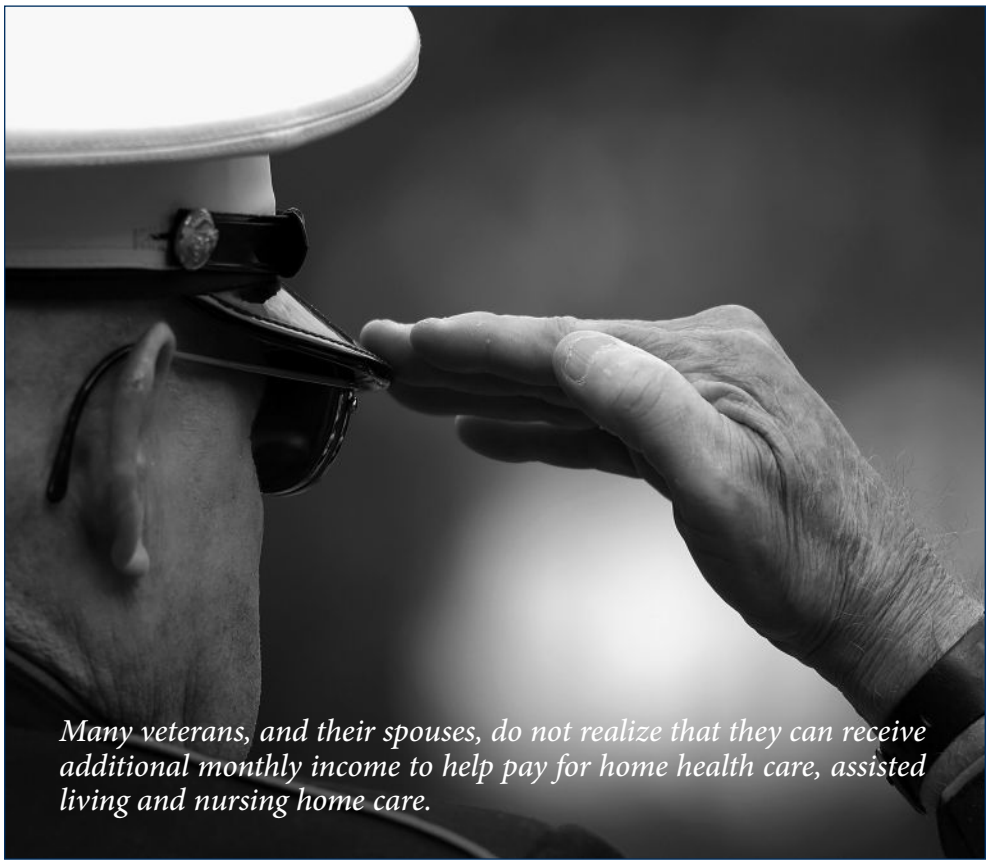
In order to qualify for the Aid and Attendance benefit, the following criteria must be satisfied: (1) the veteran must have served at least 90 days of consecutive active duty service, one day of which must have been during a war-time; (2) the veteran must have received a discharge other than dishonorable; (3) the claimant must have limited income and assets; (4) the claimant must be age 65 or older OR have a permanent and total disability OR be receiving skilled nursing home care in a nursing home facility OR be receiving Social Security Disability OR be receiving Supplemental Security Income; and (5) the disability must have been caused without willful misconduct of the claimant.

As stated above, the veteran or his/her widow must have limited assets, excluding the home and one vehicle. Exactly how much the veteran or his/her widow can have depends upon their age. For example, it may be reasonable for a 67 year old to have $80,000 in assets and qualify, but a 90 year old with $80,000 in assets likely has too much to qualify. One significant distinction between Medicaid benefits and the Aid and Attendance benefit is that while there is a five (5) year look back on all transfers to qualify for Medicaid eligibility, there is NO LOOKBACK on transfers made to qualify for the Aid and Attendance benefit.

That said, you must be mindful of the five (5) year Medicaid look back when transferring assets to qualify for the Aid and Attendance benefit. Transferring assets may render you eligible for the Aid and Attendance benefit today, but then render you ineligible for Medicaid benefits if you apply for Medicaid within five (5) years of the date of the transfer.

In addition, the veteran's income must not exceed certain thresholds, known as Maximum Annual Pension Rates ("MA PRs") in order to qualify. For these purposes, "income" does not include welfare benefits or Supplemental Security Income. It also does not include unreimbursed medical expenses actually paid by the veteran or a member of his or her family. This can include Medicare, Medigap, and long-term care insurance premiums; over-the-counter medications taken at a doctor's recommendation; long-term care costs, such as nursing home fees; the cost of an in-home attendant that provides some medical or nursing services; and the cost of an assisted living facility. These expenses must be unreimbursed (in other words, insurance must not pay the expenses). The expenses should also be recurring, meaning that they should recur every month.

If you or your spouse is a veteran, or if you are a widow of a veteran, call us to discuss whether or not you may be eligible to receive this additional monthly Aid and Attendance benefit.



Many veterans, and their spouses, do not realize that they can receive additional monthly income to help pay for home health care, assisted living and nursing home care.

DOMA continued from page 2

those same-sex married couples should now consider the same tax planning strategies that have been used by their heterosexual neighbors for generations. As indicated previously in this newsletter, in "2014: An Estate Tax Update," New Jersey residents can only leave up to $675,000 to someone other than a spouse without triggering an estate tax. Now, same-sex couples can use the tax planning of death tax sheltered trusts to shield up to $1,350,000 from New Jersey estate taxes upon the death of the surviving spouse.

Married same-sex couples are also now able to transfer assets freely between them without any gift tax consequences. Generally, transfers in excess of $14,000 to a non-spouse require the filing of a federal Gift Tax Return and the use of some portion of the transferor's federal gift tax exemption (currently, $5,340,000). However, same-sex married persons may transfer assets between themselves freely. This facilitates tax planning, and asset allocation, for same-sex couples.

Also, the IRS has indicated that it will look to the laws of the state in which the marriage was performed for tax purposes. For example, if a same-sex couple residing in Pennsylvania crossed the river to New Jersey and was legally married in New Jersey, for federal purposes, the couple would be deemed to be legally married even though the couple's state of residence, Pennsylvania, might not recognize the marriage union.

If you would like to discuss these recent and monumental changes, and how they may effect you, please call us.

LIFE INSURANCE continued from page 2

estate. If you purchase a new insurance policy in the name of the trust, the death benefit will instantly be excluded from your estate.

To better illustrate the benefits of an ILIT, consider the following scenario: you own your home, a bank account and retirement account assets totaling $600,000; and you also have a $1,000,000 life insurance policy. If everything passes to your spouse at your death, there will be no estate tax at your death. However, upon your spouse's death, the full $1,600,000 of your assets (plus whatever your spouse owns) will be subject to estate taxes. As indicated above, New Jersey only has a $675,000 estate tax exemption. Accordingly, upon the surviving spouse's death (or, upon your death if you do not have a spouse), the $1,600,000 is subject to a New Jersey estate tax of approximately $70,000. If, instead, the insurance was owned by an ILIT, the New Jersey estate tax could be reduced to zero—a $70,000 savings!

If you want to discuss the potential benefits of an ILIT in your estate plan, call us to schedule a consultation.

Does your group need a guest speaker?

We are available to speak to your professional, civic, religious or special interest group on various topics (Estate Planning, Elder Law, IRA Planning, Special Needs Trusts, Disability Planning.) Give our office a call at **(856) 489-8388** to arrange a date and time or visit our website at www.fendrickmorganlaw.com.

YOUR FUTURE DESERVES
FORETHOUGHT
Published by Fendrick & Morgan, LLC
Winter 2014 / Volume 1

To add a friend to our mailing list, please call (856) 489-8388
or visit our website at www. fendrickmorganlaw.com

Published by Fendrick & Morgan, LLC

Staffordshire Professional Center
1307 White Horse Rd. • Bldg. B • Suite 200 • Voorhees, NJ 08043
ph: (856) 489-8388 • fax: (856) 489-8424
www.fendrickmorganlaw.com

FENDRICK & MORGAN LLC
ATTORNEYS AT LAW