

# THE BERNSTEIN TAX LETTER

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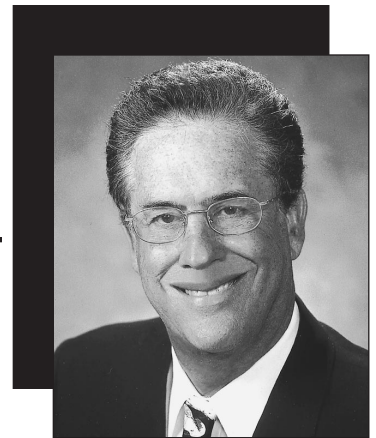
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Dear Reader,

The Thanksgiving recess has passed and it's time that Congress takes some tax legislation into serious consideration. Charles Rangel, chairman of the House Ways and Means Committee, introduced legislation last month that amended a prior bill that would have repealed the individual alternative minimum tax (AMT). The new legislation, The Temporary Tax Relief Act of 2007 (H.R. 3996), was passed by the House of Representatives and provides more scaled-down tax relief, including extensions of several provisions that were about to expire. The key relief provisions of this bill include an

- extension of the AMT exemption of \$66,250 for married joint filers (\$44,350 for individuals) for 2007 returns
- additional standard deduction of \$700 for joint filers (\$350 for individuals) for state and local property taxes in 2008 for non-itemizers
- extension of the deduction for state and local sales taxes for 2008
- extension of the deduction for tuition and qualified higher educational expenses for 2008
- extension of the qualified charitable distribution provision from an IRA for 2008
- exclusion from income in some instances for discharge of acquisition indebtedness for mortgage foreclosures on principal residences

President Bush has threatened a veto of the bill due to two tax increase provisions totaling nearly \$50 billion for taxation of deferred compensation paid by offshore hedge funds to investment managers and the taxation of carried interest for private equity partners performing management services.

It is likely that the debate will cause the extenders to pass in December (maybe even next year) and will be too late for the IRS to incorporate provisions into the 2007 tax returns. This will delay filing for many affected taxpayers. We'll keep you abreast of these developments and the enactment of the final legislation.

Unfortunately, we often see unnecessary expenses for individuals at their death or disability due to the lack of organization and communication with key family members with respect to important legal documents and records. Read the inside report for a quick guide and start the New Year with a resolution to get more organized.

Cordially,

*Happy Holidays*

*Richard S. Bernstein*

**A Second Opinion Costs You NOTHING,  
But Could Save You MILLIONS!**

**WHEN IT COMES TO YOUR HEALTH, YOU GET A SECOND OPINION,  
SHOULD YOUR FINANCIAL WEALTH BE ANY DIFFERENT?**

*Happy Hanukkah*

*Merry Christmas*

## **ORGANIZATION OF DOCUMENTS AND RECORDS: A CRITICAL COMPONENT OF ESTATE PLANNING**

The development and implementation of a comprehensive and cohesive estate plan are essential to achieve the most efficient use of an individual's wealth, both for the estate owner and his or her heirs. However, substantial costs and delays will be suffered if family members and caregivers are unable to locate information and documents quickly at critical times. This information will have to be retrieved quickly if an individual loses capacity, must be placed in a hospital or care facility, or dies. We urge everyone to take the appropriate steps to organize the information and communicate with the people who will be most likely to handle the care, housing, and estate settlement decisions. Although the types of records and documents will differ somewhat from individual to individual, the discussion below might provide useful guidance.

### **PERSONAL INFORMATION AND RECORDS**

Personal identification documents are often necessary to get things done. This has been made even more essential by new homeland security rules that will require appropriate identification to accomplish many everyday tasks. It would be helpful to have quick access to birth certificates, Social Security cards, passports, and any other identification papers. Family records, such as marriage certificates, divorce agreements, and adoption information, should be available. For individuals who are not born citizens of the United States, citizenship or residency documents might be extremely important, particularly for applications to receive government benefits or to file accurate income or estate tax forms. Finally, medical information, such as the names and numbers of physicians, hospitals, pharmacies; Medicare or Medicaid information; and any other relevant health care information should be consolidated where it can be quickly retrieved.

### **ESTATE PLANNING DOCUMENTS**

**Will.** Of course, every individual with the capacity to execute a will should have this task completed. However, surveys have indicated that nearly 60 percent of Americans have not done so. After completing a will, it is important to inform the chosen personal representative of his or her role in settling the estate and letting the appropriate individual(s) know where to find the will. Sometimes it is stored with the attorney who prepared the document, but often it is kept in a safe accessible place in the home. Certainly, pertinent information, such as the name and phone number of the attorney who prepared the will, could be useful to the executor because legal assistance is generally recommended to assist the executor in settling the estate.

**Trusts.** Trusts are often prepared as part of the estate plan. The grantor, trustee, and beneficiaries should generally have original (or copies of the) trust documents. Again, the documents should be accessible and the phone numbers of the appropriate individuals, such as legal counsel, trustees, and tax preparers, should be readily available to the people who will have to perform any transaction with the trust.

**Living Will.** A living will (advance medical directive) is a document for the declarant to state his or her intentions with respect to health care if he or she is not capable of stating the intention at the time the health care is received. This document should be available to family members who will have to arrange health care and should be provided to the declarant's physicians and health care facilities where the care is provided.

**Power of Attorney.** A power of attorney gives the agent (or attorney-in-fact) the ability to act in behalf of the principal. The power can be limited to perform one specific act (for example, to sign an agreement of sale for the principal) or broad enough to handle all financial matters. Generally, a broad (or general) power of attorney is made durable so that the attorney-in-fact can continue to act for the principal after the principal loses capacity. Another form of power of attorney is limited to making health care decisions for the principal. Of course, the attorney-in-fact should be given one or more original documents and access to the document(s) should be given to any successor attorneys-in-fact. It also may be a good idea to make any financial institution where the principal does business aware of the power of attorney to ensure that the financial institution will be willing to comply.

## **FINANCIAL RECORDS AND INFORMATION**

The financial information that should be consolidated and easily found by family members is potentially voluminous, and it should be stored in a safe, organized fashion. All financial accounts, records of pension plans or IRAs, individual securities, mortgage or loan information, location and keys to safe deposit boxes, titles to automobiles, annuities, and life insurance policies should be organized and the location communicated to the appropriate individuals. Tax returns and records will generally be necessary to prepare future returns or settle an estate. Deeds, leases, or other contracts related to real estate should be safeguarded and accessible to family members. Jewelry, furs, or collectibles may be hidden or placed in safe storage, and records of such property (and appraisals) will have to be available to appropriate family members. Of course, the names and numbers of any financial, tax, and legal advisors who have worked with the individual in creating the estate should be available to the family members who will need their assistance. These individuals are often invaluable in assisting in the organization of the information.

## **RECORDS AND INFORMATION INVENTORY**

One good method to summarize and complete this task is to prepare a checklist of the types of items discussed in this article. The inventory should indicate the existence and location of the items relevant to the individual. Phone numbers and addresses of relevant advisors and important contacts should be included. This inventory should be provided to the individuals who will potentially handle the estate of an individual who loses capacity or passes away. The inventory might be prepared informally; inventory checklists are available in business or legal book stores.

## RECENT CASES AND RULINGS

### IRS INSTITUTES POLICY TO APPLY SURETY BOND REQUIREMENT FOR ESTATES ELECTING DEFERRED PAYMENT OF ESTATE TAX UNDER SEC. 6166

Estates holding a closely held business interest valued at greater than 35 percent of the adjusted gross estate can elect to pay the estate taxes related to the inclusion of the business interest in installments under rules provided by Sec. 6166. The rules also permit the IRS to require the estate to post a surety bond to secure the government's interest in the deferred tax. The IRS imposed a policy to make the bond mandatory, and the issue was litigated in a case reported in a prior edition of this newsletter. The Tax Court held that the IRS should apply the bond requirement on a discretionary case-by-case basis. The IRS announced a revision of its policy (IRS Notice 2007-90, 2007-46 IRB 1003) and will apply various factors to determine the need to require a bond. Among the factors to be considered are (1) the duration and stability of the business, (2) the ability to pay the installments of tax and interest timely, and (3) the compliance history of the business. The Notice requests comments from practitioners about other factors that might be appropriate.

### FAILURE TO NAME SECONDARY BENEFICIARY TO AN IRA ACCELERATES INCOME TAX LIABILITY

The decedent, aged 78, owned an IRA at the time of his death. The designated beneficiary of his IRA was his wife. The decedent failed to name a secondary beneficiary, although a prior designation named his daughter as secondary beneficiary. The IRA provider mailed him a new beneficiary designation form when his wife predeceased him, but he failed to complete the form before his death. The executor got the probate court to approve a change in the beneficiary to the IRA owner's daughter subsequent to his death. The IRS ruled (Ltr. 200742026) that the estate is the beneficiary of the IRA and that no individual can be a named beneficiary for the purposes of determining the applicable distribution period of the IRA. Thus, the account must be distributed over the decedent's remaining fixed-term life expectancy instead of the daughter's life expectancy, causing income taxes to be incurred earlier than necessary. This ruling indicates the importance of checking beneficiary designations and making timely changes as necessitated by individual circumstances.

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This Tax Letter is intended to assist you to conserve your estate and to protect the interests of your family and business associates. Estate planning involves the joint services of a competent Trust Officer, Attorney, Accountant, and Life Underwriter. The experience and advice of each is generally essential.

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