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NP TRUSTS & ESTATES BLOG | NIXON PEABODY LLP

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What's trending on NP Trusts & Estates

Estate planning for cryptocurrencies, a tax-free way to pay educational expenses, performing a paycheck checkup, the IRS mobile app and more. Here's what's trending in estate planning and wealth management.

Estate and Gift Planning

Does anyone know you own bitcoins? — estate planning for cryptocurrencies

Since it was first released in 2009, bitcoin, and other cryptocurrencies that emerged after it, have become more popular. Bitcoin came out of a new data technology referred to as blockchain technology.

What is blockchain?

Blockchain represents a new method of maintaining data, using a database distributed among numerous nodes to establish a continuously updated list of records, added as blocks in a chain. A "node" in financial technology terms means any system or device connected to a network where each device has a unique network address, which can be used to validate transfers of data. In bitcoin, a full node is a program that can fully validate transactions and blocks.
Bitcoin, one of the first applications of blockchain, is essentially a virtual currency and is not derived from existing currencies issued by a central bank. As with any new technology problems were encountered, which include conflict with existing financial regulatory systems and the criminal use of cryptocurrencies for fraud, money laundering and other illegal purposes.

Anonymity of cryptocurrencies

While the anonymity of owning cryptocurrencies is seen as an attractive benefit, ownership comes with a burden on the owner, or the owner's heirs, to track, access and account for the cryptocurrencies.

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What type of property is cryptocurrency?

For federal estate tax purposes, the Internal Revenue Service treats cryptocurrency as a tangible personal property.

State property law, however, could treat cryptocurrency as either intangible or tangible property. This is very important as state law governs who inherits your cryptocurrency. A typical will provides for a disposition of tangible property (typically jewelry, furniture, furnishings, cars, etc.) in one manner and the residue or remainder (typically all of your financial assets in your name alone) in a different manner.

Planning options for cryptocurrencies

One method to ensure that your cryptocurrency will not be lost at your death, is to specifically reference the ownership of the cryptocurrency in your will or, preferably, revocable trust.

It is important to put your heirs and fiduciaries on notice that you own cryptocurrency and then provide in a separate document all of the information necessary to digitally access the cryptocurrency, including exchange accounts, user names, PINs, passwords, security codes, private keys, digital wallets, etc. Remember to update this document from time to time and, most important, to store it in a secure location and tell someone else where it is stored.

Some states, including California, have adopted some form of the Uniform Fiduciary Access to Digital Assets Act. In those states you can appoint a "digital fiduciary" to access certain assets.

Basis adjustment at death

When you die, your cryptocurrency, like every other asset, is included in your estate for federal estate tax purposes and must be valued at death.

Under current estate tax laws, the cryptocurrency will receive a step-up in income tax basis equal to the date-of-death value. If your cryptocurrency is highly appreciated, this can reduce the amount of capital gain recognized by your heirs or beneficiaries of your estate on a subsequent sale.

— *Deborah L. Anderson*

The 529 plan: a tax-free way to pay educational expenses

A 529 plan is a college-savings vehicle, which is offered by nearly every state in the United States and is also offered by some colleges. An individual can invest in the 529 plan of any state—not just the state where they live—and a student may typically use the funds of a 529 plan to attend school in any state. Although 529 plans are widely considered college savings plans, the funds can also be used for qualified educational expenses for elementary school through graduate school.

Who can contribute to a 529 plan?

Any person may make annual or one-time contributions to a 529 plan account on behalf of a beneficiary. Earnings build up tax-free, and distributions are not subject to income tax to the extent that distributions are used to pay for qualified higher education expenses. Qualified higher education expenses typically include tuition, fees, books, supplies and room and board costs.

What are the contribution options and limits?

Contributions to 529 plans are treated as present interest gifts, which qualify for the annual federal gift tax exclusion. An individual can contribute up to $15,000 in 2018 per beneficiary without incurring a gift tax and without using their available exemption. In 2018, if a married couple wishes to contribute to a 529 plan for the benefit of their grandchildren, they may together contribute $30,000 to each grandchild's 529 plan, without incurring a gift tax. Individuals may also make unlimited tuition payments directly to the educational institution each year without incurring a gift tax and without using their available exemption.

A pre-funding option also exists where an individual may make five years of contributions at once—a unique aspect of 529 plans, which permit a donor to take advantage of five years' worth of annual exclusions—provided that no other gifts are made to the same beneficiary during that period.

What happens if the beneficiary does not go to college or does not use the full amount in the 529 plan?

In the event that a beneficiary does not attend college or receives a scholarship such that the full amount saved is not needed to fund the student's education, the account owner may:

1) Leave the money in the account in case the beneficiary decides to attend school later or pursue graduate school;

2) Rollover the account to a different beneficiary so long as the new beneficiary is not a younger generation than the original beneficiary (otherwise a gift tax will be triggered); or

3) Withdraw the money for other uses subject to a 10% federal penalty tax on the earnings portion of the distribution.

— Maureen Mullen

Wealth Management

Market Pulse: October Economic Highlights

What's happening: highlights from the NP Investment Team

The Dow and S&P 500 both wiped out all of their gains in 2018 over the past month as fears of a global slowdown and the ramifications of slower growth (particularly in China) have taken hold. Investors are concerned that the Fed will raise rates too quickly driving up the cost to borrow money and therefore force companies and consumers to cut back. These issues as well as worries about the upcoming mid-term elections, Brexit and Italy's budget crisis have led to the worst monthly performance in the S&P 500 since February 2009.

Despite all of these concerns, U.S. GDP growth remains very healthy, unemployment is at historical lows and the majority of U.S. companies are reporting third-quarter earnings ahead of expectations. Through Friday, 240 companies in the S&P 500 have reported third-quarter results with 78% posting earnings per share that were above Wall Street expectations. Overall, economic data continues to show no sign of a pending recession, earnings are on track to grow over 20% and, with the pullback, stock valuations have become much more attractive with the S&P 500 trading at 15 times next year's projected earnings down from over 18 earlier this year. As we witnessed earlier this year and in 2015–2016, market corrections are healthy, and we will utilize our long-term investment outlook to capitalize on these situations. Please reach out to the Investment team with any questions you may have about the recent pullback or your own investment portfolio.

Leaders and laggards: What's up and down in the U.S. stock market?

ECONOMIC SECTORS	OCTOBER THROUGH 10/25/18	YEAR-TO-DATE 2018 (THROUGH 10/25/18)
Energy	-11.45%	-4.84%
Health Care	-7.05%	8.41%

Consumer Discretionary	-9.20%	9.54%
Information Technology	-7.80%	11.22%
S&P 500	-9.50%	-1.10%
Industrials	-10.93%	6.62%
Consumer Staples	1.84%	-1.56%

Stock market leadership has shifted since the September 20, 2018, high with defensive and communication services sectors outperforming while the commodity sectors, industrials, financials and technology have lagged. This is similar to the sector reaction experienced in the 2015–2016 market correction as investor confidence became more fragile.

Click here for more information about NP's investment capabilities.

— NP Investment Team

Income Taxes

Does your paycheck need a checkup?

The 2018 tax reform bill brought about many changes to the income tax rules, including the tax withholding tables. Accordingly, taxpayers should evaluate their current federal tax withholdings.

Checking and potentially adjusting withholdings now can prevent possible tax problems in the future, such as a larger than expected tax bill or tax penalty. Alternately, your paycheck checkup may result in more take home pay if a taxpayer is having too much withheld now.

Who should review their federal withholdings?

Taxpayers who should review their withholdings include those who:

- Are part of a two-income family
- Have two or more jobs at the same time or only work part of the year
- Claim tax credits (like the child tax credit)
- Have dependents age 17 or older
- Itemized deductions in 2017
- Have high income or a complex tax return
- Had a large tax refund or tax bill in 2017

How should a taxpayer review their federal withholdings?

Performing a paycheck checkup is simple with the new IRS Withholdings Calculator, which will calculate an estimated tax liability. This estimate should be compared to current withholdings to determine if federal taxes are being over or under withheld.

The IRS does recommend that taxpayers with particularly complex tax situations (such as owing self-employment tax, being subject to alternative minimum tax or having capital gains and dividend income) consult publication 505 Tax Withholding and Estimated Tax to evaluate their withholdings instead of using the online calculator.

How does a taxpayer adjust their federal withholding?

To adjust federal paycheck withholdings, a taxpayer will need to complete a new IRS Form W-4 and submit it to their employer.

Claiming additional allowances will decrease tax withholdings while claiming fewer allowances will result in additional tax being withheld.

Don't delay your paycheck checkup.

As we are approaching the end of 2018, there are fewer pay periods remaining in which to make the adjustment necessary for an under withholding situation so the sooner a taxpayer acts the better.

— *Smita Patel*

IRS2Go: the IRS has a mobile app

The Internal Revenue Service (IRS) has entered the mobile app world. The IRS mobile app, IRS2Go, which is available in English and Spanish, can be downloaded from Google Play, the Apple App Store or the Amazon Appstore for free to iOS or Android devices.

After downloading IRS2Go, a taxpayer can use the app for the following:

Check the status of a refund

IRS2Go will be able to provide the status of a federal tax refund within 24 hours of e-filing a return and about four weeks after a paper filing.

Make a tax payment

IRS2Go offers access to mobile-friendly payment options (like IRS Direct Pay) which allows taxpayers a free, secure way to make payment directly from a bank account or, if an approved payment processor, a debit or credit card.

Free tax preparation assistance

If a taxpayer's adjusted gross income is below $66,000, using the Free File tool within IRS2Go, a taxpayer can access free tax software to prepare and file tax returns.

Get helpful tips and information

IRS2Go also provides access to IRS accounts on social media, including YouTube, Twitter and Tumblr on tax matters, as well as information on how to subscribe to IRS Tax Tips.

— *Christopher F. Caldwell*

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Achieving success in estate planning, wealth management and tax minimization.