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What's trending on NP Trusts & Estates

What happens to a celebrity's image and likeness after death, how a change in marital status automatically affects an estate plan, what taxpayers should know about penalty relief and more. Here's what's trending in estate planning and wealth management.

Estate Planning

What happens to a celebrity's image at death?

Aretha Franklin, the Queen of Soul and eighteen-time Grammy-winning singer, died last month at the age of 76. In addition to her real estate holdings in Michigan and her numerous copyrights, her $80 million estate will likely include another valuable asset—her image and likeness.

How is a celebrity's image treated during lifetime?

Celebrities' images and likenesses, as assets, stem from their right to publicity—in essence, their right to control the use of his or her identity for commercial purposes during their lives. Currently, twenty-two states recognize the right to publicity by statute and at least thirty-eight states recognize it under common law theories.

How is a celebrity's image treated at death?

Not all states that recognize the right to publicity treat it as a transferable asset that survives celebrities' deaths. Therefore, celebrities' domiciles at their deaths determine whether their images and likenesses will be includible for estate tax purposes and reported on any state and/or federal estate tax returns.

A famous example of the importance of domicile is Marilyn Monroe's estate. Monroe died owning real estate in California and New York and could have claimed domicile in either. California treats the right to publicity as transferable at celebrities' deaths whereas New York does not. Monroe's estate claimed New York domicile so as to avoid the steep estate and inheritance taxes that were in effect in California at the time. As her image proliferated in the United States and beyond, her estate tried to assert ownership over her image in an attempt to cash in on it, but was ultimately barred from doing so due to its prior claim of New York domicile.

What does this mean for Franklin's image?

Franklin died a resident of Michigan. Michigan recognizes the right to publicity during celebrities' lives but is unsettled as to whether such right survives death.

Though Michigan does not have a state estate tax, Franklin's estate will likely owe a federal estate tax. Therefore, her estate will be in the position of being able to choose whether to treat her image and likeness as an asset for estate tax purposes. As illustrated by Monroe's estate, there are benefits and detriments to both.

How are images valued for tax purposes?

Assuming Franklin's estate treats her image and likeness as an asset for estate tax purposes, it will be difficult to value. Recently, celebrities' images and likenesses have become a hot audit item by the IRS due to their potential to appreciate greatly and inherent uniqueness as assets.

The IRS assigned a value of $434 million to Michael Jackson's image and likeness despite his estate claiming a value of just over $2,000. Similarly, the IRS assigned a value of over $11.7 million to Whitney Houston's image and likeness despite her estate claiming a value of $200,000. Jackson's tax court matter is still ongoing whereas Houston's estate recently settled with the IRS earlier this year for approximately $2 million.

Assuming Franklin's executor asserts ownership over her image and likeness, it will need to pay close attention to valuation and would be advised to anticipate audit by the IRS. It should also be aware that whatever value the IRS assigns at audit will likely be higher than the estate's original position. As with Houston's estate, it is likely that Franklin's estate will settle with the IRS for some lesser, but still significant, valuation for her image in the end.

— Alexandra P. Crean

A change in your marital status often necessitates a change in your estate plan

You may have already met with an estate planning attorney and completed wills, trusts, powers of attorney and/or implemented other long-term estate planning strategies. Congratulations! This is a very important step toward protecting your loved-ones and ensuring your financial and medical needs will be properly managed when you are unable to do so for yourself.

Unfortunately, an estate plan is not a static set of documents. Marriage and divorce have legal implications, and more often than not a change in marital status often necessitates a change in your estate planning documents to ensure that your plan reflects your intentions.

The following short discussion provides a non-exhaustive overview of how the change in your marital status can automatically affect your estate plan.

How does marriage affect your estate plan?

Under the Massachusetts Uniform Probate Code ("MUPC"), a will that is signed prior to marriage is not automatically revoked after marriage. Failing to update your will after marriage means that your surviving spouse may only be entitled to an "intestate share," i.e., only that amount of the deceased spouse's probate estate that the surviving spouse would have received had the decedent died without a will. The surviving spouse may not even be entitled to an intestate share if:

(i) the intestate share compromises the assets devised to a child who was born before the marriage and who is not a child of the surviving spouse,
(ii) the previous will was expressly made in contemplation of marriage and
(iii) the deceased spouse provided for the surviving spouse through other means (e.g., life insurance) that were intended to provide for the surviving spouse in lieu of the provisions in the will.

Is this enough? Are those the correct assets your spouse should receive?

While these benefits are automatic, they frequently do not reflect the subsequently-married individual's intentions. After marrying, it is important to review and perhaps update your estate plan to ensure:

(i) your new spouse receives the type and amount of assets that you intend;
(ii) your spouse will serve in fiduciary roles such as executor, trustee or agent under a power of attorney (if appropriate); and
(iii) the tax benefits afforded to married individuals are maximized, e.g., the estate tax

marital deduction.

How does divorce affect your estate plan?

Under the MUPC, divorce automatically revokes all beneficial dispositions to, and fiduciary designations of, a former spouse whether made by will, revocable trust or beneficiary designations (such as over life insurance policies and retirement plans). Although the MUPC purports to void beneficiary designations with respect to life insurance policies and retirement assets, in some instances courts have found that those provisions of the MUPC are unenforceable. Therefore, it is important to update your beneficiary designations with respect to these assets.

Additionally, since divorce voids certain provisions of your estate planning documents, it may be necessary to add new provisions to address who inherits your property and who will govern your financial affairs during your incapacity and after your death.

If you have minor children, this may be especially important to ensure new fiduciaries are named and that your former spouse does not possess any powers or rights (and, therefore, indirect access to your assets) by virtue of his or her status as a natural guardian of your children.

Even in the absence of minor children, it is important to update your estate planning documents to avoid confusion among financial institutions reading your estate planning documents and determining who is entitled to receive, and has power over, your assets.

Finally, now that you are single, you may also need to address potential tax issues as the unlimited marital deduction is no longer available to you.

While the MUPC's automatic revocations have a broad sweep, they do not apply to all estate planning documents or all situations where divorce can affect your estate plan.

First, divorce does not automatically revoke beneficial interests and fiduciary appointments of a former spouse under irrevocable documents such as irrevocable life insurance trusts. Eliminating a former spouse from an irrevocable trust may be possible through "decanting" or other advanced planning techniques, but affirmative action is required. If a former spouse is the trustee, this could present some challenges since a trustee is the individual who must do the decanting.

Second, these automatic revocations only apply to the individuals who divorce. If you have family members who were recently divorced, it is important to review and/or change your estate plan if the former in-law is to receive any assets or serve in a fiduciary role under your estate plan.

— *Megan Neal*

Wealth Management

Market Pulse: September Economic Highlights

What's happening: highlights from the NP Investment Team

The MSCI/S&P Dow Jones Indices are making significant changes to the GICS classification, which sorts stocks into sectors/industry groups/industries and sub-industries. The most significant change is that Telecom Services sector will be broadened and renamed Communication Services.

Why is this happening? Telecom has become a less dominant mode of communication and there is an evident convergence between telecom and cable companies. In addition, there are internet companies that have become synonymous with social communication and information. Therefore, Media and other select stocks currently classified in Consumer Discretionary will be moved into Communications Services as well as Home Entertainment Software and other select stocks from the Tech Sector. This is important for investors because GICS classifications are widely used by institutional investors and major ETF providers and these changes can have an impact on sector and stock performance within individual portfolios. Please let us know if you have any questions about your asset allocation and how these changes can affect your portfolio.

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

ECONOMIC SECTORS	SEPTEMBER 2018	YEAR-TO-DATE 2018 (THROUGH 9/30/18)
Energy	2.59%	7.46%
Health Care	2.93%	16.63%

Consumer Discretionary	1.04%	20.62%
Information Technology	-0.33%	20.64%
S&P 500	0.57%	10.57%
Industrials	2.19%	2.59%
Consumer Staples	1.04%	-3.34%

Stock market leadership year to date has been led by the technology and consumer discretionary sectors as revenues and earnings came have in higher than expected through the first two quarters. We also saw strong performance in the healthcare sector as these companies posted impressive earnings growth in the second quarter and communicated a positive outlook.

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

— NP Investment Team

Income Taxes

Save those summer camp receipts for taxes

The memories of your children's summer camp experiences will be with them for a lifetime. The cost of camp may result in a tax credit for you on your income tax returns.

Who can claim the credit?

The Child and Dependent Care Tax Credit is a nonrefundable federal tax credit. The expenses must be employment related. That is, the expenses enable the parent to work or to look for employment. The child must be under the age of 13 unless he or she is disabled.

What summer camp costs are eligible?

The cost of sending a child to summer day camp is treated like day-care costs even if the camp features educational activities. If you sent your children this summer to science camp, YMCA camp, drama camp, sports camp or arts camp, then you may be eligible for the credit.

However, the cost of sending your child to summer school or to a tutor does not qualify. In addition, overnight camps do not qualify.

How do you claim the tax credit?

To claim the credit, generally both parents must have earned income such as wages or self-employment income. Depending on your adjusted gross income, the credit can range from 20% to 35% of your qualified expenses. The maximum qualified expenses are $3,000 for one qualified individual and $6,000 for two or more qualifying individuals.

The payment for camp must be made to a real institution or person, and you must include their name, address and identifying number (social security number or employment identification number) on the tax form. Keep all receipts and records for when you file your tax return.

Keep in mind that if your employer provides dependent care benefits, you must reduce your qualified expenses for those benefits in computing your tax credit. If your employer allows you to pay for child care using “pre-tax” dollars, your tax savings may be greater than claiming the credit on your personal tax return.

— *Dawn E. Lannon*

IRS issues final regulations related to substantiating and reporting charitable contributions

The IRS published final regulations, effective July 30, 2018, that provide guidance to individuals, partnerships and corporations on the substantiation and reporting requirements for cash and noncash charitable contributions. Individuals who plan to make charitable contributions should review the requirements to ensure that their charitable contributions are properly deductible.

Recordkeeping requirements for cash contributions

In order to obtain a charitable contribution deduction for cash, check or other monetary gifts, donors must keep records that show the *name* of the charitable donee and the *date* and *amount* of the deductible cash contribution.

This record can be a bank record or written communication from the donee. A single written acknowledgment from the donee may satisfy this requirement, as well as the separate requirement for a contemporaneous donee acknowledgement of any donation of $250 or more. A blank pledge card provided by the donee organization to the donor for completion by the donor is not, however, adequate substantiation.

Noncash substantiation requirements

Additional substantiation requirements apply when donations involve property (as opposed to cash), which are as follows:

• Under $250: the donor must obtain a receipt from the donee or keep reliable records.
• $250 to $500: the donor must obtain a contemporaneous written acknowledgment.
• $501 to $5,000: the donor must obtain a contemporaneous written acknowledgment *and* file a completed Form 8283.
• $5,001 to $500,000: in addition to a contemporaneous written acknowledgment, the donor must obtain a qualified appraisal* and complete and file either Section A or Section B of Form 8283 (depending on the type of property contributed).
• More than $500,001: the donor must meet the requirements for a contribution of $5,001 or more and actually attach the qualified appraisal to his or her return.

**A qualified appraisal is not required for gifts of publicly traded securities, certain intellectual property, a qualified vehicle donation or inventory or property held by a donor primarily to sell to customers in the ordinary course of the donor's trade or business.*

When substantiating noncash contributions that exceed $500, similar items contributed during the tax year are treated as one property.

New definitions of "qualified appraisal" and "qualified appraiser"

As of January 1, 2019, a qualified appraisal must be conducted by a qualified appraiser in accordance with generally accepted appraisal standards.

The regulations define a "qualified appraiser" as an individual with "verifiable education and experience in valuing the relevant type of property for which the appraisal is performed" (Regs. Sec. 1.170A-17(b)(1)). "Verifiable education and experience" means the individual has successfully completed professional or college-level coursework in valuing the relevant type of property and has two or more years' experience in valuing that type of property or has earned a recognized appraiser designation (Regs. Sec. 1.170A-17(b)(2)). A professional trade organization may provide the necessary education, but the appraiser must successfully complete coursework because mere attendance at a training event is not sufficient.

— *Sarah Roscioli*

Here's what taxpayers should know about penalty relief

After receiving a notice stating the IRS assessed a penalty, taxpayers should check that the information in the notice is correct. Those who can resolve an issue in their notice may get relief from certain penalties, which include failing to:

- File a tax return
- Pay on time
- Deposit certain taxes as required

The IRS offers the following types of penalty relief:

Reasonable cause

This relief is based on all the facts and circumstances in a taxpayer's situation. The IRS will consider this relief when the taxpayer can show they tried to meet their obligations, but were unable to do so. Situations when this could happen include a house fire, natural disaster and a death in the immediate family.

Administrative Waiver and First Time Penalty Abatement

A taxpayer may qualify for relief from certain penalties if he or she:

- Didn't previously have to file a return or had no penalties for the three tax years prior to the tax year in which the IRS assessed a penalty.
- Filed all currently required returns or filed an extension of time to file.
- Paid, or arranged to pay, any tax due.

Statutory Exception

In certain situations, legislation may provide an exception to a penalty. Taxpayers who received incorrect written advice from the IRS may qualify for a statutory exception.

Is Interest Relief Available?

The IRS doesn't abate interest for reasonable cause or as first-time relief. Interest is charged by law and will continue to accrue until your account is fully paid.

— *Masha Rabkin*

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