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What's trending on NP Trusts & Estates

The importance of having a will and the perils of dying without one, estate planning asset by asset, the Schedule K-1 explained, protecting yourself against tax scams and more. Here's what's trending in estate planning and wealth management.

Estate Planning

Aretha Franklin died without a will — this is one celebrity trend you should avoid

The "Queen of Soul," legendary singer-songwriter and 18-time Grammy Award winner, Aretha Franklin, died at the age of 76 on August 16, 2018, without a will. As a consequence, the estimated $80 million estate of Ms. Franklin, who lived a deeply private life, will be put on display worldwide for all to see.

Although the revelation that Ms. Franklin died without a will has come as a surprise to most, the Queen of Soul is merely the latest celebrity to pass away without having planned her estate. Other high-profile celebrities who have died without a will include Michael Jackson, Prince, Amy Winehouse, Bob Marley, Jimi Hendrix, Sonny Bono and Kurt Cobain, among many more.

As a result, Ms. Franklin's estate will be administered pursuant to public probate proceedings and administered in accordance with the laws of intestacy for the State of Michigan, her place of domicile. Due to her high profile and the public nature of her estate administration, Ms. Franklin's estimated $80 million net worth is more likely to be subject to increased creditor claims and potential family conflicts.

Ultimately, like the many celebrities who passed before her, Ms. Franklin's lack of wealth planning or estate planning may impact her estate severely. Increased creditor claims, prolonged administration expenses, hefty gift and estate taxes and legal fees will likely mean her four children will be left with much less than their fair share of their mother's legacy.

The perils of dying without a will

End-of-life planning is a difficult topic that often seems morose, depressing and even scary to think about, but it is a critical aspect of managing one's assets and protecting one's family. Despite the advantages to having some type of estate planning in place, nearly sixty percent (60%) of Americans currently have no will.

Although most Americans view the perils associated with dying without a will as being relevant only for extremely high net-worth, high-profile individuals, like Aretha Franklin, such difficulties are of concern to any American adult who owns some type of property.

1. Fighting and expensive lawsuits

If the deceased person's (decedent's) wishes concerning how his or her estate should be distributed were never expressed in a will, then the court must rely on the state's intestate statute to distribute the decedent's assets.

Because state intestacy laws deal mainly in percentages and do not address individual items of personal property, family members and potential heirs often fight over who receives particular family heirlooms or other individual items of value. In addition, because probate proceedings are public record, personal family disputes are put on public display for all to see.

Ultimately, fighting among family members carries increased emotional tensions and often leads to litigation. As a result, family members and potential heirs may spend significantly more in legal fees than what it would have cost the decedent to create a proper will.

2. A court decides guardianship of minor children

Having proper estate planning documentation is of particular importance to people who have minor children. Using a will, parents can name their choice of guardians for their minor children, and courts generally uphold a parent's nomination. But when there is no will, and both parents die intestate, the court will appoint guardians for the minor children left behind—a result no parent wants.

3. Increased fees, taxes and legal costs

Perhaps the most significant reason every American adult should have, at a minimum, a will, is that dying intestate incurs increased probate fees, taxes and legal costs. One of the goals of estate planning, or having a will, is to prevent potential disputes or problems from arising after a person has died. It is important to remember that preventing problems is usually less costly than paying to resolve them later, and is more predictable and less harrowing for the family of the decedent.

Avoiding the trend and planning for the inevitable

Just because one does not have an estimated $80 million estate or is not a high-profile public figure does not mean that dying without a will is worry-free. The perils associated with dying without any kind of estate planning are relevant to the majority of American adults, especially those with families and minor children.

An individual's will is a roadmap for the distribution of his or her assets in a special proceeding called probate. Probate provides public notice of the decedent's death to allow creditors to file claims against the estate. Whatever is left after payment of creditors' claims is distributed to the beneficiaries as directed under the terms of the decedent's will.

In the absence of a will, the particular state's intestate succession laws direct how the assets get distributed, resulting in numerous perils beyond those mentioned above.

— *Kaitlyn B. Barnett*

Estate planning asset by asset

Everyone should have a well-designed estate plan that takes into account all of their assets and disposition desires. However, it is important to take an "asset approach" as you are crafting your estate plan with your attorney.

Family business

Have you spent a lifetime creating your business? Do you hope it will continue to flourish after you are gone? Take steps now to make sure this happens.

Putting the "success" in succession planning
What would happen to my business if something happened to me?
Building a business? How entrepreneurs use life insurance in estate planning
Should my business learn a lesson from Disney after the death of Carrie Fisher?
Your estate plan's business: forming and maintaining business entities
Advantages to gifting family business interests to a trust for children

Real estate

There are multiple estate planning opportunities for real estate, whether your primary residence or not.

What's the best plan for my personal real estate?

What is a QPRT? And how is it used?
Estate planning for vacation homes
IRS policy affects deceased non-citizen, non-residents real estate

Collections

We all have passions. Yours may have resulted in a collection. Make sure it's handled properly after your passing.

Gun trusts
Wine cellar
Woodworking tools

Non-U.S. assets

If you are a U.S. citizen or resident, the assets you own outside of the U.S. are included in your gross estate for estate tax purposes.

Do you have overseas accounts?

New developments

As technology continues to develop, the items that need to be taken into account during the estate planning process continue to grow.

Estate planning considerations with frozen genetic material
Digital footprint dilemma: how to handle your digital assets after you're gone
Facebook: Who's your legacy contact?
Your skin art doesn't have to die!

Inclusion of assets

While many estate planning conversations include a discussion about how to keep assets out of your gross estate for estate tax purposes, there are times when you may actually want to include additional assets in your gross estate.

What is included in your gross estate?
Intentionally including assets in your gross estate

Finding assets

If your executor and family do not know about or cannot find your assets, then the time you spent planning is for nothing.

Will your family be able to find all of your assets after you die?

Letting go of assets

We all have them. Things we've collected over the years. Things we thought we'd use again but never have. Things we care about but for which our loved ones do not have the same feelings.

What to do with unwanted household items?

The foregoing is not intended to be an exhaustive list of the asset-type planning that may be needed but as food for thought as you think about the assets you own and your own estate plan.

— Mary Ford, Mary-Benham B. Nygren, Sarah J. Brownlow, Deborah L. Anderson, Sarah M. Richards, Michelle R. Canerday, Kenneth F. Hunt, Sarah Roscioli, Sarah T. Connolly, Stephanie A. Bruno, Stephanie T. Seiffert

Wealth Management

IRS approves 401(k) plan contribution tied to student loan repayment

This was originally published as a Benefits Law Alert.

Employers and employees alike acknowledge that the burden of student loan repayment often derails employee retirement savings. Student loan repayment benefits have emerged as attractive hiring and retention tools, but these benefits have historically been taxable to employees and done little to uplift lagging 401(k) deferral rates.

In a private letter ruling issued on August 17, 2018,[1] the IRS approved an employer's proposal to offer a "student loan repayment nonelective contribution" under its 401(k) plan. Although it cannot be relied upon as binding legal authority by parties other than the employer that requested it, the ruling provides welcome guidance to plan sponsors seeking an innovative and cost-effective way to provide employees with the opportunity to save for retirement on a tax-deferred basis while repaying their student loans. As set forth in further detail below, the ruling sets forth specific criteria that the IRS found relevant in approving the proposed nonelective contribution. The ruling also signals that other types of student loan repayment benefits may be permissible under retirement plans. Plan sponsors should carefully review the ruling and other IRS guidance when considering plan amendments to provide student loan repayment benefits.

Summary of private letter ruling

The unidentified plan sponsor maintains a 401(k) plan, which provides an employer matching contribution equal to 5% of an eligible employee's compensation if the employee elects to defer at least 2% of his or her compensation to the plan on a pre-tax basis. The plan sponsor requested a ruling as to whether amending the plan to provide a nonelective employer contribution conditioned upon an employee's student loan repayment would violate what is known as the "contingent benefit" prohibition.[2] The contingent benefit prohibition generally precludes a 401(k) plan from conditioning benefits (other than matching contributions) upon an employee's election to defer a percentage of his or her compensation to the plan in lieu of receiving that compensation as taxable wages. The IRS approved the proposed nonelective contribution structure, which contained the following features:

- The plan would provide a 5% employer nonelective contribution per pay period for any eligible employee who made a student loan repayment equal to at least 2% of his or her compensation during that pay period. The nonelective contribution would be made for each pay period during which an employee made a sufficient student loan repayment, even if the employee did not consistently make student loan repayments throughout the plan year.

- The nonelective contribution would be offered in addition to the plan's matching contribution, and would be provided regardless of whether an employee made any elective deferrals.

- Although an employee could continue making elective deferrals while receiving the nonelective contribution, the employee could not receive a matching contribution in addition to the nonelective contribution with respect to any pay period. If an employee was prohibited from receiving a matching contribution due to receipt of the nonelective contribution, the plan would make a "true-up" contribution. The true-up contribution (equal to 5% of the employee's compensation) would be paid for any week an employee failed to make a sufficient student loan payment but did make an elective deferral equal to at least 2% of his or her compensation.

- The nonelective contributions and true-up matching contributions would be subject to the same vesting schedule as matching contributions. Also, the nonelective contribution would be subject to all plan qualification requirements, including eligibility, distribution rules, contribution limits, and coverage and nondiscrimination testing.

- The proposed student loan repayment contribution program would be completely voluntary, meaning an employee would need to elect to enroll, and once enrolled could opt out of the program on a prospective basis. All employees eligible to participate in the plan would be eligible for the program. The nonelective contribution and true-up contribution, if applicable, would be made as soon as practicable after the end of the plan year.

- The nonelective contribution will not be treated as a matching contribution for purposes of Internal Revenue Code Section 401(m) testing, but the true-up contribution will be included for any testing or other requirement under that Code provision.

- The plan sponsor had not extended, and would not extend, student loans to employees who were eligible to participate in the student loan repayment contribution program.

In finding that the nonelective contribution structure did not violate the contingent benefit prohibition, the IRS noted that the nonelective contribution was conditioned on an employee making student loan payments outside of the plan (rather than being conditioned on the employee making elective deferrals). The IRS also found relevant the fact that employees could still make elective deferrals to the plan while participating in the student loan repayment contribution program. This meant the nonelective contribution was not conditioned upon employees having to choose between the employer making or not making contributions for them under the program in lieu of regular taxable wages.

Next steps: providing 401(k) student loan repayment benefits

While the private letter ruling should provide plan sponsors comfort to move forward with adopting a student loan repayment contribution program, several unanswered questions remain:

- It is not clear whether the IRS would permit student loan repayment contributions to be offered under retirement plans other than 401(k) plans.

- The IRS did not state that the plan sponsor would need to adopt certain student loan repayment substantiation requirements. This raises the question of how far plan sponsors should go to substantiate employee student loan payments. Although copies of bank statements showing that a participant made certain payments would appear to suffice, those kinds of statements can be vulnerable to forgery. By contrast, it could be unnecessarily burdensome to require direct proof of payment from student loan providers, or to arrange for direct payment of student loan payments through an employer's payroll system.

- It may be administratively impractical for plan sponsors to monitor employee student loan payments and determine whether those payments qualify for student loan repayment contributions without the assistance of a competent administrator. Any service agreements should be carefully reviewed to determine whether the administrator can effectively monitor changes that frequently manifest themselves in an employee's student loan repayment history, such as deferment, loan forgiveness, payment restructuring and refinancing, and defaults.

- It is possible that student loan repayment contributions could be made more frequently for highly compensated employees who may have greater ability to make student loan repayments equal to a certain percentage of their compensation. The IRS did not specify whether plan coverage and nondiscrimination testing could be manipulated to prevent student loan repayment contributions from causing plan testing failures.

- It is not clear whether a plan could make a student loan repayment contribution conditional upon an event other than an employee making a student loan payment, such as an employee refinancing his or her existing student loans under a refinancing program offered by the employer.

Plan sponsors who want to explore or adopt student loan repayment benefits that differ materially from the student loan repayment nonelective contribution outlined in the August 17, 2018 private letter ruling should consult with legal counsel to ensure that the benefits will not interfere with plan qualification requirements.

— Sarah K. Ranni, Eric Paley, Alexandro Lugo

Market Pulse: August Economic Highlights

What's happening: Highlights from the NP Investment Team

Strong economic and corporate earnings growth reports in the U.S. have supported a widening performance gap between U.S. and non-U.S. stocks. Do these data points argue for a larger allocation to U.S. stocks in investment portfolios?

While expectations for 2nd quarter 2018 U.S. economic growth were high, the U.S. economy did not disappoint with growth registering 4.1%. GDP growth was driven by a meaningful increase (+4.0% rate) in consumption (recall that roughly 2/3 of the U.S. economy is driven by consumer spending). Strength in consumer spending was aided by increased wages, lower taxes and lower inflation. Simultaneously, incented by positive changes in tax laws, capital spending/investment by businesses of all sizes has jumped 22% on a year-over-year basis as companies refresh a very aged capital stock.

All of this positive economic activity has translated into higher corporate earnings, one of the primary drivers of long-term stock performance. 2nd quarter revenue and earnings growth have delivered the strongest growth since Q3 2011 and Q3 2010, respectively. Specifically, for the S&P 500, 2nd quarter revenue grew nearly 10%, driven by gains in Energy (crude oil up ~40–50% y-o-y), Technology and Consumer Discretionary. Increased revenue growth has been leveraged (aided by lower taxes) to generate a 25% jump in corporate earnings for S&P 500 companies in the 2nd quarter. This positive economic and corporate backdrop has driven the S&P 500 to new all-time highs and an 8% return through late August.

Relative to the U.S., non-U.S. economies and stock markets have lagged in 2018, serving to deflate the global synchronized growth story that ushered in 2018. 2nd quarter GDP growth in Eurozone increased 1.4% while Japanese economic growth rose 1.6%, rallying strongly from a depressed 1st quarter figure. As Europe continues to manage through internal challenges (Italy, Turkey and Brexit in the UK), near-term growth has been compromised. Simultaneously, emerging market economies and markets (China, Brazil, Russia, etc.) have been pressured by fears of a slowing global economy (trade war fears) and a stronger U.S. dollar (which increases the cost of dollar denominated debt). These issues have resulted in relative underperformance of non-U.S. stock markets with the MSCI EAFE Index (Europe, Australasia and Far East) declining roughly 3% in 2018 while the MSCI EM Index (Emerging Markets) dropped more than 6% year-to-date (returns are in U.S. dollars).

Despite near-term headwinds, we still believe that it is prudent to maintain a meaningful exposure (~30%) of client equity portfolios to non-U.S. stocks. The European Central Bank and Bank of Japan are both in accommodative mode (very low interest rates compared to the Federal Reserve, which is raising interest rates) in an effort to grow their economies. As the U.S. dollar has strengthened, the euro and the yen have simultaneously weakened, better positioning the Eurozone and Japan for increased exports in the future. In response to an economic slowdown in China and fears of a trade war, the Chinese central bank has taken aggressive measures (lowering short-term interest rates, increasing government spending, encouraging bank lending, etc.) to stimulate economic growth. Finally, stock valuations (on a P/E basis) in non-U.S. markets look relatively cheap compared to U.S. stocks, further supporting a longer term allocation to non-U.S. stocks.

Leaders and Laggards: What's Up and Down in the U.S. Stock Market?

S&P 500 ECONOMIC SECTORS	AUGUST 2018 THROUGH 8/27/2018	YEAR-TO-DATE 2018 (THROUGH 8/27/2018)
Technology	5.6%	18.7%
Telecommunications	5.1%	-5.3%
Consumer Discretionary	3.9%	17.1%

Health Care	3.5%	11.3%
S&P 500	2.9%	8.3%
Materials	0.4%	-0.8%
Energy	-2.9%	3.6%

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

— *NP Investment Team*

Income Tax

Is it really the Internal Revenue Service contacting you?

Understanding the IRS's policies on contacting taxpayers will help protect you against tax scammers.

Scammers are continuing to find new ways to obtain our personal and financial information, including posing as IRS employees. To help taxpayers identify scammers, the IRS recently issued FS-2018-12, which describes the IRS policies on contacting taxpayers:

1. The IRS will normally contact taxpayers first by regular mail.

2. The IRS will only call a taxpayer after sending a letter in the mail. The IRS will never demand immediate payment or make any kind of threat.

3. The IRS will not use e-mail or a text message to contact a taxpayer regarding a tax debt or refund.

4. IRS employees may make official visits in certain circumstances after sending one or more letters. The IRS employee should provide the taxpayer with their HSPD-12 identification card at the beginning of the visit.

5. The collection of overdue tax debts can be assigned by the IRS to one of four private debt collection agencies (CBE Group, Conserve, Performant or Pioneer). If a taxpayer's debt has been assigned, then the IRS will send the taxpayer a letter stating which of the four agencies has been assigned the taxpayer's case. After the letter has been issued, the collection agency will contact you. Payments will always be sent to the U.S. Treasury or made electronically using the IRS' website IRS.gov/Payments and not to the specific collection agency.

— *Alyson Stevenson*

Independent contractor or employee?

In many respects, employees and independent contractors seem to be not different at all. They often work at the same company, even doing similar work. However, there are very important legal and tax-related differences between being a contractor and an employee.

• The IRS provides the general rule that states that an individual is an independent contractor if the payer has the right to control or direct only the result of the work, not what will be done and how it will be done. Whether a worker is an independent contractor or employee depends on the facts in each situation.

To help distinguish between employees and independent contractors, the IRS has set up three general criteria:

• **Behavioral Control**: Does the company control or have the right to control what the worker does and how the worker does the job? If the worker can set his or her own hours and works with little or no direction or training, he or she may be an independent contractor.

• **Financial Control**: Does the company control how the worker is paid, whether expenses are reimbursed and who provides tools and supplies? A worker who is paid a salary, is restricted from working for others and who does not participate in company profits or losses, is probably an employee.

• **Type of Relationship**: A contract may indicate that an individual is an independent contractor, but that alone is not sufficient to determine the worker's status. Businesses offering employee-type benefits generally indicates an employment relationship. If services performed are directly related to a key aspect of the company's regular business, the worker is probably an employee.

Worker classification is extremely important, because it determines if an employer must withhold income taxes and pay Social Security, Medicare taxes and unemployment tax on wages paid to an employee. Employment and labor laws also may not apply to independent contractors. Consequences of misclassifying an employee as an independent contractor with no reasonable basis for doing so makes employers liable for employment taxes as well as any related penalties.

The IRS offers to help employers to determine the status of their workers by using Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding. IRS Publication 15-A, Employer's Supplemental Tax Guide, provides more information on this issue, as well. Lastly, Form 8919 can be used by individuals who believe an employer improperly classified them as independent contractors to calculate their share of uncollected Social Security and Medicare taxes.

— *Elena N. O'Leary*

What is a Schedule K-1?

Certain types of entities utilize "pass-through" taxation, which allows the income tax liability from the entity to be reported by the shareholders or partners who have an interest in it. As a result, a tax form Schedule K-1 is issued to each shareholder or partner.

What does the Schedule K-1 report?

- Share of income, deductions, credits, etc. that are passed through to each shareholder or partner.
- Information about your ownership, or basis, in the business.

What entities issue a Schedule K-1?

- Limited Liability Companies
- Partnerships
- S-Corporations
- Estate or Trust (for beneficiaries)

It is important to review the Schedule K-1 to ensure all information on it is accurate since all information is provided to the IRS. The Schedule K-1 is needed in order to file your federal and state personal tax returns. Filing your returns can become a complex matter; Schedule K-1 instructions are available on the IRS website but it is typically a good idea to have a tax professional handle the preparation of your tax return to ensure accurate returns are being filed.

— *Darrell Kamholz*

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NP TRUST & ESTATES BLOG

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