JEFFREY·BURR
ESTATE PLANNING & PROBATE ATTORNEYS

CLIENT FOCUS

Hell Hath Frozen Over

The time has come to scrape your jaw off the sidewalk. It's hard to believe, but true—Congress failed to extend the estate and generation skipping transfer (GST) taxes into 2010. In addition, the gift tax rate dropped on January 1st from 45% to 35% and the tax free step-up in basis on estate assets also ended, requiring heirs to plan for post-death capital gains taxes.

The first estate and GST tax returns for 2010 decedents will be due next October (or in April 2011 if an estate takes the automatic six-month extension). This means that Congress could possibly bring these taxes back retroactively by passing legislation any time before then. And while the constitutionality of a retroactive estate and GST tax is definitely fun to debate, it seems as though such an act would pass constitutional muster. Our gut instinct is that Congress will take action sometime this year and implement a retroactive tax. That being the case, we echo the sentiment of many an estate planner in saying "the death of the estate tax has been exaggerated."

Still, until pen is put to paper, a new Estate Tax regime has reared its head which requires our attention. It is now uncertain how the provisions of some trust agreements will be interpreted, how some estates will be taxed, and how some property will ultimately be disposed of if someone passes away before the law again changes. If you and your spouse have established an AB-type trust, that is to say, a trust requiring allocation between at least two sub-trusts upon the death of the first spouse to die, we strongly recommend you now amend your trust agreement. Such amendment will make your intentions clear despite the tumultuous and unpredictable tax environment in which we now live. For those clients who have these types of trusts, you will be receiving a letter from us explaining the change, along with details on the amendment and fee, which will provide coverage for the situation where one might die in the year 2010.

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NEW LAWS TO AFFECT THE NEVADA On-Shore TRUST®

In Nevada's most recent legislative session, significant changes were made to NRS 166: Nevada's statute governing asset protection trusts. We believe these changes, which became effective on October 1, 2009, further validate Nevada's asset protection trusts, or NOSTs (Nevada On-shore Trusts®), as legitimate and effective wealth preservation tools.

Some highlights of the recent changes to the statute are as follows:

- Confirmation that a settlor of a NOST has the right to serve as a trustee of the NOST. NRS 166.040(3)
- Settlors of NOSTs can remove trustees, direct investments, and execute other management powers. NRS 166.040(3)
- The two-year statutory waiting period does not restart if property is transferred from the NOST to be refinanced and then re-conveyed back into it. NRS 166.170(4)
- Advisers (accountants, attorneys, or investment advisers) to the settlor or trustee of a NOST are specifically protected from third-party claims under certain guidelines. NRS 166.170(5)

These changes to Nevada's NOST statute should give added confidence in the NOST's ability to protect one's assets. Given the volatility of today's economy, it would be wise for our clients to consider using a NOST in their overall estate plan to better preserve the wealth they have accumulated over the course of their lives.

As a reminder, Nevada's asset protection trust statute has been in place for more than ten years. Nevada has been, and continues to be, a pioneer in the area of asset protection. Other states are now joining Nevada and a handful of other jurisdictions to provide the same asset protection techniques Nevada offers to its residents. Fortunately, as a front-runner in the industry, Nevada is a seasoned veteran in the field of wealth preservation and, consequently, those who formed NOSTs early on are now reaping the benefits of increased protection. We remain confident that NOSTs are one of the most effective asset protection tools available to Nevada residents. JB

SIGNIFICANT CHANGES TO NEVADA'S TRUST AND TRUSTEE LAWS

Along with the other changes mentioned in this publication, the Nevada legislature recently passed Senate Bill 287 which made comprehensive changes to its trust and trustee laws. These changes add depth and value to the already robust statutory provisions governing trusts and trustees in Nevada. The following is a brief summary of some of the changes and clarifications made:

- Classification of a beneficiary's interest in a trust and the accompanying right and interests of the beneficiary in such an interest as well as a third party's interest in the same.
- Permission to appoint a third party fiduciary to direct the trustee in carrying out certain duties such as discretionary distribution decisions and investment decisions.
- Allowance of trust "decanting" or the ability to appoint some or all of an irrevocable trust's assets to another trust. This new provision increases flexibility in dealing with antiquated trust provisions or changes in circumstances or laws.
- Provision that allows for the creation of a trust via an exercise of a power of appointment included in a trust.
- Permission given to a non-corporate trustee to lend trust funds to himself if such a power is already included in the trust agreement and all beneficiaries consent to the transaction.
- Allowance for a trustee to buy trust property or sell trust property to himself provided the trust agreement allows for this or all beneficiaries consent to it.
- Automatic inclusion of all statutory trust powers even when the trust agreement is silent on this matter.
- Permission granted to a trustee to provide notice to the beneficiaries, heirs, and other interested parties when a revocable trust becomes irrevocable (any action to contest the trust must be brought within 120 days from the date notice is served).
- Trustee allowed to convert an income trust to a unitrust to provide that the amount of income to be distributed is defined as a percentage of the total assets in the trust (this change will allow the trustee to focus on the total return of the trust which is to the advantage of all beneficiaries both present and remainder).
- Provision that trustees fees are to be allocated equally between trust income and principal.

As mentioned above, these new laws provide further statutory protection, guidance, and flexibility to trustors, trustees, and beneficiaries in their settling, administering, and benefitting from trusts. While this article is only meant to serve as a summarized overview of the new legislation, should you have any questions regarding these changes or would like to receive more detail on them, please do not hesitate to contact us.

New Power of Attorney Form

The Nevada Legislature made changes to the statutes and forms for two important documents that our office includes in most estate plans. First, the Healthcare Power of Attorney has been revised. In addition, our office has updated our forms to provide additional choices regarding end-of-life care including an option for avoiding "heroic measures" under certain conditions. Second, the changes to the statutes regarding the Asset Management Power of Attorney were more significant. The legislature provided a new statutory form in an effort to transition to a uniform version of this document. The goal of the new law is that a durable power of attorney will be more widely accepted, resulting in increased effectiveness. An interesting addition to the statute provides that third parties with whom an attorney-in-fact deals must accept a validly executed power of attorney, or they are otherwise liable for attorney fees and court costs incurred by the principal or his agent in proving the validity of the document. It seems that the main purpose of this new change is to persuade banks and other institutions to accept these new uniform versions of the durable power of attorney. Improvements to the options contained in the Healthcare Power of Attorney and our office's adoption of the new uniform form for Asset Management Power of Attorney are good reasons to contemplate replacing these documents so that they will be a more effective element of your estate plan.

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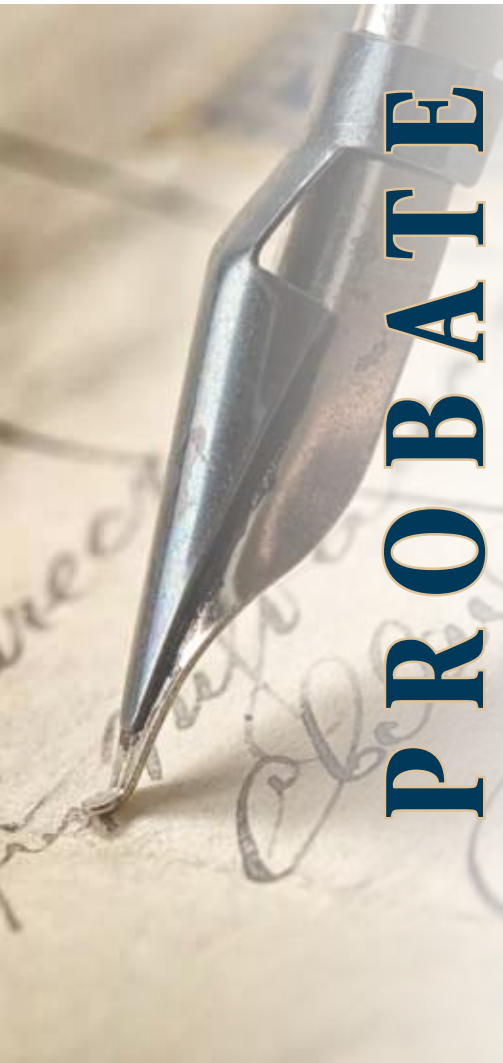

PROBATE

At Jeffrey Burr Ltd. we are committed to helping you achieve your estate planning goals in the most efficient way possible. Unfortunately, upon the loss of a loved one, many clients find that their deceased family member may not have had all of their affairs in order requiring the necessity of a probate administration.

Assets that the decedent owned in their name alone upon death will require some form of administration and may require that a personal representative be appointed by the court to marshal the assets and properly administer the estate.

We have been helping clients navigate the probate system for the past 25 years in Nevada and California. We have a highly skilled team of attorneys, paralegals, and staff who are able to efficiently administer a loved one's estate and also provide creative solutions to avoid or minimize the time and expense involved in the probate process.

We are honored that many respected colleagues and practitioners in various areas of the law trust us to assist their clients in administering a loved one's estate. It is this trust that has rewarded us with approximately ten percent of all probate filings in Clark County.

If you are dealing with the loss of a loved one and if there are issues which make a probate administration necessary, don't go it alone. Please call our office for help.

contact us

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