

# CLIENT FOCUS

## Estate Tax Changes Require Immediate Attention

Many people likely recall Congress' so-called "fiscal cliff" negotiations at the end of 2012, which resulted in a great deal of commotion regarding changes to the income tax. Most of us have encountered these changes to some degree, but fewer people are probably aware that as a result of the "fiscal cliff" negotiations, Congress also enacted permanent changes to the federal estate and gift tax laws effective this year. Other than adjustments for inflation, the new laws do not have any built-in changes, expiration dates, or reversions to prior laws.

As a result of these permanent changes, new planning opportunities are available. Many married couples that have previously established a revocable trust now have an opportunity to simplify their estate plan in a way that can alleviate a huge administrative burden upon the death of the first spouse. Because this opportunity to simplify is forever foreclosed once the first spouse passes, immediate action should be taken before it is too late.

### Some highlights from the new laws:

**Unification of Estate and Gift Tax:** Increases in the estate tax "exemption amount" started in 2004 and resulted in a disconnect between the estate tax and gift tax exemption amounts. For example, the estate tax exemption amount in 2009 was \$3.5 million while the lifetime gift tax exemption was \$1 million. The new law re-unifies the exemption amount and tax rate that apply to both lifetime gifts and the estate tax.

**\$5 Million Exemption:** The new estate tax exemption amount is \$5 Million and is indexed for inflation each year; 2014's indexed amount is \$5.34 Million. The exemption amount is actually a cumulative credit available on gift tax and estate tax returns that allows a person to transfer up to \$5.34 million during life and at death without paying any estate or gift tax.

**40% Tax Rate:** Each dollar transferred in excess of the exemption amount is subject to the gift tax with the maximum tax rate being 40%.

**Portability:** The exemption amount is now "portable" between spouses, meaning that a surviving spouse gets to use a deceased spouse's unused exemption amount.

This concept of portability leads to an opportunity to simplify estate planning for many people. Under the old estate tax laws, the exemption amount was available only if utilized. Assets transferring directly from one spouse to another would not utilize the exemption therefore the deceased spouse's exemption would have been lost. Many people implemented a special type of trust in their estate planning to prevent the loss of the first spouse's exemption amount. These trusts are known as "credit shelter trusts," "exemption trusts," "bypass trusts," or "A-B Trusts" and they necessitate the division of the trust into two separate trusts upon the death of the first spouse.

**What Needs Immediate Attention and Why:** In most cases an old A-B Trust can be replaced by a "disclaimer A-B" trust to simplify a married couple's estate plan. This revised structure is advisable for the following reasons:

- ◆ First, fewer couples are going to be impacted by the federal estate tax now that the combined exemption amount is nearly \$10.7 million; therefore the division of the trust does not provide any estate tax benefit.
- ◆ Second, because of portability, the required division in the case of an A-B trust is an unnecessary complexity that can be eliminated using the disclaimer A-B trust.
- ◆ Third, because the "bypass trust" is required to file an income tax return, the surviving spouse will have increased costs for preparation of income tax

# CELEBRATING

# 30

# YEARS

The Law Firm of Jeffrey Burr is thrilled to celebrate the 30-year anniversary of the founding of the firm. Founded in 1983, the firm has grown to be one of Southern Nevada's oldest and largest estate planning firms. Thousands of residents have benefited from the service and support of the attorneys at Jeffrey Burr, who are honored and humbled by the opportunity to serve the community.

"Through everything the firm has done, I've always been very excited to be a part of it," said Jeffrey Burr, Partner. "I'm proud of everything that the attorneys and I at the firm have accomplished. The world and the legal playing field are drastically different than they

were when the firm began. I'm glad that the company is still here after 30 years, and can look at everything that we've done in Southern Nevada knowing that we've come so far."

Although much has changed in the company and in the Las Vegas Valley since the inception of the firm, Jeffrey Burr's mission has always remained the same: to provide high-quality and exceptional service to clients, treating them with the compassion and care they deserve, helping them prepare for the future, through good times and bad. Over the years, the attorneys at Jeffrey Burr have been recognized as community leaders, as active members and leaders in numerous organizations, including

Boys & Girls Club Southern Nevada, Boys Scouts of America, Clark County, Iowa State, and Nevada State Bar Associations and the National Academy of Elder Law Attorneys. The firm and its attorneys have received numerous accolades, including Martindale-Hubbell AV ratings, Super Lawyers Mountain States, Best Lawyers in Nevada and Vegas Inc Top Lawyers.

Burr says, "We have some exceptionally talented attorneys in the firm, and I know that they do all they can to build, preserve and protect our clients' legacy. We have come a long way, and I look forward to seeing where the firm goes in the next 30 years."

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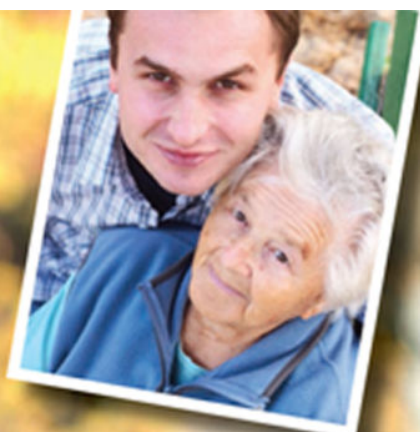
returns, and the possibility of an increased income tax burden. The income tax rules for trusts are somewhat peculiar and the highest tax rate is reached at only \$11,950 of income. Residents of community property states that fund the "bypass trust" will find that the opportunity for a second step-up in cost basis at the death of the surviving spouse is lost and this can cause an increase in income tax burden for the beneficiaries of the trust.

Please contact the offices of JEFFREY BURR, LTD. for a complimentary review of your estate plan and more information about the new estate tax laws. **B**

## The highest compliment you can pay to our firm is a referral

The Law Firm of Jeffrey Burr has thrived in Las Vegas for the past 30 years based on our reputation of quality work and referrals passed along by our clients. We are honored to be on the receiving end of the compliments that we receive from our clients, especially in the form of referrals.

If you know someone in need of the services of Jeffrey Burr, please feel free to share our contact information! We look forward to providing satisfactory estate planning, asset protection and business planning services to your friends, family or colleagues. Also, make sure that your own planning remains, up-to-date! Call us today at (702) 433-4455 if you need a review or would like to update us on important events in your life. **B**



*"Any strategic planning by the trustee should also take into consideration a beneficiary's situation and whether the trust's distribution will also trigger the 3.8% NIIT for the individual beneficiary."*

## The 3.8% Net Investment Income Tax

Many readers are probably aware of the new 3.8% Net Investment Income Tax (NIIT). A few other nicknames for this tax are: "Medicare Surtax;" the "Unearned Income Medicare Contribution;" or just the "3.8% Medicare Tax." The tax itself has turned out to be much more complicated than expected; the final tax regulations recently issued by the IRS on the NIIT are over 400 pages long and many of the traps and examples may not be fully understood at this point. This article is only a brief overview of the tax.

For a select group of individuals the NIIT results in an extra 3.8% in income taxes on investment income. So who is this select group?

**First**, the threshold for triggering the NIIT is based on a person's (or a couple's) modified adjusted gross income. This threshold is:

- ◆ \$250,000 for Married filing jointly or Widow(er) with a dependent child
- ◆ \$125,000 for Married filing separately
- ◆ \$200,000 for Single or Head of Household.
- ◆ \$11,950 for a Trust/estate on undistributed net investment income

**Second**, the 3.8% tax is applied to the lesser of:

- a. Net Investment Income, or
- b. The excess of modified adjusted gross income (MAGI) over the threshold as shown above.

**Third**, Net Investment Income includes the following:

- ◆ Gains from the sale of stocks, bonds, mutual funds (excluding retirement plan distributions\*).
- ◆ Capital gain distributions.
- ◆ Gain from the sale of investment real estate (including a second home).
- ◆ Gains from the sale of interests in partnerships or S-corporations for a passive shareholder or passive partner.
- ◆ \*Although retirement distributions are not included in Net Investment Income, they are part of MAGI and can trigger imposition of the 3.8% NIIT.

We will be posting several examples of how the NIIT can apply to situations and we will post these examples to our law firm blog: <http://jeffreyburr.blogspot.com/>

Back to the estate planning world: where the NIIT can really hurt is in the context of an irrevocable trust that is treated as a separate taxpayer filing Form 1041. For a Trust, the 3.8% additional tax will apply to MAGI in excess of \$11,950 or net investment income, whichever is less. In trust accounting, MAGI includes income that is retained in the trust and not distributed to beneficiaries. So there may be some planning opportunity for the Trustee to reduce a trust's MAGI by distributing most of the trust's income to the beneficiaries (if the terms of the trust allow this). Any strategic planning by the trustee should also take into consideration a beneficiary's situation and whether the trust's distribution will also trigger the 3.8% NIIT for the individual beneficiary.

With the implementation of this new tax, some of our clients may be surprised by an increased tax burden for 2013. This should be discussed with your tax advisor to see if any planning can reduce the burden in 2014. You should also review any irrevocable trusts with our office to see if the trust can be amended to allow for flexibility in distributing income to the trust beneficiaries in order to aid in future tax planning. Please contact our office and your income tax advisor with any questions. *B*

# Michael Lum

joins the law firm of JEFFREY BURR

The Law firm of Jeffrey Burr is pleased to welcome Michael D. Lum as associate attorney. Michael joins the estate planning firm with a background in finance and taxation, and represents clients in a variety of legal matters that include tax, business, and estate planning. He is licensed to practice law in Nevada.

Michael has years of experience in the financial industry. Prior to attending law school, Michael was a banker, and most recently held the position of Assistant Vice President at Bank of Nevada. He was also a commercial Loan Officer responsible for the funding of various local developments and businesses. Michael graduated from the University of Nevada, Las Vegas in 2007 with a Bachelor of Science Degree in Finance and in 2009 with a Master's Degree in Accountancy with an emphasis in Taxation. In 2012, Michael earned his Juris Doctorate from the University of Nevada, Las Vegas, earning Dean's Honors for his academic performance. While attending law school, Michael participated in the Low Income Taxpayer Clinic where he represented low-income taxpayers with tax disputes before the Internal Revenue Service. **B**



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