

Senior Law Quarterly

Volume VII, Issue 2

We have new offices!

Summer 2010

South County Senior Law moved its office previously located in Suite 102, 5518 Telegraph Road, to Suite 101 in the same building. The suite was purchased in late 2009, and after a complete renovation, the attorneys and staff from Suite 102 (including attor-

neys Mavis Kennedy and Christine Hart) moved into the new suite. Dennis Mertz remains in our office at 5520 Telegraph, Suite 104.

Please stop by to enjoy a cup of coffee with us and tour our new office space!

Our new address in the 5518 building is:

5518 Telegraph Road, Suite 101, St. Louis, MO 63129.

The firm's contact phone number, fax numbers, and email addresses remain the same.

Inside this Issue

- Federal Estate Tax and Carryover Basis
- Franklin County World War II Honor Flight
- Baseball Trivia Answers

PHOTO: CLIENT GEORGE SCHAEFER AND FELLOW VETERANS AT THE WORLD WAR II MEMORIAL IN APRIL

See the article about his visit on Page 2



National Academy of Elder Law Attorneys, Inc.

MEMBER

The articles in this newsletter are written by the attorneys of South County Senior Law & Estate Planning Center, LLC as an informational resource for our friends and clients. Nothing in this publication is intended as legal advice for anyone's particular legal situation. If you have a specific legal issue, please call our office for assistance.

FEDERAL ESTATE TAX AND CARRYOVER BASIS

Introduction

In 2001, President Bush signed the Economic Growth and Tax Relief Reconciliation Act ("EGTRRA"), a law lasting for ten years, 2001 through 2010. EGTRRA progressively increased the \$1 million estate tax exemption to the 2009 level of \$3.5 million, and decreased the maximum estate tax rate from 55% to 45%.

One of the quirks in EGTRRA was a provision that the estate tax law would be "repealed" for the year 2010, and re-

placed by a "carryover basis" tax for that one year.

Right up until the end of 2009, most estate tax attorneys expected Congress to reinstate the federal estate tax. But that didn't happen, and "carryover basis" is in effect for this year only.

The Obama administration has proposed returning the estate tax to its 2009 level, with a \$3.5 million exemption and a 45% rate on assets that exceed that amount. The House approved the administration's proposal last year,

(Continued on page 3)

The choice of an attorney is an important decision and should not be based solely on advertising.

Franklin County World War II Honor Flight to Washington D.C. By Veteran George Schaefer

Our client, George Schaefer, was a member of the Franklin County World War II honor flight to Washington D.C. this spring and provided the following personal reflections on his trip.

April 28, 2010

On our flight we had 36 World War II veterans and 21 honor flight guardians to assist vets that may need any help on our day at the memorials. Arrival time at St. Louis Lambert International Airport was 5:30 a.m. for check-in. We were issued badges with names, rank and country served. We were also issued honor flight caps and t-shirts for us to wear.

U.S.O. was there to serve refreshments and snacks. After going through security, we boarded American Airlines flight 884 at 7:30 a.m. to Ronald Reagan Washington National Airport. We arrived at 10:30 a.m. As we taxied to the gates, we were given a welcome by airport fire trucks spraying both sides of the plane honoring veterans to Washington D.C. As we were going through the terminal, we were greeted by hundreds of people waving flags, signs and shaking hands. It was an emotional, heartwarming and awesome reception. I will never forget it.

Outside the terminal, we boarded a tour bus with 18 wheelchairs for vets who needed them. It was a half hour ride with police escort to the National World War II Memorial. Upon our arrival, group pictures were taken. A surprise visit was from our son Tom who lives about one and one half hours from Washington D.C. He met me and other vets at the Memorial and stayed with us taking lots of pictures. The weather was cool but bright and sunny and we needed only a light jacket.

After about two hours, we boarded our tour bus and were given a box lunch. Then we were off to the Korean, the Iwo Jima and the Vietnam memorials with more pictures.

Next, as we traveled to the Air Force Memorial crossing the Potomac River to Arlington, Virginia, we passed the Pentagon and our guide pointed out the September 11th plane disaster location. The Air Force Memorial was located on a promontory in Arlington, Virginia, overlooking the Pentagon and adjacent to Arlington National Cemetery and can be

seen in the skyline of Washington D.C. It has three stainless steel spirals which soar skyward reaching 270 feet expressing the strength of the U.S. Air Force. These spirals soar like our Arch in St. Louis.

We next visited the U.S. Navy Memorial on Pennsylvania Avenue and took more pictures. It is located one half mile from the White House and Capitol.

Finally, we visited Arlington National Cemetery. We arrived in time to see the changing of the guard at the Tomb of the Unknown Soldier. It was a very solemn and emotional service. Our tour guide stated that Arlington Cemetery has 300,000 interred and holds about 25 funerals per day. He also pointed out the graves of some of the Medal of Honor veterans.

At the end of the day, our tour bus returned to Ronald Reagan Washington National Airport with police escort. After clearing security, we had dinner at the food court. Then, we boarded American Airlines flight 1993 for St. Louis.

While in flight, we had mail call and were handed a large envelope with cards and letters from family and friends stating they were happy we could see the memorials. In my envelope I had 14 letters from students ages 11 through 14 from Franklin County and surrounding county middle schools. They thanked all World War II vets for their service. There were names and addresses on the letters. More tears — very emotional.

We landed at Lambert Airport about 8:30 p.m. There were more surprises. There was a "Welcome Home" reception with friends and relatives and we received a World War II memorial photographic book.

It was a very long day that I will always remember. Thanks to all who made this trip possible.

George Schaefer,

US Army T-5, Philippines and Japan, World War II

Our firm's thanks to the individuals and companies who are making these trips for our WWII veterans possible.

[See photo of George and his group on Page 1]

FEDERAL ESTATE TAX AND CARRYOVER BASIS

(Continued from page 1)

but Republican opponents blocked action in the Senate. Political partisanship has made compromise increasingly difficult, raising doubts about whether Congress can agree on a fix that will prevent a more punitive tax from rising from the grave (pardon the pun) in 2011.

In the meantime, the list of wealthy estates that will escape federal estate taxes has continued to grow.

CARRYOVER BASIS

Under the step-up basis rule in effect prior to 2010, if an asset was transferred by reason of the death, the beneficiary acquired a new basis in the asset equal to its fair market value at the decedent's death. Under the carryover basis rule, the beneficiary's basis in an asset acquired from a decedent is the decedent's cost for the asset. This could result in substantial capital gains for the beneficiary.

There are new basis adjustment provisions that may reduce or eliminate gains on property transferred from a decedent in 2010. In order to obtain this basis adjustment, however, an income tax return for the decedent must be filed by the "executor" of the estate to allocate the available adjustment. The return must be filed in a timely manner, or by April 15 of the year following the decedent's death (an extension to October 15 may be available).

In order for an adjustment in basis to be available, the property, or interest in property, must be "acquired from the decedent." There are five categories of such property:

- Property acquired from the decedent "by bequest, devise, or inheritance."
- Property acquired "by the decedent's estate from the decedent," e.g., real property transferred to decedent's estate by a beneficiary deed.
- Property transferred by the decedent during his or her lifetime "to a qualified revocable trust."
- Property transferred to a trust "with respect to which the decedent reserved the right to make *any change in the enjoyment thereof* through exercise of a power to alter, amend or terminate the trust," e.g., typical self-declared revocable trust.
- Any other property passing from the decedent by reason of his or her death "to the extent such property passed without consideration," e.g., joint property.

Under 2010 law, if property otherwise qualifies as having been acquired from the decedent, the basis of the property at death is the lesser of the decedent's "adjusted basis," or the fair market value of the property at the date of decedent's death. Generally speaking, "adjusted basis" will be the decedent's cost for the property.

The *initial basis* of decedent's property at death can be increased in the total amount of \$1.3 million plus the amount of certain built-in losses and loss carryovers not utilized by the decedent during life.

As an example, assume John purchased his home in 1985 for \$400,000. He executed a beneficiary deed which transferred his home (now valued at \$700,000) to his daughter Jane at his death in 2010. John's adjusted basis in his home is \$400,000.

To reduce Jane's \$300,000 gain on the home (which would be taxable to Jane) John's "executor" must file a final tax return by April 15 of 2011, and allocate \$300,000 of the \$1.3 million available for basis adjustment to John's home on a form yet to be determined by the IRS. Then Jane will only have taxable gain if she sells John's home for over \$700,000.

In addition to the initial basis adjustment discussed above, there is another \$3 million basis increase which can be utilized to increase the basis of assets transferred from the decedent to his or her surviving spouse. There are additional rules applicable to the spousal basis increase.

There is very specific information which an "executor" is to report to the IRS, to each person whose name is required to be set forth in such return, and specific time requirements for reporting of the information in order to take advantage of the basis adjustment and limit the impact of the carryover rule. If the final income tax return of the decedent, with the allocation of basis adjustments, is not timely filed, there is no allocation and no basis adjustment. The beneficiaries and administrators of all assets acquired from decedents who pass away in 2010, regardless of estate size, are encouraged to seek tax advice from their accountant and/or elder law/estate planning attorney to understand and comply with the carryover basis rules.

Note: Missouri now uses the words "personal representative," a synonym to "executor."

SOUTH COUNTY SENIOR LAW & ESTATE PLANNING CENTER, LLC

5520 Telegraph Rd., Suite 104
5518 Telegraph Rd., Suite 101
St. Louis, MO 63129

Phone: 314-845-0541
Fax: 314-845-2580
Email: dmertz@STLseniorlaw.com
mkennedy@STLseniorlaw.com
chart@STLseniorlaw.com



Dennis B. Mertz

Mavis Kennedy, CELA (seated)*

Christine F. Hart

South County Senior Law & Estate Planning Center, LLC has been serving the needs of our senior clients for twenty years. The firm attorneys, Dennis B. Mertz, Mavis Kennedy, and Christine F. Hart are members of NAELA, Inc. (National Academy of Elder Law Attorneys), dedicated to meeting the legal needs of all persons of all ages, including seniors.

We concentrate our practices in the areas of estate planning, trusts and estates, powers of attorney, probate, asset preservation, including Medicaid planning and tax advice, Special Needs Trusts and trust administration, nursing home abuse, will contests and other contested estate matters, financial exploitation of the elderly, personal injury, and guardianships and conservatorships. The initial consultation with any of our senior law attorneys is always at no charge or obligation to employ our firm. Call us at (314) 845-0541 to schedule an appointment to discuss any of your legal questions.

SHARE YOUR NEWSLETTER

We encourage you to share this newsletter with anyone who is interested in issues pertaining to seniors. The information in this newsletter may be disseminated without charge or permission, but with appropriate citation to *Senior Law Quarterly*.

Anyone wishing to be added to our newsletter mailing list should contact our office at (314) 845-0541 with your request.

*Mavis Kennedy is a Certified Elder Law Attorney by the National Elder Law Foundation, the only elder law certification program accredited by the American Bar Association. Certified Elder Law Attorneys offer the specialized knowledge, skills and experience to resolve legal issues that affect older people and the disabled.

(Neither the Supreme Court nor the Bar of Missouri reviews or approves certifying organizations or specialist designations).

Can You Name the Baseball Teams Below? *Answers to our Spring Issue Baseball Quiz*

- | | | |
|---|--|---|
| 1. Communists: Reds-Cincinnati | 12. Demon Beams: Devil Rays-Tampa Bay | 23. Behemoths: Giants-San Francisco |
| 2. Forest Caretakers: Rangers-Texas | 13. Warm Water Fish: Marlins-Florida | 24. Crimson Foot Coverings: Red Sox-Boston |
| 3. Nickname for Americans: Yankees-New York | 14. Rattlesnakes: Diamondbacks-Arizona | 25. Striped Asian Cats: Tigers-Detroit |
| 4. Spanish Patriarchs: Padres-San Diego | 15. Native American Warriors: Braves-Atlanta | 26. Steak & Cheese Sandwich: Phillies-Philadelphia |
| 5. Tricksters: Dodgers-Los Angeles | 16. Alabaster Foot Coverings: White Sox-Chicago | 27. Large Public Displays: Nationals-Washington D.C. |
| 6. Relating to Stars & Space: Astros-Houston | 17. Gemini: Twins-Minnesota | 28. People Who Play Sports: Athletics-Oakland |
| 7. Men of the Sea: Mariners-Seattle | 18. Cerulean Tenth Letter: Blue Jays-Toronto | 29. Capt. Kidd & Long John Silver: Pirates-Pittsburgh |
| 8. Was Introduced: Mets-New York | 19. Mountain Range: Rockies-Colorado | 30. Calcutta Natives: Indians-Cleveland |
| 9. Young Wolves or Bears: Cubs-Chicago | 20. Cherubim: Angels-Los Angeles | |
| 10. Yellow & Black Songbirds: Orioles-Baltimore | 21. Kings, Queens, Princes, etc.: Royals-Kansas City | |
| 11. Red Birds: Cardinals-St. Louis | 22. Beer-Makers: Brewers-Milwaukee | |