TAX & WEALTH ADVISOR ALERT: POWERS OF APPOINTMENT – A TOOL TO ADD FLEXIBILITY INTO AN ESTATE PLAN

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A power of appointment is a legal instrument that grants an individual (the "appointee") the authority to decide how a particular asset or assets will be distributed upon the death of the individual who created the power (the "donor"). The appointee can exercise this power during their lifetime or in their will, and they can direct the asset to be given to any person or entity they choose.

When selecting the type of power of appointment to include in an estate plan, the donor generally has two options: 1) a general power of appointment, or 2) a limited power of appointment.

A general power of appointment allows the appointee to direct the asset to an entity or individual of their choosing without restriction. In contrast, a limited power of appointment restricts the appointee's choices to a specific group of people or entities.

Powers of appointment can be useful in estate planning for several reasons. First, they provide flexibility in the distribution of assets. The donor can create a power of appointment that allows the appointee to redirect the asset if the original beneficiary is unable to receive it for any reason, such as if they pass away before the donor or if they disclaim their inheritance.

Second, powers of appointment can be used to address changes in circumstances that occur after the estate plan is created. For example, if the donor's family circumstances change, they can create a power of appointment that allows the appointee to redirect the asset to a different family member or to a charitable organization.

Third, powers of appointment can be used to minimize taxes. By creating a power of appointment, the donor can direct the asset to be distributed in a way that minimizes the tax burden on their estate and the estate of the ultimate beneficiary.

In conclusion, powers of appointment can be a useful tool in estate planning. They provide flexibility, allow for changes in circumstances, and can minimize taxes. However, it is important to work with a qualified estate planning attorney to ensure that powers of appointment are created and implemented correctly to achieve the intended goals. For information on how powers of appointment can be used in an estate plan, contact Attorney Carl D. Holborn at carl.holborn@wilaw.com.

TAX & WEALTH ADVISOR ALERT: SELECTING A FIDUCIARY – ONE OF THE MOST IMPORTANT DECISIONS IN AN ESTATE PLAN

When creating an estate plan, one of the most critical decisions you will make is selecting a personal representative and trustee, also known as "fiduciaries." A fiduciary is a person or institution entrusted with the responsibility of managing assets and carrying out the terms of your estate plan. Choosing the right fiduciary is essential, as they will play a significant role in ensuring your assets are managed and distributed according to your wishes. This blog post explores the various options available for selecting a personal representative and trustee in your estate plan.

Family Member

Many people choose a family member to act as their personal representative and trustee. This option has several advantages, including the fact that a family member is likely to have a personal connection to you and your family, and they may be better able to understand your wishes. However, it is important to consider the potential drawbacks of selecting a family member as your fiduciary. Family members may lack the necessary expertise to manage complex assets or make difficult decisions, and they may also be emotionally invested in the outcome of the estate plan, which can lead to conflicts of interest.

Corporate Fiduciary

Another option is to select a corporate fiduciary as your personal representative and trustee. Corporate fiduciaries have experience managing assets and carrying out the terms of estate plans, which can be an advantage in complex situations. Additionally, corporate fiduciaries have the resources to handle complex financial matters and the ability to remain impartial when carrying out your wishes. However, a corporate fiduciary may have limited knowledge of your personal wishes, the needs of your family, and may lack a personal relationship with your family.

Lawyers or Accountants

A lawyer can also act as your personal representative and trustee in your estate plan. Lawyers have a deep understanding of the legal and financial aspects of estate planning and can provide valuable guidance and support throughout the process. Furthermore, lawyers are trained to remain impartial and objective, ensuring that your wishes are carried out according to your intentions. However, a lawyer may have limited knowledge of your personal wishes or the needs of your family, and may lack a personal relationship with your family. An accountant can also act as your personal representative and trustee in your estate plan. Accountants have experience in managing financial matters, preparing tax returns, and financial record keeping, and can provide valuable guidance and support in estate planning matters.

Selecting a personal representative or trustee is one of the most important decisions you can make in your estate plan. It is important to consider all options so that you select the best fiduciary to carry out your wishes in your estate plan. Contact Attorney Carl D. Holborn at (414) 276-5000 for more information.

TAX & WEALTH ADVISOR ALERT: CHARITABLE REMAINDER TRUSTS, A DYNAMIC ESTATE PLANNING TOOL TO REDUCE TAXES AND DO GOOD

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Charitable Remainder Trusts (CRTs) are a powerful tool for those looking to support their favorite causes while also securing a steady income stream for themselves or their loved ones. These trusts are essentially a way to give cash or other property to an irrevocable trust, with the donor receiving an income stream for a set term of years or for life, while the remaining assets go to the named charity at the end of the trust term.

One of the biggest benefits of CRTs is the immediate income tax charitable deduction that donors receive when they fund the trust. This deduction is based on the present value of the assets that will eventually go to the charity and can be a significant reduction in the donor's overall tax burden.

Another great feature of CRTs is that they can be structured to defer the payment stream, making them an effective income stream during retirement. Additionally, donors can couple a CRT with a Donor-Advised Fund (DAF) to have even more control over how their charitable dollars are invested and distributed.

For donors with highly appreciated assets, CRTs are an excellent way to defer capital gains taxes. When appreciated property is contributed to a CRT, the capital gains tax is deferred until the time that it is distributed out to the income beneficiary, allowing the donor to diversify their position in a tax-effective manner.

Funds or property contributed to a CRT may be removed from the donor's estate for estate tax purposes which may reduce estate taxes in some cases. However, there may be gift tax consequences if the donor names a non-spouse non-charitable beneficiary to receive the income from the CRT.

It's important to note that with a CRT, the individual recipient of the distributions from the CRT during the term of the CRT must pay tax on such distributions, and it is categorized into four tiers: (1) income and dividends; (2) capital gains; (3) tax-exempt income; and (4) return of principal.

In summary, CRTs coupled with a DAF can be a great option for donors seeking a current or future income stream. It is recommended that clients work with a qualified estate planning attorney to confirm that a CRT will provide the expected results from a tax and administration perspective. For information about CRT's contact Attorney Carl D. Holborn at carl.holborn@wilaw.com.

TAX & WEALTH ADVISOR ALERT: DONOR-ADVISED FUNDS, A GREAT WAY TO DO CHARITABLE GIVING

Donor-advised funds, or DAFs, are a popular way for individuals to support charitable organizations they care about while also receiving potential tax benefits. A DAF is essentially a charitable investment account that allows individuals to make a tax-deductible donation and then invest those account funds for tax-free growth. The individual can then recommend grants to virtually any IRS-qualified public charity.

Creating a DAF is simple and straightforward. First, an individual must establish a “giving account” with a public charity. Many financial institutions and community foundations may also be the sponsoring organizations of these accounts. Second, the individual must make a donation of cash, securities, or other assets to the giving account. This donation is generally eligible for an immediate tax deduction. Finally, the funds in the giving account can then be invested for tax-free growth.

One of the benefits of a DAF is that it allows individuals to see their donation grow over time. Most sponsoring organizations offer a variety of investment options for the charitable dollars in the giving account. This means that individuals can choose an investment strategy that aligns with their goals and risk tolerance.

Another benefit of a DAF is that individuals can support virtually any IRS-qualified public charity with grant recommendations from the account. This includes local homeless shelters, alma maters, religious institutions, and more. The public charity sponsoring the account will conduct due diligence to ensure that the funds are used for charitable purposes.

In conclusion, DAFs are a great way to support charities you care about while also receiving tax benefits. They are easy to set up, offer tax-free growth, and give you the flexibility to support virtually any IRS-qualified public charity at a pace that is comfortable for you. If you are looking for a way to make a meaningful impact on the causes you care about, a DAF may be an excellent option for you.

For more information about donor-advised funds, contact Carl D. Holborn at carl.holborn@wilaw.com.

TAX & WEALTH ADVISOR ALERT: QUALIFIED PERSONAL RESIDENCE TRUSTS – A PLANNING TECHNIQUE TO SAVE THE FAMILY HOME FROM ESTATE TAXES

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A Qualified Personal Residence Trust (QPRT) allows a homeowner to transfer their personal residence to a trust for a specified period of time, after which the residence is transferred back to the homeowner or to a designated beneficiary. QPRTs are often used as a tax-saving strategy for homeowners who want to reduce the value of their estate for estate tax purposes.

One of the main benefits of a QPRT is the ability to remove the value of a personal residence from the homeowner's estate. By transferring the residence to a trust for a specified period of time, the homeowner is able to reduce the value of their estate and, as a result, reduce the amount of estate taxes that will be due upon their death.

Another benefit of a QPRT is the ability to maintain the use of the residence during the term of the trust. The homeowner can continue to live in the residence and pay a reduced rent to the trust for the use of the residence. This allows the homeowner to continue to enjoy the residence while also reducing the value of their estate. QPRTs are subject to certain rules and limitations, such as a requirement that the term of the trust cannot exceed the life expectancy of the homeowner and that the fair market rent must be paid to the trust for the use of the residence.

Overall, a QPRT can be a useful tool for homeowners looking to reduce the value of their estate for estate tax purposes while also maintaining the use of their personal residence. For more information on QPRT's contact Attorney Carl D. Holborn at carl.holborn@wilaw.com.

TAX & WEALTH ADVISOR ALERT: IRREVOCABLE

LIFE INSURANCE TRUST, A TECHNIQUE TO ELIMINATE ESTATE TAXES ON LIFE INSURANCE PROCEEDS AND TO PROVIDE LIQUIDITY TO AN ESTATE PLAN

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An Irrevocable Life Insurance Trust (ILIT) is a special kind of trust that is designed to own life insurance. The key characteristic of an ILIT is that it is irrevocable, meaning that it cannot be changed or dissolved once it is created. This characteristic is important because it allows the trust assets to be removed from the estate of the person who creates it, which can help to reduce estate taxes.

An ILIT requires at least one trustee to manage the trust and a beneficiary to receive the proceeds of the life insurance policy. The person who creates the trust, known as the grantor, will typically transfer a life insurance policy into the trust and pay the premiums on the policy. The beneficiary of the trust is typically the family of the grantor.

One of the main benefits of an ILIT is that the proceeds from the life insurance policy are not subject to estate taxes. This can help to reduce the overall tax burden on one's estate and ensure that more of the assets are passed on to one's intended beneficiaries.

Another benefit of an ILIT is that it can provide a source of liquidity for one's estate. The proceeds from the life insurance policy can be used to pay any outstanding debts, taxes, or other expenses that may arise after the grantor's death.

In order for an ILIT to be effective, it is important that the grantor does not retain any incidents of ownership over the life insurance policy. This includes foregoing the rights to change the beneficiary, borrow against the policy, or cancel the policy. If the grantor retains any of these rights, the life insurance policy will be considered part of the grantor's estate and subject to estate taxes.

In summary, an ILIT is a type of trust that is used to hold a life insurance policy and can help to reduce estate taxes by removing the policy from the grantor's estate. It requires a trustee to manage the trust and a beneficiary to receive the proceeds of the life insurance policy, and it can provide a source of liquidity for the estate. It is important to keep in mind that the grantor should not retain any incidents of ownership over the life insurance policy for the ILIT to be effective. For more information about ILITs, contact Attorney Carl D. Holborn at carl.holborn@wilaw.com.

TAX & WEALTH ADVISOR ALERT: SPOUSAL LIFETIME ACCESS TRUSTS, A POWERFUL ESTATE PLANNING TOOL FOR COMPLEX ESTATES

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The Spousal Lifetime Access Trust (SLAT) is a type of irrevocable trust that allows married couples to transfer assets to their spouse and other family members while removing those assets from their combined estates. This type of trust can help high net worth individuals take advantage of the federal lifetime gift and estate tax exclusion, which is currently $12.92 million per person in 2023, or $25.84 million per married couple, while still retaining limited access to the assets, if needed.

A SLAT is created by one spouse (the “donor” spouse) gifting property to an irrevocable trust for the benefit of the other spouse (the “non-donor” spouse). The non-donor spouse is the primary beneficiary of the trust and can request distributions from the trustee, if needed, during their lifetime. However, most advisors recommend that the non-donor spouse not request distributions from the SLAT unless it is absolutely necessary to maintain their accustomed standard of living.

The donor’s transfer of assets to the SLAT is considered a taxable gift, but gift tax may not be owed if the donor utilizes their Federal gift and estate tax exclusion. The assets and any future appreciation is removed from the donor’s taxable estate and the trust is excluded from the non-donor’s taxable estate as well.

A SLAT can offer many benefits such as:

- Allows married couples to reduce the size of their estate while retaining limited access to the assets.
- Allows the donor to indirectly benefit from the property gifted to the trust, as long as the non-donor spouse is living and remains married to the donor.

- The non-donor spouse can request distributions from the trustee of the trust to maintain their accustomed standard of living.
- Appreciation of the assets outside the donor's estate for the benefit of their descendants.

SLATs are a sophisticated estate planning tool and should be created with the assistance of a qualified attorney. They can provide significant benefits to married couples looking to transfer wealth to the next generation while still retaining access to the assets. Contact Attorney Carl D. Holborn at (414) 276-5000 for more information.

TAX & WEALTH ADVISOR ALERT: IRS POSTPONES $600 PAYMENT PROCESSOR 1099-K REPORTING REQUIREMENT

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In a year-end gift of sorts to tax professionals, payment processing companies, and individuals pursuing eBay and other small-transaction side hustles, the IRS has delayed a new transaction reporting requirement that some believed would cause confusion among taxpayers and tax preparers alike.

Many More Payments Were to Be Reported to the IRS

The new reporting requirement would have required companies such as Venmo, PayPal, eBay, and Etsy that process business-related payments to provide each individual who received more than a total of $600 in reportable transaction payments from the company in 2022 with a form 1099-K and to report those payments to the IRS. Formerly the 1099-K reporting requirement was not triggered unless an individual received more than $20,000 in reportable payments in more than 200 transactions in a calendar or tax year.

So, for example, if an eBay seller earned more than $600 from eBay auctions in 2022, eBay would have been required to report that total to the IRS and to send the seller a form 1099-K reflecting those payments. This would be the case for any payment processor that made payments to individuals or businesses for business-related transactions (StubHub, Etsy, Airbnb, Venmo, Zelle, Square, and the like). In each case, if any one individual or company was paid more than $600 for business-related transactions in 2022, the payment processor would have been required to report the total amount paid to the IRS, and the recipient of the payments would receive a form 1099-K reflecting that total.

Concerns About Errors and Confusion

There was widespread concern that given the lower reporting threshold of $600 per year, many individual taxpayers would receive erroneous 1099-Ks that mistakenly included non-reportable transactions. A Venmo payment for splitting dinner checks with a friend is one example. Only properly reportable transactions, such as payments for business-related products or services, should trigger a 1099-K, and the risk of error with the lower threshold was significant. Of course, those erroneous amounts would also have been reported to the IRS, creating headaches for taxpayers, tax preparers, and the IRS.

The IRS Has Delayed the New Reporting Requirement

In late December 2022, the IRS issued a notice delaying the implementation of the $600 threshold for the 1099-K reporting requirement until 2023, meaning taxpayers should not be receiving 1099-Ks from payment processors such as eBay and PayPal unless the old $20,000/200-transaction threshold was reached during the year.

This does not mean taxpayers are not required to declare all their 2022 income, of course. It simply means that if a taxpayer's transactions for the year were under the $20,000/200-transaction threshold, payments won't be reported to the IRS by the payment processors and the taxpayers won't receive a form 1099-K for amounts they've received.

Be Prepared for 2023

Note that the IRS is not abandoning the new $600 reporting requirement; it's simply giving payment processors, tax professionals, and taxpayers another year to ensure they are prepared to implement it. This means that if you're a taxpayer and you receive payments from online transactions such as eBay, Etsy, StubHub, or Airbnb, or if you have clients pay you via Venmo or Paypal, it's essential for you to keep track of the money you receive via these payment processing services. You should also make sure you pay close attention to non-business payments you receive from friends and family when you split a dinner check or share a weekend cabin rental.

Keep track of expenses you incur related to the reportable payments you receive – for example, if you buy and resell concert tickets, the cost of the original ticket you purchased is an expense related to the money you receive from selling the ticket. Doing so will usually reduce your reportable income. And the more you keep good records, the easier it will be to ensure that any 1099-K forms you receive for 2023 payments are accurate and properly reflect the money you've been paid for goods or services you provided.

Note That Things May Change

The new $600 threshold for 1099-K reporting provoked a predictable backlash from the payment processing industry. Some members have formed an advocacy group called the Coalition for 1099-K Fairness to draw attention to the new requirement and encourage the IRS to, at a minimum, delay its implementation. With the IRS's decision in late 2022 to postpone enforcement of the new rule for a year, at least one of this group's requests has been met (though the IRS did not specifically reference the Coalition when it issued its notice).

According to a survey conducted on behalf of the Coalition, millions of what they call "casual sellers" make less than $5,000 per year selling used or pre-owned goods online. For most of these people, the Coalition argues that selling things online is not their primary source of income; think "side-gig." One industry concern is that if millions of people start receiving 1099-K forms for casual transactions, many may stop selling online to avoid the hassle of keeping records of revenues and expenses as though they are operating a full-fledged business.

On the other side is the idea that even "casual sellers" should include their income from smaller-scale transactions on their tax returns. And the thought is that if taxpayers are aware that the revenue they receive from these casual sales is being reported to the IRS, they will be more inclined to include it (or the portion that is properly reportable as income) on their tax returns.

That said, there is no dispute that the new $600 reporting threshold is a drastic change from the old $20,000/200-transaction threshold, and that complying with the new 1099-K reporting requirement will be significantly more burdensome for payment processors of all types. While the $600 threshold may be changed in response to industry and taxpayer pressure, there is no guarantee this will happen, so payment processors and taxpayers should continue to act as though the threshold will remain where it is for 2023.

For questions or further information relating to form 1099-K reporting, please contact Attorney Britany E. Morrison.

HOME FOR THE HOLIDAYS: GIVE THE GIFT OF

LEGAL PLANNING FOR YOUR COLLEGE STUDENT

In the summer flurry of packing and planning to transition their high school student to college life, many parents overlook the legal documents that can help families in the event of a student's financial or health emergency. As many parents learn the hard way when their child suffers a physical or mental health crisis, the law generally prohibits a hospital or medical provider from sharing information about their adult child without their child's consent regardless of whether the child is covered under their health insurance or a dependent for tax purposes. Similarly, while parents can deposit money into their child's checking account, they do not have the ability to act on their adult child's behalf to manage other aspects of his or her financial life. A few simple documents can help families as their teens transition to adulthood.

HIPAA Release and Authorization

HIPAA normally prohibits a medical provider from giving information about a patient to anyone without the patient's consent. A HIPAA release and authorization allows medical professionals to divulge medical records to an individual's personal representative under HIPAA. Students can name one or both of their parents as individuals authorized to obtain such information.

Power of Attorney for Health Care

A power of attorney for health care allows a person to appoint someone to make health care decisions for them if they are unable to do so. The power of attorney does not override or supplant the individual's wishes; it becomes effective only when (i) two physicians or (ii) a physician and a psychologist, nurse practitioner, or physician assistant determine that the individual is incapacitated. Only one person can be given power of attorney for health care at a time and that person should be aware of the individual's desires and beliefs concerning treatment.

Durable Power of Attorney

A durable power of attorney allows a person to appoint someone to oversee their financial affairs. These powers can be either immediate or effective only in the event of incompetence. For a college student, an immediate durable power of attorney would permit his or her parent to act on the student's financial behalf to the extent the power permits. This power can be broad and cover all accounts, including brokerage institutions, credit cards or banks, or limited to a specific financial institution.

O'Neil Cannon's **Estate & Succession Planning Group** can advise and assist your college student with these important documents.

TAX & WEALTH ADVISOR ALERT: HOW JOINT ACCOUNTS CAN RUIN YOUR ESTATE PLAN

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As individuals grow older, they are often inclined to add a child to their financial accounts to assist them with paying bills and managing assets. While this strategy is convenient, it can lead to financial abuse and can also derail estate plans.

A joint account is a financial account with one or more owners, who both have rights of survivorship. Upon the death of one owner, the balance of the account passes to the surviving owner without probate, regardless of whether the surviving owner contributed to the account or not. The balance of the account will not pass according to the deceased owner's estate plan and the surviving owner has no legal duty to abide by the deceased owner's estate plan. The surviving owner can legally liquidate the account and cannot be held liable for doing so.

If you mistakenly add a joint owner to your financial account, it can be extremely difficult to prove that the joint account was instead set up as a "convenience account" for the sole purpose of making it more "convenient" for the joint owner to pay your bills and manage your assets. To prove a joint account was a convenience account, the legal presumption that the surviving owner of the joint account should receive the balance of the account must be overturned. This proof relies heavily on factual circumstances and requires a showing of clear and convincing evidence that the original owner did not have a donative intent when initially creating the joint account.

Instead of adding an individual as a joint owner of your financial account, we recommend adding your agent under your financial power of attorney. A financial power of attorney allows a person to perform financial transactions on your behalf, without having any legal ownership over your financial accounts. More importantly, a financial power of attorney also terminates upon your death. In other words, when you pass away, the account will either pass to the beneficiary listed on your account or to your estate—as originally intended. If you already have a revocable trust in place, your revocable trust can be named as the beneficiary of the account and the account will then pass to your trust upon death, thus avoiding a probate proceeding.

It is important to note that while it is better to add an agent under a financial power of attorney to a financial account, a financial power of attorney can also be dangerous in the hands of a bad actor, and it can be difficult to hold an agent accountable. It is vital to choose a trustworthy agent, such as a spouse or close family member. Avoid selecting an agent who has a history of financial trouble, drug, or gambling problems. Always consult with an estate planning attorney when establishing a financial power of attorney and adding an agent to financial accounts.

Here at O'Neil, Cannon, Hollman, DeJong & Laing S.C., our Estate & Succession Planning Group can create a comprehensive estate plan for you and assist you with properly retitling your bank accounts, setting up beneficiary designations, and adding your agent under your financial power of attorney as an authorized user of your accounts. Our Inheritance Litigation Group can also assist you in holding a bad actor liable if you believe that your loved one's joint account should be a considered a convenience account or if your loved one was taken advantage of by his or her agent under a financial power of attorney.