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January 2012

In This Issue

News, Articles, and Updates for the Estate Planner

See updates and articles references involving charitable trusts and donations; elder law; estate and gift taxes; estate and trust administration; probate; estate planning; generation-skipping transfer tax; health care; retirement; same sex marriages; civil unions; domestic partnerships; small and mid-size law firm practice; special needs trusts; guardianships; trusts; wills.

Tech Tip

The Charitable Trust module includes individual and joint inter vivos charitable remainder and lead trusts. Each trust carefully adheres to the corresponding IRS Revenue Procedure, and each has a set of accompanying supporting documents. This Tech Tip shows you how this works.

See all articles in this issue

NEWS, ARTICLES, AND UPDATES

For The Estate Planner

Charitable Trusts and Donations

Other

U.S. Tax Court. Conservation Deductions for Easements Not Granted in Perpetuity Disallowed by Court. On January 3, the U.S. Tax Court denied over $2.7 million in charitable contribution deductions claimed by Kayln M. Carpenter, Scott A. Van Wyhe, and John C. and Sharon L. McSween for conservation easements in parcels of land they owned in Teller County, Colorado that each granted to Greenlands, a charitable nonprofit Colorado corporation. All of the conservation easement deeds contained a provision for extinguishment of the easement by judicial proceedings, or by mutual written agreement of the parties should the purpose of the easement be impossible to accomplish. The Court concluded that the easements were, therefore, not protected in perpetuity and thus were not qualified conservation contributions under I.R.C. § 170(h)(a). Westlaw: Carpenter v. Commissioner, T.C., No. 15589-10, T.C. Memo. 2012-1, 2012 WL 10798 (January 3, 2012); Web: Carpenter v. Commissioner, T.C., No. 15589-10, T.C. Memo. 2012-1 (January 3, 2012).

U.S. Tax Court. Court Upholds Disallowance of Charitable Contribution Deduction for Rights to Martha Vineyard Farm. On January 10, the U.S. Tax Court ruled that Marshall and Judith Cohan and Robert and Susan Hughes may not claim more than $2 million in charitable contribution deductions under I.R.C. § 170 relating to a transaction between Herring Creek Acquisition Co., L.L.C., and the Nature Conservancy that occurred in 2001. As members of the LLC, taxpayers held certain rights to Herring Creek Farm located on the southeast shoreline of Martha's Vineyard, which were transferred to the Conservancy. The court found that the Conservancy's gift letter failed to include several items of consideration given the LLC in return for the rights transferred to the Conservancy as required under §170(f)(8) and that

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petitioner's claimed reliance on the letter was unreasonable, noting that the facts indicated that both parties negotiated the disclosure of the consideration and both knew of the exclusions. Westlaw: Cohan v. Commissioner, T.C., No. 19849-05, T.C. Memo. 2012-8, 2012 WL 67735 (January 10, 2012); Web: Cohan v. Commissioner, T.C., No. 19849-05, T.C. Memo. 2012-8 (January 10, 2012).

**Elder Law**

**Articles**


**Estate and Gift Taxes**

**Articles**


**Legislation**

_Ohio. Wills and Trusts, Powers of Attorney, and References to the Certain Federal and State Tax Provisions in Trusts._ Ohio has passed legislation affecting wills and trusts, powers of attorney, and references to the certain federal and state tax provisions in trusts. The legislation adopts the Uniform Power of Attorney Act; modifies a trustee's duties with respect to life insurance policies, specifies a trustee's power to distribute trust principal in further trust, provides for the titling of assets in trust form, permits some but not all of specified parties to enter into a private settlement agreement, and makes other changes in the Trust Code; modifies the anti-lapse provisions regarding wills and adopts anti-lapse provisions applicable to trusts; provides a mechanism for a probate court to order a person who suffers from alcohol and other drug abuse to undergo treatment; and provides a procedure for the construction or modification of a trust that refers to the federal estate tax, generation-skipping transfer tax, or Ohio estate tax. (2011 Ohio Senate Bill No. 117, Ohio One Hundred Twenty-Ninth General Assembly - 2011-2012 Session; Title: To Adopt The Uniform Power Of Attorney Act; To Modify A Trustee's Duties With Respect To Life Insurance Policies, Specify A Trustee's Power To Distribute Trust Principal In Further Trust, And Make Other Changes In The Trust Code.; VERSION: Adopted; December 21, 2011). WestlawNext: 2011 OH S.B. 117 (NS); Westlaw: 2011 OH S.B. 117 (NS); Web: Ohio Legislature.

**Other**

_U.S. Supreme Court. Court Denies Review of Regulation Barring IRS from Granting Second Estate Tax Extension._ On January 9, the U.S. Supreme Court denied a petition for writ of certiorari filed by D. Charles Dickow, in response to the U.S. Court of Appeals for the First Circuit decision that upheld a Treasury regulation barring the IRS from granting Dickow, as Executor of the Estate of Margaret W. Dickow, a second extension of time for filing an estate tax return. Dickow had brought suit in 2009 seeking a refund of federal estate taxes in the sum of $237,813.48 that he says were

U.S. Tax Court. Court Includes Assets, Denies Deductions in Estate Tax Ruling. On January 9, the U.S. Tax Court held that the taxable estate of Dwight T. Fujishima should include the $10,000 face amount of a Conseco, Inc. Senior Note even though no value was listed on the decedent's brokerage account statement and should also include two life insurance policies totaling over $2 million that were shown on the issuing companies records as owned by the decedent totaling even though the premiums were paid by his mother. The court also denied the estate deductions of $87,000 for executor's commissions and $50,000 for attorney’s fees, noting that no detail to support the amounts was presented, and also denied $130,000 for charitable contributions, since the contributions were determined by the personal representative after the decedent's death rather than by a will. Finally, the court disallowed a deduction for $175,000 allegedly owed by decedent to his mother as of the date of death for care he received from her during life as a result of an injury and subsequent disabilities, concluding that decedent's brokerage account statement as of the date of death suggested that the debt could have been paid during his lifetime if decedent and his mother had recognized it as valid. Westlaw: Estate of Fujishima v. Commissioner, T.C., No. 3930-10, T.C. Memo. 2012-6, 2012 WL 43509 (January 9, 2012); Web: Estate of Fujishima v. Commissioner, T.C., No. 3930-10, T.C. Memo. 2012-6, (January 9, 2012).

U.S. Tax Court. Court Says Estate Entitled to Deduct Additional Administration Expenses Resulting from Litigation. On January 9, the U.S. Tax Court determined that the Estate of Raymond J. Gill is entitled to a deduction for additional administration expenses under I.R.C. § 2053 resulting from the protracted litigation after decedent's death between his children and his second wife, whom he married six months after his first wife's death. The court, however, held that the amount of the marital deduction should not be reduced by federal estate and state death taxes concluding that the estate and decedent's living trust placed the tax burden on the recipient of distributed property rather than on the estate or trust and therefore the obligation did not fall on decedent's marital trust. The litigation resulted when Gill's children filed a statement of claim against his estate alleging breach of fiduciary duty while he acted as trustee of his first wife's living trust, claiming that he had made improper withdrawals of trust principal from both the credit shelter trust and the marital trust created under her living trust, and of which they were remainder beneficiaries. Westlaw: Estate of Gill v. Commissioner, T.C., No. 12885-00, T.C. Memo. 2012-7 (January 9, 2012); Estate of Gill v. Commissioner, T.C., No. 12885-00, T.C. Memo. 2012-7 (January 9, 2012).

Estate and Trust Administration; Probate

Articles


Estate Planning (Generally)

Articles


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**Legislation**

**Massachusetts.** *Massachusetts Uniform Trust Code--Effective Date.* Massachusetts has passed legislation that delays the effective date of the Massachusetts Uniform Trust Code. The effective date has been changed from January 2, 2012 to March 31, 2012. (2011 Massachusetts House Bill No. 3780, Massachusetts One Hundred Eighty-Seventh General Court; Title: An Act To Establish The Massachusetts Uniform Trust Code; VERSION: Adopted; December 30, 2011). WestlawNext: 2011 MA H.B. 3780 (NS); Westlaw: 2011 MA H.B. 3780 (NS); Web: Massachusetts Legislature.

**Generation-Skipping Transfer Tax**

**IRS Decisions, Regulations, And Guidance**

**IRS.** *Section 2642 - Inclusion Ratio.* The Internal Revenue Service granted the executor of decedent's estate and surviving spouse a 120-day extension to make generation-skipping transfer tax exemption allocations to transfers made to a trust after the accountants omitted the allocation when they prepared the couple's Forms 709. Westlaw: PLR 201152004, 2011 WL 6854990 (December 20, 2011); Web: PLR 201152004, IRS Written Determinations (December 20, 2011).

**Legislation**

**Ohio.** *Wills and Trusts, Powers of Attorney, and References to the Certain Federal and State Tax Provisions in Trusts.* Ohio has passed legislation affecting wills and trusts, powers of attorney, and references to the certain federal and state tax provisions in trusts. The legislation adopts the Uniform Power of Attorney Act; modifies a trustee's duties with respect to life insurance policies, specifies a trustee's power to distribute trust principal in further trust, provides for the titling of assets in trust form, permits some but not all of specified parties to enter into a private settlement agreement, and makes other changes in the Trust Code; modifies the anti-lapse provisions regarding wills and adopts anti-lapse provisions applicable to trusts; provides a mechanism for a probate court to order a person who suffers from alcohol and other drug abuse to undergo treatment; and provides a procedure for the construction or modification of a trust that refers to the federal estate tax, generation-skipping transfer tax, or Ohio estate tax. (2011 Ohio Senate Bill No. 117, Ohio One Hundred Twenty-Ninth General Assembly - 2011-2012 Session; Title: To Adopt The Uniform Power Of Attorney Act; To Modify A Trustee's Duties With Respect To Life Insurance Policies, Specify A Trustee's Power To Distribute Trust Principal In Further Trust, And Make Other Changes In The Trust Code.; VERSION: Adopted; December 21, 2011). WestlawNext: 2011 OH S.B. 117 (NS); Westlaw: 2011 OH S.B. 117 (NS); Web: Ohio Legislature.

**Health Care**

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Articles


Legislation

Illinois. Dependent Includes Children of a Civil Union Under State Employees Group Insurance Act of 1971. Illinois has passed legislation that amends the State Employees Group Insurance Act of 1971 which changes the definition of dependent to include children of a civil union. Among other things, the legislation defines a dependent as a person who qualifies as a dependent under a specific provision of the State Employee Group Insurance Act of 1971 and who, if age 26 or above, also qualifies as a dependent under a specific provision of the Internal Revenue Code; includes the child of a party to a civil union as a dependent; requires a party to, or the child of a party to, a civil union to qualify as a dependent under the Internal Revenue Code in order to qualify as a dependent; provides that in order to qualify as an eligible individual an employee may not be entitled to Medicare or be claimed as a dependent on another person's tax return; changes the maximum deductible for high deductible health plans from $5,000 for plans providing self-only coverage and $10,000 for plans providing family coverage to, in both cases, the highest level authorized by the federal Internal Revenue Service; delays the date by which each employer must make a health savings account program available to each eligible individual and upon which each individual may deposit contributions into a health savings account; exempts certain employers from the requirement to make a health savings account available to each eligible individual. (2011 Illinois House Bill No. 355, Illinois Ninety-Seventh General Assembly - First Regular Session; Title: Government-Tech; VERSION: Adopted; December 30, 2011). WestlawNext: 2011 IL H.B. 355 (NS); Westlaw: 2011 IL H.B. 355 (NS); Web: Illinois Legislature.

Retirement

Articles


Other

CRS. CRS Issues Report on Issues and Proposed Expansion of IRAs. On January 6, the Congressional Research Service issued a new report, Individual Retirement Accounts (IRAs): Issues and Proposed Expansion, which presents background information on IRAs, including a description of current law and the tax benefits of IRAs. The report also discusses the effects of IRAs on saving and other national objectives and explains recent IRA reform proposals. In the Appendix, a history of the development of IRAs is presented. [Congressional Research Service reports are not directly available to the public. The reports are made public through requests to Members of Congress. Secondary sources include online legal services, like BNA's Taxcore documents available on Westlaw (this report is 12 NO. 005 BNA Taxcore 006, (January 6, 2012)). Incomplete collections also exist on the web, often collected by subject. See http://www.opencrs.com].

Same Sex Marriages; Civil Unions; Domestic Partnerships

Articles


Legislation

Illinois. Dependent Includes Children of a Civil Union Under State Employees Group Insurance Act of 1971. Illinois has passed legislation that amends the State Employees Group Insurance Act of 1971 which changes the definition of dependent to include children of a civil union. Among other things, the legislation defines a dependent as a person who qualifies as a dependent under a specific provision of the State Employee Group Insurance Act of 1971 and who, if age 26 or above, also qualifies as a dependent under a specific provision of the Internal Revenue Code; includes the child of a party to a civil union as a dependent; requires a party to, or the child of a party to, a civil union to qualify as a dependent under the Internal Revenue Code in order to qualify as a dependent; provides that in order to qualify as an eligible individual an employee may not be entitled to Medicare or be claimed as a dependent on another person's tax return; changes the maximum deductible for high deductible health plans from $5,000 for plans providing self-only coverage and $10,000 for plans providing family coverage to, in both cases, the highest level authorized by the federal Internal Revenue Service; delays the date by which each employer must make a health savings account program available to each eligible individual and upon which each individual may deposit contributions into a health savings account; exempts certain employers from the requirement to make a health savings account available to each eligible individual. (2011 Illinois House Bill No. 355, Illinois Ninety-Seventh General Assembly - First Regular Session; Title: Government-Tech; VERSION: Adopted; December 30, 2011). WestlawNext: 2011 IL H.B. 355 (NS); Westlaw: 2011 IL H.B. 355 (NS); Web: Illinois Legislature.

Small and Mid-Size Law Firm Practice

Articles

Adventures with Boy Scout Troop 66. Thomas J. Crane. (GPSolo, January/February, 2012). WestlawNext: 29 No. 1 GPSolo 50; Westlaw: 29 No. 1 GPSolo 50.

Becoming an Accidental Big Sister. Wendy Cole Lascher. (GPSolo, January/February, 2012). WestlawNext: 29 No. 1 GPSolo 38; Westlaw: 29 No. 1 GPSolo 38.

Behind the Scenes at a Volunteer Lawyer Program. LeBreon Simone Washington. (GPSolo, January/February, 2012). WestlawNext: 29 No. 1 GPSolo 40; Westlaw: 29 No. 1 GPSolo 40.

Build Your Practice, Build Good Karma. Fred Rooney. (GPSolo, January/February, 2012). WestlawNext: 29 No. 1 GPSolo 26; Westlaw: 29 No. 1 GPSolo 26.

Gain Experience Through Pro Bono. Pam Feinstein. (GPSolo, January/February, 2012). WestlawNext: 29 No. 1 GPSolo 16; Westlaw: 29 No. 1 GPSolo 16.

Giving Seminars. Erik Hammarlund. (GPSolo, January/February, 2012). WestlawNext: 29 No. 1 GPSolo 72; Westlaw: 29 No. 1 GPSolo 72.

The Good Fight is Good Business. Ignacio Pinto-Leon. (GPSolo, January/February, 2012). WestlawNext: 29 No. 1 GPSolo 20; Westlaw: 29 No. 1 GPSolo 20.


Judge Pro Bono. Michael D. Caccavo. (GPSolo, January/February, 2012). WestlawNext: 29 No. 1 GPSolo 32; Westlaw: 29 No. 1 GPSolo 32.

Mentoring a High School Robotics Team. Cynthia Hannah-White. (GPSolo, January/February, 2012). WestlawNext: 29 No. 1 GPSolo 42; Westlaw: 29 No. 1 GPSolo 42.


Pro Bono in the Arts Community. David Valentine-Elam. (GPSolo, January/February, 2012). WestlawNext: 29 No. 1 GPSolo 36; Westlaw: 29 No. 1 GPSolo 36.

Speak with Style and Authority. Steven Wisotsky. (GPSolo, January/February, 2012). WestlawNext: 29 No. 1 GPSolo 58; Westlaw: 29 No. 1 GPSolo 58.

Ten Steps to Prepare Yourself for a Graceful Launch. John H. Snyder. (GPSolo, January/February, 2012). WestlawNext: 29 No. 1 GPSolo 60; Westlaw: 29 No. 1 GPSolo 60.

Therapy Dog Visits. Anita Fuoss. (GPSolo, January/February, 2012). WestlawNext: 29 No. 1 GPSolo 48; Westlaw: 29 No. 1 GPSolo 48.

Volunteering at a Jewish Community Center. Suzanne R. Albin. (GPSolo, January/February, 2012). WestlawNext: 29 No. 1 GPSolo 46; Westlaw: 29 No. 1 GPSolo 46.

Volunteering with Citizen Schools. Cynthia M. Gilbert. (GPSolo, January/February, 2012). WestlawNext: 29 No. 1 GPSolo 34; Westlaw: 29 No. 1 GPSolo 34.

Volunteering with the Humane Society. Danny E. Meek. (GPSolo, January/February, 2012). WestlawNext: 29 No. 1 GPSolo 44; Westlaw: 29 No. 1 GPSolo 44.


You Can Get There from Here. David Leffler. (GPSolo, January/February, 2012). WestlawNext: 29 No. 1 GPSolo 68; Westlaw: 29 No. 1 GPSolo 68.

Special Needs Trusts; Guardianships

Articles


Working with Children Aging Out of Foster Care. Vicki Levy Eskin. (GPSolo, January/February, 2012). WestlawNext: 29 No. 1 GPSolo 30; Westlaw: 29 No. 1 GPSolo 30.

Legislation

Ohio. Wills and Trusts, Powers of Attorney, and References to the Certain Federal and State Tax Provisions in Trusts. Ohio has passed legislation affecting wills and trusts, powers of attorney, and references to the certain federal and state tax provisions in trusts. The legislation adopts the Uniform Power of Attorney Act; modifies a trustee's duties with respect to life insurance policies, specifies a trustee's power to distribute trust principal in further trust, provides for the titling of assets in trust form, permits some but not all of specified parties to enter into a private settlement agreement, and makes other changes in the Trust Code; modifies the anti-lapse provisions regarding wills and adopts anti-lapse provisions applicable to trusts; provides a mechanism for a probate court to order a person who suffers from alcohol and other drug abuse to undergo treatment; and provides a procedure for the construction or modification of a trust that refers to the federal estate tax, generation-skipping transfer tax, or Ohio estate tax. (2011 Ohio Senate Bill No. 117, Ohio One Hundred Twenty-Ninth General Assembly - 2011-2012 Session; Title: To Adopt The Uniform Power Of Attorney Act; To Modify A Trustee's Duties With Respect To Life Insurance Policies, Specify A Trustee's Power To Distribute Trust Principal In Further Trust, And Make Other Changes In The Trust Code.; VERSION: Adopted; December 21, 2011). WestlawNext: 2011 OH S.B. 117 (NS); Westlaw: 2011 OH S.B. 117 (NS); Web: Ohio Legislature.
Trusts (Generally)

Articles


Legislation

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Wills

Articles


Legislation

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See all articles in this issue

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The Charitable Trust module includes individual and joint inter vivos charitable remainder and lead trusts. Each trust carefully adheres to the corresponding IRS Revenue Procedure, and each has a set of accompanying supporting documents.

The Trust Information area provides easy entry of Payment Recipients, Charitable Organizations, Remainder Beneficiaries, and Trustees for insertion into the trust as appropriate.
Numerous phrase options allow you to select the specific type of trust to generate, the method of payment and term of trust, various administrative options, and more. Supporting documents include various certificates, the SS-4 Form, several letters, an invoice, and covers and envelopes.

In addition, the revocable trust and will modules include options to create a charitable remainder or lead trust as the recipient of the residue of the trust or estate. (Checklist #350 for the revocable trusts and #910 for the wills include these options.) The trusts are in lieu of the testamentary trust and use the testamentary trustee screen to assign trustees to the charitable trust.

If you have any questions on your Trust Plus or TrusTerminator software, support is just a phone call away using the following numbers:

- **License activations** - Customer Technical Support, 1-800-366-1730 (option 1)
- Questions about your **West account** or requests to add/remove **Members Only or Listserve access** - Customer Service, 1-800-366-1730 (option 2)
- **Content questions** and questions on how to use the software - Reference Attorneys, 1-800-277-9378 (option 3)
- **Technical software questions** and problems (installation, networking, technical errors) - Customer Technical Support, 1-800-366-1730 (option 4)
- **Sales of supplies** (Estate Organizer Binders, client booklets, etc.) - Inside Sales, 1-800-366-1730 (option 5)
- To schedule training on using the software - Telephone Training, 1-800-328-0109 (option 1)

» See all articles in current issue