

### **NEW AND NOT-SO-IMPROVED "KIDDIE TAX"**

For many years, families with high income have transferred assets to children to minimize income taxes. For example, a married couple earning \$200,000/year has a marginal federal income tax rate of 33%. However, a person earning \$10,000/year has a marginal federal income tax rate of only 10%. Imagine shifting \$50,000 to a child who only works a few hours a week after school. Any interest earned on that \$50,000 will only be taxed at 10%, right?

Not quite. Before 2006, if the child was over age 14, the unearned income (e.g. not a salary, just interest on money sitting in the bank) was taxed at the child's tax bracket of 10%. But, if the child was under age 14, the unearned income was taxed at the parents' rate of 33%. This "Kiddie Tax" was specifically

designed to avoid asset-shifting/ tax-lowering strategy described above.

**Now, the unearned income of a child who is under 19 or under 24 (if a full-time student, and not providing half of his own support cost) is taxed at the parents' rate.**

\$12,000/year annual exclusion gifts may be useful to reduce your assets for estate tax purposes, but due to the Kiddie Tax, they will probably be tax neutral for income tax purposes, and may reduce the amount of financial aid available for your child. When planning for college expenses there is no one size fits all scenario. I highly suggest you speak with your tax advisor before making large gifts, contributing heavily to 529 Plans, or establishing education trusts.

### **HEALTH CARE & ORGAN DONATIONS**

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If you wish to donate your organs at your death, you may have a pink sticker on your Driver's License. California now wants prospective organ donors to go a step further and register at [www.donatelifecalifornia.org](http://www.donatelifecalifornia.org). No matter what your choice is, make sure you tell your family of your wishes and consider visiting the Donate Life California website so that your intent will be clear to doctors state-wide.

You may also wish to register your Advance Health Care Directive with the Secretary of State. This registry tells physicians that you have previously executed a Directive and can include the name of your intended agent in case of emergency. It is especially useful if you expect some controversy regarding your medical care and you do not want family members to ignore your Directive.

As a general rule of thumb, I recommend that you give copies of your Advance Health Care Directive to each person named as an agent within the document, along with your personal physician. Distributing multiple copies should ensure the document is not "missing" at a crucial time.

If you're interested in what happens to donated organs at death (especially if you're willing to give organs to research and education, and not just emergency transplants), I highly recommend the book Stiff: The Curious Life of Human Cadavers, by Mary Roach. My uncle loaned me this book, and it sat on my nightstand for four months, but when I finally got over my squeamishness and picked it up, I found a fascinating and easy-to-read treatise on the uses of deceased human bodies.

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**HEALTH CARE (CONT.)**

It had never occurred to me that bodies are used to judge the effectiveness of weapons, as practice for plastic surgeons, to calibrate automobile crash test dummies, and for studies of decomposition.

After reading Stiff you'll never think of a dead body the same way again.

**A PERSONAL NOTE**

It's hard for my husband and I to believe that my children are no longer babies. Aaron (3½) is a curious, opinionated, and fun-loving kid. Abby (1½) has grown into a full-fledged toddler who knows what she wants and goes for it!

I've had my solo practice for nearly six years, and I am still overwhelmed by the support of my clients and colleagues. The time has flown by... and I am so grateful to have such a great job and work with such wonderful people.



*Carol*

**HAVE YOU GOTTEN MARRIED THIS YEAR?**

Once or twice a year, a single client will excitedly call to tell me she is getting married, and ask me to prepare a premarital agreement. Typically, the client wants the agreement to ensure her children from a first marriage are protected. Well, I don't prepare premarital agreements, but while I'm giving the client my list of preferred family law attorneys, I also try to impart on her the importance (actually the necessity) of signing a short trust amendment following marriage.

If you have a trust and then get married, but die before signing a trust amendment, the law presumes that you would have left your new spouse something, but just didn't get around to talking to your lawyer. Your spouse will automatically receive between 1/3 and 1/2 of your separate property (depends on whether you have children) and all of your community property unless (a) you write in a trust amendment or will that you are married, and state how much you want to leave to your spouse, (b) you leave your spouse something outside of your will or trust (e.g. your retirement plan or life insurance) and it's clear that your intent was that this

gift would "take care" of the spouse, or (c) your spouse, in writing, waves his or her right to inherit from your estate.

It's up to you to take the steps needed to clarify your updated intent. You may benefit your spouse, your children, or someone else entirely, **but you should definitely revise your estate plan and not just rely on state law.**

A trust amendment can be rather short and take less than an hour of my time to prepare. You may disinherit your spouse, give him an interest in your trust for a period of time or for life, or give him a token amount, with the rest to your children. You should also think clearly about who would be the best person to act as Trustee and navigate the tensions between new family members.

In my practice, the biggest source of conflict following a death is that between a spouse and children from a prior marriage. If you make your intentions clear and pick a neutral Trustee, it is much more likely that your new spouse and your children will want to maintain their family relationship, even after you're gone.

# Happy Holidays!

This Newsletter is for information and discussion purposes only. Before any action is taken, professional advice, based on your specific situation, should be obtained.