

**New Lawyer's Subcommittee
Trust & Estates Section of the CBA**

Minutes for January 21, 2016

CBA Offices – 9th Floor – Terrace Room

A. Welcome & Introductions

- Attendance:
 - Alison Leary
 - Klaralee Charlton
 - Annette Bybee
 - Matthew Saks
 - Rachel Sheikh
 - Angela Hopkins
 - Marianne Luu-Chen
 - John Estes
 - Sarah Pheral
 - Lauren da Cunha
 - Jennifer Hazelton
 - Rikke Liska
 - Sara Dietz
 - Gina Trevey
 - Mark Masters
 - Bob Hertsch (by phone)
 - Elizabeth Stewart (by phone)

B. Review and Approval of Minutes from November 19, 2015 Meeting

- Motion was seconded and passed unanimously

C. Presentation by Klaralee Charlton, Associate Attorney with Katz, Look & Onorato, P.C., on the subject of fiduciary tax. Klaralee specializes in estate administration and tax planning. She received her J.D. from the University of Utah, graduating with Honors, and then earned an LL.M. in Tax Law from the University of Denver. Klaralee currently serves as Chair Elect of the Young Lawyers Division of the Denver Bar Association.

- See handout: “Fiduciary Income Tax–Tips and Tricks for Filing Trust and Estate Income Tax Returns”
- Important for Estate Planners to understand fiduciary tax
 - Most estate attorneys are focused on estate tax, but income tax can be a really big hit if you aren't planning for it
- Income distribution deduction - claim deduction for distributions to fiduciaries (individuals and charities) which is beneficial to the trust because trusts are taxed at much higher rates than individuals
- Obtain an EIN for an estate or previously revocable trust after date of death

- Simple trust (all income distributed currently) v. complex trust (all other trusts; the majority of trusts are complex)
- Estates have option to file returns based on calendar year or fiscal year
 - Beneficial to get it all done in one year using fiscal year to maximize benefit of deductions
 - Beneficial to use calendar year when you have multiple investment accounts so you can obtain and use the 1099
- IRC § 645 Election - allows you to treat both entities (estate and trust) as one; but 2 year time limit
- Identifying Income
 - Interest/Dividends
 - Capital Gains -
 - IRC § 1014 - The more sickly client should own the property (and all of the highly appreciated assets) to allow for basis adjustment.
 - Putting assets into a decedent's name within 2 years before death is scrutinized less than taking assets out of decedent's name
 - Joint Trust - Schedule A (husband), Schedule B (wife), Schedule C (joint)
 - Even if assets held in joint trusts, it is good practice to fill out schedules to show who owned the property before it was put into the joint trust - was it husband's or wife's?
- Deductions - nearly every expenditure by an estate or trust is deductible on Form 1041
- 65 day rule - PRs or trustees may make an election to treat distributions made to beneficiaries during the first 65 days following the end of the tax year as being made in the prior year for purposes of the income distribution deduction
- Tax Exempt Income – you should bill to a separate matter so you can more easily track expenses to get extra deductions
- Questions
 - Client is coming from a community property state and moving to Colorado and wants to redo the trust
 - Community property gets extra special treatment when it comes to the basis adjustment, so make sure to include language to make clear that community property remains community property
 - May want to use a Restatement of Trust, rather than a new Trust entirely; and always provide a Pourover Will
 - Don't want to change controlling law to Colorado
 - People can import community property to couples, but we cannot create it here in Colorado
 - Maintain a file to trace community property--keep settlement statement, cashier's check, carbon copy, etc. to prove that proceeds of the sale of house from California (or another community property state)
 - Be proactive to get a step up in basis and certain creditor protection advantages

D. Upcoming CLEs

- Estate Planning for “Portability” – Audio Webcast Thu, January 21, 2016
 - 1 General Credit
 - Estate Planning Basic Skills 2016 - Live Fri, February 26-27, 2016
 - 14 General Credits, including 1 Ethics Credit
- E. Study Group Update (1st Thursday of each month from 12-1 PM)
- Email Sara Dietz if you want to be added to the email chain
 - A call-in number is circulated for the conference call by Matt Tanda
- F. Client Conundrums
- Medicaid planning is a whole different planning because there are two separate sets of rules that were not made to be harmonized
 - Send clients to a specialist (Medicaid)
 - Consider attending Medicaid Boot Camp (John Campbell)
- G. Proposed Resource for the CBA New T&E Lawyers Subcommittee Website
- Send Elizabeth Stewart (estewart@stewartlawgrp.com) comments, questions and/or potential resources
- H. Adjourn