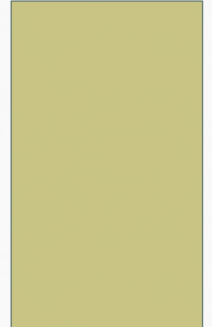


# HOT TOPICS

*A Review of Current Issues in Estate Planning,  
Probate and Trust Administration*

*Presented by:*

Stephanie R. Taylor



**RANDALL|DANSKIN**  
*A Professional Service Corporation*

# FEDERAL TAX PLANS

- **Estate, Gift and GST Tax**

- Federal Lifetime Unified Exclusion

- 2022 - \$12,060,000.00

- 2023 - \$12,930,000.00

- Retained Basis Step-Up at death

- **Sunset December 31, 2025** – Back to \$5M, adjusted for inflation

- Gift Tax Annual Exclusion (per year/per donee)

- 2022 - \$16,000.00

- 2023 - \$17,000.00

# ELECTING PORTABILITY

- What is Portability?
  - Allows a decedent's unused exemption amount (DSUE) to become available for use by the surviving spouse during his/her lifetime or at his/her death.
  - Generally, must be made on a timely filed estate tax return.
- Rev Proc. 2022-32 (July 8, 2022)
  - Extension of time to elect portability if no return is required is 5 years from Decedent's DOD – must include reference to this Rev. Proc. on the Estate Tax Return

# WA CAPITAL GAINS TAX

- ESSB 5096 Enacting a Capital Gains Tax
  - Rate – 7% of a Washington Resident's adjusted long-term capital gains;
  - Effective Date – 1/1/2022;
  - Applies to Individuals
    - Including owners of pass-through entities and disregarded entities
  - Capital Gains from voluntarily selling or exchanging long-term capital assets

# WA CAPITAL GAINS TAX

- Carve-Outs from Long Term Gains Tax
  - Short-term capital gain assets;
  - Real Estate (land and fixtures affixed to land, including leasehold improvements);
  - Interest in a privately held entity only to the extent that any long-term capital gain or loss from such sale or exchange is directly attributable to real estate owned directly by such entity;
  - Assets held under certain retirement accounts and employee benefit plans;
  - Assets under imminent threat of condemnation proceedings;
  - Depreciable property under IRC Sec. 167(a)(1) or property that qualifies for expensing under IRC Sec. 179;
  - Timber, timberland, or the receipt of capital gains as dividends and distributions from related real estate investment trusts;
  - Goodwill from the sale of an auto dealership;

# WA CAPITAL GAINS TAX

- Carve Outs (Continued)...
  - Commercial fishing privileges;
  - Cattle, horses, or breeding livestock if more than 50% of the taxpayer's gross income for the tax year, including from the sale or exchange of capital assets, is from farming or ranching;
  - A qualified family-owned small business; and
  - Up to \$100,000 in charitable donations to one or more qualified organizations in excess of \$250,000.

# WA CAPITAL GAINS TAX

- Long-term assets include both **tangible** and **intangible** personal property. If the capital asset is tangible personal property, the tax will apply if the property is located in Washington at the time of the sale or exchange. The tax also could apply to tangible personal property if:
  - The property was located in Washington at any time during the current or immediately preceding taxable year;
  - The taxpayer was a Washington resident at the time of the sale or exchange; and
  - The sale was not subject to income or excise tax on the adjusted capital gain by another taxing jurisdiction.
- If the capital asset is intangible personal property, then the tax will apply if the taxpayer is domiciled in Washington at the time of sale or exchange.
  - However, a credit is allowed when excise tax is legally imposed by another jurisdiction and the capital gains were included in Washington capital gains.

# WA CAPITAL GAINS TAX

- **Status**

- Passed in 2021
- Douglass County Court ruled it unconstitutional
- Supreme Court took up appeal
  - Issued stay on Douglass County ruling until Supreme Court hears arguments
  - Tax is moving forward
- Language in legislation precludes voter referendum



# WASHINGTON ESTATE TAX

- Basic Exclusion Remains at \$2M
  - Indexed for inflation – currently remaining at \$2.193M
    - RCW 83.100.020(1)(b) ties inflation to **Seattle-Tacoma-Bremerton** Metropolitan CPI
    - In January 2018, US Bureau of Labor Statistics changed CPI to “**Seattle-Tacoma-Bellevue**”
    - DOR’s position: current law explicitly requires the DOR to use the most recent October CPI-U for the *Seattle-Tacoma-Bremerton* area to adjust the applicable exclusion amount, the Department must continue to use the October 2017 CPI-U for the Seattle-Tacoma-Bremerton area until legislation is changed

# WASHINGTON FILING REQUIREMENTS

- Estate Tax Return Filing Relief
  - Amended RCW 83.100.050 – Estates must file a return if the gross estate is equal to or less than the applicable exclusion amount
    - 2022 amount is \$2,193,000
    - Prior to legislation estates over \$2M were required to file even though under the exemption amount

# WASHINGTON ESTATE TAX

- Portability
  - Currently, Washington does not allow portability
  - In 2019, House Bill 2061 was introduced which attempted to introduce portability into Washington's estate tax scheme.
    - Referred to Finance Committee but no further action was taken

# RECENT WASHINGTON COURT CASES

- Joint Title Gift Presumption
  - ***In re Marriage of Watanabe***, 18 Wn.App.2d 1011, 2021 WL 2768828 (Div. III, 7/2/21 (unpublished), *aff'd* 199 Wn.2d 342 (3/24/22))
    - **Facts:** Wife inherited significant property. Wife wanted to continue a business but had no credit. Husband and wife wanted to borrow money. Wife quitclaimed property as CP in order to secure the loan. Husband and Wife divorced.
    - **Held:** Court disregarded title and looked only to CP contributions to determine if there was any CP interest.
- Requirements to Create a Trust
  - ***K&W Children's Trust v. Estate of Fay***, 20 Wn.App.2d 862 (Div. III 2/8/22): During divorce proceeds, Husband agreed to set up a trust to hold real property for the benefit of the couple's two children. Husband died prior to setting up Trust. Following his death, ex-wife created Trust and sued his estate as Trustor. Court held that Trust was not in existence at his death and ex-wife had no standing.

# RECENT WASHINGTON COURT CASES

- Testamentary Capacity
  - ***In re Estate of Korsten***, 19 Wn.App.2d 1002 (Div.II 8/24/21) (unpublished)— Testatrix executed a Will disinheriting her children, in favor of her grandchild. Following her death, daughter sued, claiming Testatrix lacked testamentary capacity due to dementia and Alzheimer's. Court properly held that long-term attorney's testimony that he saw no signs of undue influence and that she had testamentary capacity compelling.
- Mutual Wills
  - ***In re Estate of Hill***, 19 Wn.App.2d 1043 (Div. III 10/28/21) (unpublished): Husband and Wife executed a CPA and reciprocal Wills. Following Husband's death, Wife changed her Will to disinherit Husband's children from prior marriage. At death of Wife, Husband's son sued, claiming the reciprocal Wills were "mutual" wills. Court held that a reciprocal Will is not an oral contract to make a Will.

# RECENT WASHINGTON COURT CASES

- Proper Exercise of Power of Appointment
  - ***In re Estate of Berg***, 21 Wn.App.2d 1046 (Div. I 4/4/22) (unpublished) –
    - Husband granted Wife a Power of Appointment in his Will, which required that Wife “must expressly refer to and exercise this power in her valid Will or codicil for the appointment to be effective.”
    - Following Husband’s death, Wife executed Will with language that included...“including property over which I may have a power of appointment”...
    - Child who would have received more under Wife’s exercise of the power after the Trustee took the position that the exercise was ineffective.
    - Court held that the language was effective to exercise the power.

# RECENT WASHINGTON COURT CASES

- Will Contest; Tolling of Time for Service Due to COVID-19
  - ***In re Estate of Boswell***, 19 Wn.App.2d 1034 (Div. I 10/18/21) (unpublished). Disinherited child informed PR that she intended to file a Will contest and provided a copy of the Petition to PR. Child filed the Will Contest on 1/24/20, but did not serve PR within 90 days. Child claimed “Stay-Home Order” precluded personal service. Court properly dismissed Will Contest because Child could provide no evidence that she was unable to serve the PR due to the Stay Home Order.
- Operation of Decedent’s Business
  - ***In re Estate of Petelle***, 21 Wn.App.2d 1050 (Div. I 4/11/22) (unpublished). A PR with full intervention authority has no authority to operate a Decedent’s business without Court approval. As such, the PR can not be held liable for her actions running the business when she had no authority to do so.

# RECENT WASHINGTON COURT CASES

- Undue Influence
  - ***In re Guardianship of Horts***, 20 Wn.App.2d 1050 (Div.II 1/19/2022) (unpublished). Horst (age 80) agreed to allow his bowling partner (McGill) to live on Horst's farm and work in exchange for rent. McGill moved his family onto the farm. McGill had Horst (who was in the hospital at age 90 due to a fire at his home) execute a POA naming McGill as POA which specifically authorized McGill to make gifts. McGill later obtained Horst's signature on a deed transferring the property to McGill and then started eviction proceedings against Horst. Court held that McGill unduly influenced and financially exploited Horst.
- Proper Execution of a Will
  - ***In re Estate of Goldberg***, 19 Wn.App.2d 1053 (Div. III 11/4/21). Court refused to allow a Will to be probated where there were no signatures of witnesses and a private detective found that one purported witness was bribed and coerced into stating that he witnessed the execution of the Will.



# RECENT WASHINGTON COURT CASES

- Disguised Will Contest; Legal Malpractice
  - ***In re Estate of Reugh***, 20 Wn.App.2d 1033 (Div. III 12/14/21) (unpublished)
    - Decedent executed a Pour-Over Will and RLT;
    - Per RLT, residue was to pass to foundation (if in existence) or Innovia to create a Foundation;
    - Decedent's daughter and long-time business partner were initial PRs and Trustees;
      - Sent Innovia a letter stating Innovia would receive \$2.2M, but took estate tax charitable deduction for \$15M
    - Decedent's children filed a TEDRA petition claiming RLT was invalid
    - Court removed initial PRs and Trustees and named professional trustee
    - Court determined TEDRA petition was essentially a Will contest and subject to SOLs
      - Children claimed attorney had exercised undue influence to get Decedent to name the foundation as the residuary beneficiary
      - Court found that the attorney did not exercise undue influence

# RECENT WASHINGTON COURT CASES

- Undue Influence/Slayer Statute for Non-Probate Assets
  - ***In re Estate of Besola***, 2022 WL 2467468 (Div. II, 7/6/22) (unpublished) –
    - Decedent's sister purchased right to assert undue influence claim over individuals who were named as beneficiaries of the Decedent's retirement accounts
    - Sister sued housemates, claiming undue influence and Slayer Statute;
    - Court held that beneficiary designations are controlled by R2d of Contracts § 177 and there was no evidence presented sufficient to rise to presumption of undue influence
- Impact of Interested Witnesses on Will
  - ***In re Estate of Tymony***, 2022 WL 2301315 (Div. I 6/27/22) –
    - Decedent executed Will which was witnessed by her three children.
    - Will was valid even though witnesses were interested parties rather such parties can only take no more than they would under intestacy

# RECENT WASHINGTON COURT CASES

- ***In re Estate of Saunders***, 2022 WL 2127741 (Div. II 6/14/22) (unpublished) – proper to ignore later Will
- ***In re Estate of Baca***, 2022 WL 2442330 (Div. I July 5, 2022) (unpublished) – Specific Bequest/Right of First Refusal Subject to Debt
- ***In re Estate of Larson***, 19 Wn. App. 2d 1033 (Div. III Oct. 12, 2021) (unpublished) – Division of Property upon Distribution

# QUESTIONS???

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