BKD Advisor

March 2002

Strategies to Build Your Business & Personal Net Worth

Gift tax exclusion increases

The annual gift tax exclusion increased to $11,000 per donee in 2002. If a married couple splits gifts, the amount of the exclusion can be doubled.

The estate tax exemption also increased to $1 million effective January 1, 2002. This represents a $325,000 increase over the 2001 amount. Taxpayers may make gifts exceeding the gift tax exclusion and still avoid current tax, as long as the total of the gifts does not exceed the exclusion and exemption.

Donors also can make an unlimited amount of direct tuition and medical payments to the institution(s) on behalf of a donee without impact on the gift tax exclusion or the estate tax exemption.

Tax-exempt audits to increase

The Internal Revenue Service (IRS) has announced certain tax-exempt organizations will be subject to extra audit scrutiny in 2002. It intends to perform audits of business leagues, labor unions, social clubs, community-based trusts, social service providers and religious organizations other than churches to determine compliance with tax laws.

Auditors also will be scrutinizing distributions made by donor-advised funds and compensation paid to executives of tax-exempt groups. If the initial audits show noncompliance with the tax code and other abuses, the IRS has indicated the program will be expanded.

Protect gifts to minors

Many people who wish to make a large gift to a minor child or grandchild use a uniform gift to minors or uniform transfer to minors account. Banks, brokers and other financial institutions that offer these accounts may tell the donor that setting up one of these accounts in the child's name is as good as establishing a formal trust and avoids legal and other fees associated with a formal trust.

Unfortunately, this advice may be unwise. Uniform gift and transfer to minors accounts provide that when the child or grandchild reaches majority (age 18 in most states), proceeds are distributed to the person for whom the account was established. At that point, the donor loses all control over the money and the youngster can use the money in any way he/she desires.

With a formal trust, the distribution can be delayed, and the donor or another trustee can be named to manage the funds if the original donor disqualifies him/herself from receiving the money. While it's true costs are higher and administration more complicated, establishing a formal trust can prevent a young person from spending a large sum of money foolishly.

Since establishment of custodial accounts and formal trusts also may have estate tax consequences and could lead to loss of college financial aid, discuss these matters with your BKD advisor beforehand.

Plan vacation home use

If you own a vacation home, it may be desirable to treat it as rental property for tax purposes.

It can be considered rental property if you personally use the house for 14 days or less in a year. Even if you use it more than 14 days, it can still be considered rental if your personal use totals no more than 10% of the total days rented at fair market value.

The alternative to property rental is residential. The advantage of treating the property as rental is the ability to deduct the total business-related expenses and depreciation and take up to $25,000 in losses per year, subject

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to the passive loss rules.

Under the passive loss rules, once your adjusted gross income (AGI) exceeds $100,000, the maximum $25,000 loss deduction starts phasing out and disappears entirely when AGI exceeds $150,000.

However, the unused passive losses can be carried forward to future years in which the AGI-based loss limitation is not triggered. Also, to the extent you make personal use of the rental property, the portion of mortgage interest attributable to your use of the property becomes personal interest not deductible for tax purposes.

Tax preparation as fringe benefit

Employer-paid tax return preparation is a highly prized employee benefit at firms that offer it. However, the IRS has just reiterated its position that it is not a tax-free fringe benefit, even when employees are required to have tax returns prepared by an outside firm hired for this purpose by the employer.

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In one specific case, the deduction for the tax return preparation expenses was denied to a firm that used the tax return preparation firm to determine whether its foreign employees would have owed less tax if they worked in the United States.

The IRS held the fee did not qualify as a job expense because tax return preparation is a non-business expense, and the new 2002 exclusion for employer-provided retirement planning services does not encompass the value of tax preparation services.

FICA on stock options

The IRS has issued a set of proposed regulations and two administrative notices that make the exercise of a statutory stock option subject to FICA and FUTA employment taxes beginning

Retirees take note

Retirement earnings limit raised

Social Security recipients under age 65 who continue to work will be able to earn more in 2002 without losing benefits. The new earnings limit is $11,280 ($940 average per month) compared with $10,680 in 2001.

Recipients under age 65 lose $1 of benefits for every $2 of excess earnings. Recipients age 65 and older can earn an unlimited amount without loss of benefits.

Social Security recipients received a 2.6% increase in benefits in 2002. This translates into a $22 increase for the average recipient and raises the maximum monthly benefit to $1,660.

However, those enrolled in Medicare Part B will receive only an $18 average increase because the Medicare Part B monthly premium also will rise from $50 to $54. The Medicare Part A deductible for hospital stays for 2002 will be $812 per benefit period.

Social Security subject to offsets

Taxpayers should soon receive reminders that the IRS will begin offsetting outstanding tax liabilities against Social Security benefits. Approximately 200,000 beneficiaries could be affected.

Under the Federal Payment Levy Program, Social Security benefits may be reduced up to 15% after the taxpayer has been notified of intent to levy and received an explanation of appeals rights and procedures.

Social Security payments to minors, lump-sum death benefit payments, supplemental security income payments, payments to taxpayers in bankruptcy and payments to taxpayers seeking innocent or injured spouse relief are exempted from the Federal Payment Levy Program.

Medicare+Choice update

Since 1999, those covered by Medicare have been eligible to enroll in several government-provided insurance options, referred to as Medicare+Choice, and intended to customize coverage and control escalating costs.

Medicare+Choice plan members could switch plans on a monthly basis. However, in 2002 and 2003 the rules change.

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Enrollees may change plans only once between January 1 and June 30, 2002. From July 1 through December 31, 2002, the choice is locked in so no change in plans will be permitted during the second half of the year. In 2003, enrollees will be able to change plans once between January 1 and March 31. No changes will be allowed between April 1 and December 31.

If beneficiaries are content with their current Medicare coverage, no change is necessary. However, the new rules make it more important than ever for Medicare+Choice plan enrollees to carefully select their insurer.

A booklet entitled **New Rules for Switching Medicare Plans** that covers the new rules is available by calling Medicare at 800 633-4227.

Long-term care insurance

Although relatively few long-term care insurance policies were sold during the 1990s, sales of long-term care insurance policies are now increasing at the rate of 20% per year.

A long-term care policy can protect retirement and estate assets, provide resources necessary to avoid nursing-home care and retain independence and prevent dependence on welfare and other government programs.

Whether the purchase of a long-term care policy is appropriate depends on many factors. These include financial resources of the person(s) considering the policy, federal and state tax provisions (in some instances, the government shares the cost of the premium through tax deductions or tax credits), type and amount of benefits being provided and the incapacity that would trigger benefit payments.❑

January 1, 2003.

They also clarify how the income tax withholding rules will apply when statutory stock options are otherwise disposed of or exercised.

The regulations provide that the amount of "wages" the employee is deemed to receive for FICA and FUTA tax purposes upon exercise of tax option is the excess of the fair market value of the acquired stock over the amount paid for it. Withholding on the exercise of the option would not be required as long as certain holding period and employment requirements are met.

In response to concerns the new rules will make stock options less attractive to employees and employers and create significant administrative burdens, the IRS will permit the employer to treat FICA and FUTA wages resulting from an option exercise as paid on a pay period, quarterly, semi-annually, annually or other basis, including as paid over more than one period.

However, all payments must be treated as paid on or before December 31 of the year of exercise. Although employers generally have no income tax withholding obligation on an employee's exercise of an incentive stock option or option under an employee stock purchase plan, the employer is not released from a reporting obligation in connection with the exercise. The employer must report any payment exceeding $600 on Form W-2.

The IRS indicates it will not assess any FICA or FUTA taxes with respect to exercise of a stock option before January 1, 2003.

Tax tip

Employers' disability coverage affects benefit taxation

Recent IRS Private Letter Rulings indicate a plan amendment that allows employees an annual choice between employer-paid or after-tax employee-paid premiums for long-term disability insurance coverage can govern whether any benefits paid for the year will be included in or excluded from the employee's gross income.

However, for such an arrangement to work, coverage must be financed solely either by the employer or the employee, so it is not a contributory plan, and the choice cannot be tied to a cafeteria plan.

In effect, if the employer pays the premiums for disability insurance, premiums will not be included in income of the employee, and future payouts from the insurance will be taxed to the employee.

Conversely, if the employee elects to be taxed on premiums paid for the insurance, the employer payments will be added to the income shown on the W-2 form. Subsequent insurance payouts will not be subject to employee income tax, since the premium payments will have been treated as being made by the employee with after-tax dollars.❑

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ESOP gain exclusion

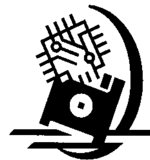
A major tax benefit for a business owner of a nonpublic C corporation who sells all or part of the company to an employee stock ownership plan (ESOP) is the ability to avoid taxes on the capital gain. This is possible if the ESOP owns at least 30% of the company and proceeds from the sale are reinvested in qualified replacement property (QRP), defined as any stock or bond issued by a U.S. operating company, within 12 months of the sale.

If the seller holds the securities until death, the QRP will be treated as appreciated property and the heirs will inherit it at its stepped-up basis, eliminating the deferred capital gain and the associated tax. Although the step-up in basis on inherited assets is scheduled to be eliminated in 2010, it is uncertain if this provision will ever take effect.

If the ESOP borrowed the funds to finance the stock purchase, your company could repay the loan by making ESOP contributions, effectively enabling it to deduct principal as well as interest payments on the loan.

Protecting your records

Are you considering selling, donating or otherwise disposing of an old personal computer (PC)? Make sure birth dates, Social Security numbers, bank account numbers, tax information and other data that can be used in identity theft or in other electronic crime are permanently erased from the computer's hard drive.



Deleting files using the basic delete commands is insufficient because the information can still be retrieved from the computer's hard drive.

Special software designed to completely erase computer files is available from computer vendors.

Employee computer misuse

Numerous studies indicate that employees are using their employers' computers to make stock trades, exchange personal e-mail, pay bills, conduct personal correspondence and even to play games during regular work hours.

There are steps employers can take to combat this type of misuse:

- ✔ Establish a policy restricting computer use for business purposes only
- ✔ Have all employees sign a statement of that policy
- ✔ Block Internet access for all employees who do not need it
- ✔ Install software blocking access to specific web sites
- ✔ Institute surveillance software programs to monitor computer activity and provide access controls

According to the American Management Association, 36.1% of U.S. companies are keeping tabs on computer files and 46.5% are storing and reviewing employee e-mail messages. However, only about 10% of firms monitor all employee Internet use.

Some employers worry these monitoring practices will damage the relationship between employees and management. However, this is seldom the case since workers are aware that using computers for personal use during business hours is unethical.

Sales tax moratorium extended

The moratorium on Internet sales taxes was to expire October 31, 2001, but Congress extended it for an additional two years through November 1, 2003. In addition, a provision that would

have let states require more out-of-state sellers to collect sales taxes was dropped.

States are extremely unhappy about the extension and claim it will result in revenue losses exceeding $5.5 billion in 2002, with a projected increase to $13.736 billion by 2004.

Lockbox use

If you have customers throughout the country, consider establishing one or more lockboxes to accelerate cash flow. Where to locate the lockboxes can be determined by analyzing the location of your customers. If at least 10 to 15% of your customers are concentrated in each of four or five areas, that's where lockboxes should be based.

Payments from this volume of customers could make up approximately 75% of your total cash flow, leading to a significant acceleration of cash inflow.

Whether establishing a lockbox makes sense also depends on the number of customers you have. Make sure the income derived from your accelerated cash collections is significantly greater than the cost of the lockbox service.

Copayments more common

In a turnabout, insurers are requiring companies to make larger copayments over and above any deductible when renewing directors' and officers' insurance policies. The absence of any copayment provisions absolved companies from any liability with respect to claims paid as long as the outlay was within the limits of the policy.

Therefore, insured companies did little to curtail litigation settlement costs. The new policies will require insureds to provide a copayment of at least 20% for claims exceeding the exclusion.

Split-dollar insurance guidance changes

by Mary Horn, Bloomingtom

The IRS has revoked earlier, interim guidance concerning treatment of split-dollar life insurance arrangements. Proposed regulations are expected to require taxation of parties to a split-dollar life insurance arrangement under one of two mutually exclusive circumstances.

The proposed regulations are expected to provide that in an employment-related split-dollar life insurance arrangement, if the employer is formally designated as owner of the life insurance contract, benefits to the employee under the arrangement are subject to tax to the employee. The employer is considered to be providing current life insurance protection to the employee, and the benefit is, therefore, taxable.

If the contractual arrangement between employer and employee was entered into before January 28, 2002, the employer and employee may continue to use P.S. 58 rates to determine the value of the life insurance protection.

For arrangements entered into after that date and before the effective date of future guidance, the IRS has issued new premium rate tables to be used to determine the value of current life insurance protection. A transfer of the life insurance policy from the employer to the employee will be taxed under Section 83 of the code.

Employee-owned policy

If the employee is formally designated owner of the policy and is obligated to repay the employer, premiums paid by the employer are treated as a series of loans by the employer to the employee. If the employee is not obligated to repay premiums paid by the employer, the premiums paid are treated as compensation income to the employee at the time the premiums are paid by the employer.

If you have a split-dollar life insurance arrangement with an employee or with your employer or enter into one before the date the final regulations are issued, the IRS has provided guidelines to avoid taxable transfers and/or reduce taxation of the benefits.

Contact your BKD advisor to determine whether changes to your current arrangement can help you take advantage of these transition rules.❑

IRA catch-up contributions

by Scott Slagle, Wichita

The Economic Growth and Tax Relief Reconciliation Act of 2001 includes a number of pension and individual retirement account (IRA) provisions that went into effect in 2002, including provisions for catch-up contributions for workers age 50 or over in 2002 to 401(k) and 403(b) plans above the normal contribution limits.

Many taxpayers believe these new catch-up contributions are available only to those who did not make the maximum contributions in the past.

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On the contrary, catch-up contributions are really bonus, or extra, contributions available to workers 50 or older at the end of the plan year (for IRAs, the end of the calendar year).

The maximum additional contribution amounts will be phased in from 2002 to 2006 in $1,000 increments, until they reach $5,000 per year in 2006. For SIMPLE 401(k) plans and SIMPLE IRAs, the catch-up contribution limits are $500 in 2002, $1,000 in 2003, $1,500 in 2004, $2,000 in 2005 and $2,500 in 2006 and thereafter.

Even individual IRA contributors can get in on the action, with catch-up contributions of $500 per year available in 2002 through 2005 and an extra $1,000 available in 2006 and later years.

Be careful when making contributions in 2002. Those made in 2002 for the 2001 tax year will remain under the $2,000 per individual limit. Those made for the 2002 tax year will be under the higher $3,000 limit.❑

Market commentary: fourth quarter 2001

by Jeff Layman, BKD Wealth Advisors, LLC

The markets showed resilience in the fourth quarter, rebounding from the low of late September. The pattern of market activity was similar to that experienced in past times of crisis, with the initial sell-off followed by a fairly robust rebound.

Positive influences during the quarter included additional fiscal and monetary stimulus, progress in the war in Afghanistan and optimism on the part of investors about the future of the economy.

- ✔ Despite the vigorous fourth-quarter rebound, the major stock market averages ended 2001 posting the lowest trailing two-year returns since 1973 to 1974. Bonds showed positive returns for the year because of an favorable interest rate backdrop. See the table for index returns for the fourth quarter and the full year.
- ✔ Consumer spending remained strong in the fourth quarter, as individuals responded to 0% interest financing on auto purchases and broad-based discounting by retailers. Some retail stocks, including Lowe's and Best Buy, posted returns of 100% or more in 2001. Retail sales were generally stronger than expected during the Christmas shopping period.
- ✔ The largest bankruptcy in corporate history occurred in the fourth quarter as Enron filed after significant off-balance sheet financing schemes were revealed. These arrangements caused prior earnings to be overstated and company debt obligations to be understated.
- ✔ During the quarter, the Federal Reserve Board lowered rates another 1.25%, bringing the total for the year to 11 cuts and 4.75% of easing. The Fed easing in the fourth quarter took the real Fed funds rate, the rate minus inflation, below zero for the first time since the early 1990s.

  A real Fed funds rate of zero or less has successfully reversed past recessions, as negative real cash returns prompt investment in longer duration financial and real assets.
- ✔ There are some signs indicating an improvement in corporate profits. As of January 7, 2002, positive earnings preannouncements by companies have risen 77% in the fourth quarter vs. the third. Meanwhile, negative preannouncements have fallen significantly.

  This may indicate the worst is behind us and analysts' expectations are now more consistent with economic reality.

Investors offered a collective sigh of relief as 2001 ended. A tragic chapter in our country's history has closed, and we began the new investment year with a clean slate.❑

Fourth Quarter & Full Year 2001

	4Q 2001	2001
S&P 500	10.69%	(11.87%)
NASDAQ Composite	30.13%	(21.04%)
Russell 2000	21.08%	2.49%
MSCI EAFE	6.98%	(21.21%)
Lehman Aggregate Bond	.04%	8.42%
Lehman Municipal Bond	(.66%)	5.08%

Tale of the Tape

Selected Returns through February 7, 2001

Benchmarks	1 Year	Year to Date
DOW	-4.54%	-0.53%
S&P 500	-12.52%	-5.07%
NASDAQ Composite	-23.78%	-11.58%
Russell 2000	-12.67%	-4.95%
Selected Asset Classes - Mutual Funds		
Large Cap Growth		-7.44%
Large Cap Value		-4.31%
Mid Cap Growth		-9.44%
Mid Cap Value		-2.14%
Small Cap Growth		-9.43%
Small Cap Value		-0.9%
Science & Technology		-15.2%
International		-4.71%

Source - **Wall Street Journal**, February 24, 2002. As with a portfolio of all stocks and bonds, a diversified portfolio gives no guarantee of safety of principal, which is subject to fluctuation.

Wealth Advisors now has five locations

BKD Wealth Advisors, LLC's five offices are conveniently located throughout the Heartland of America.

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Returns steady in real estate

by Wayne Starr, BKD Wealth Advisors, LLC

"I took profits in a very disciplined fashion in tech stocks as they went up, never letting a stock double in price without selling half of my position. My mistake: I often plowed the proceeds back into the tech sector. It turns out the biggest risk was sector risk."

That lament from an investor was reported in Jonathan Clements' "Getting Going" column in the December 18, 2001, issue of the **Wall Street Journal**.

If investors learned anything over the past two years, it should have been that asset allocation works. While the S&P 500, the Dow Jones Industrial Average and the NASDAQ Composite were generating dreadful returns, other asset classes were not. One that was not is real estate.

Real estate may lower risk

The accompanying chart shows data based on risk and return from 1972-1999. The diversified portfolio containing 30% real estate in the form of real estate investment trusts (REITs) generates a more than respectable return with lower risk than that of the all-bond portfolio.

Through mid-December 2001, REITs returned 14% while the S&P 500 ended the year with a loss of 11.87%. The National Council of Real Estate Investment Fiduciaries estimates that investors in apartments received an annual return in 2001 of 10%.

Real estate investing takes many forms, including:

- ✔ Undeveloped land bought for speculation
- ✔ Rental housing – single-family dwellings, duplexes or apartment buildings
- ✔ Actively rented vacation property
- ✔ Real estate investment trusts
- ✔ General and limited partnerships in commercial and residential rental properties

Active or passive investments

The list is only the beginning in real estate investing. Each entry has its own specific characteristics, tax issues and risks. Begin by considering the level of involvement that best suits you. Do you want to be an active or passive investor?

The U.S. Census Survey of the mid-1990s reveals that approximately 10 million individuals or married couples own single-family houses as rentals. The survey also showed more than seven million individuals owned multifamily properties.

Survey respondents have chosen active involvement that may be beyond your interest level or skills. Direct ownership can involve property repairs, setting rents, screening and evicting tenants and dealing with a myriad of tax laws. These "hassle factors" are inherent in actively managed real estate. Even investors who understand the value of real estate may shy away from this level of management.

A more passive investment approach to real estate does not mean giving up all the rewards. Real estate, like other investments, has its own risk/reward characteristics. A passive investment in REITs returned an annualized 12.4% return from 1981-2000, according to a study done by Ibbotson Associates for the National Association of Real Estate Trusts. Over the same period, the S&P returned 15.7% and government bonds returned 12%.

Equity or mortgage REIT

There are two varieties of REITs, equity and mortgage. Equity REITs own the properties while mortgage REITs trade mortgages on properties. Hybrid REITs do both. Mortgage REITS are vulnerable if interest rates rise sharply as they often do in an economic recovery.

This rent investment vehicle can be composed of different types of commercial properties from strip shopping centers to hotels. When analyzing a REIT consider:

- ✔ Geographical diversity - more diversity is better
- ✔ Tenant quality - name companies like AT&T or smaller home town, family businesses
- ✔ Number of tenants
- ✔ Length of leases - longer is better and eight to 10 years is best
- ✔ Rent escalators in leases
- ✔ Length of the sponsor's tenure in real estate management
- ✔ Payout history - under Internal Revenue Service rules, REITs must pay out at least 90% of their taxable net income

No single investment will cure all your portfolio's ills. However, asset allocations involving real estate can, over time, diminish your portfolio's volatility.❏

Why Real Estate?

	Compounded Annual Return	Risk (Standard Deviation)
100% Stocks	15.18%	16.33%
100% Bonds	9.72%	11.55%
Diversified Portfolio*	12.78%	11.47%

Source: Domestic Stocks – The Standard & Poor's 500 Composite Index; Domestic Bonds-Salomon Corporate Bond Index – 10+ years; International Stocks – Capital International EAFE (Europe/Australia/Far East) Index; Real Estate – National Association of Real Estate Investment Trusts Index. All data: 1972-1999. As with a portfolio of all stocks or bonds, a diversified portfolio gives no guarantee of safety of principal which is subject to fluctuation. Portfolio Mix: Real Estate – 30%, Domestic Stocks – 23%, Domestic Bonds – 35%, International Stocks – 12%.

Revocable trusts—yes or no?

by Jeffrey Yu, BKD Wealth Advisors, LLC

Estate planning is an important process, and the revocable trust is a popular estate-planning tool.

Also known as a living, grantor or intervivos trust, the revocable trust has been mass marketed to the public as the right estate-planning tool for everyone. However, you should evaluate your specific circumstances to determine if this tool is a proper fit for your estate plan.

What is it?

A revocable trust is a trust created by an individual (grantor) during his/her lifetime. The trust is designed to hold assets during the grantor's life and distribute assets, in accordance with the trust document, at the grantor's death. During the grantor's life, he/she usually reserves the right to change or terminate (revoke) the trust and also receive all the income earned by the trust.

Will it avoid probate?

At the grantor's death, assets held by the trust are passed to the grantor's heirs according to the trust document and not the grantor's will. As a result, the trust's assets avoid the probate process.

There are advantages and disadvantages to avoiding probate. However, to the extent the grantor owns any assets that were not transferred to (owned by) the revocable trust, the grantor's estate may still have to go though the probate process with regard to those nontrust-held assets.

Will it reduce or avoid post-death fees?

People generally refer to probate fees as attorney, executor and accountant fees paid during the probate process. Some states also have statutory fees based on a percentage of the value of the assets subject to probate. In these states, the use of a living trust will reduce probate fees. However, in most states there are no statutory fees. Therefore, the value of the assets subject to probate will not directly affect the professional fees incurred by the estate.

In many states, an estate can be unsupervised with the permission of the beneficiaries. This eliminates the expense of filing inventories and reports with the probate court. However, fees associated with the administration of assets will generally be the same whether maintained in a trust or an estate.

Also, professional fees incurred in the preparation of federal and state inheritance or estate tax returns will generally be the same with or without a trust. Therefore, the "probate" costs of an unsupervised estate may not be materially different than the costs of administrating a revocable trust. However, a revocable trust is a legal document that typically would involve legal and professional fees in the drafting and funding of the trust.

Advantages

Privacy - A revocable trust may avoid the publicity of probate. A probated estate's records are available to the public.

Multistate administration - The revocable trust avoids administration in multiple jurisdictions. If assets, *i.e.,* real estate, are owned in other states, having this trust own the asset will usually prevent the estate from being subject to that state's probate process on the asset.

Continuation of management of assets - Assets placed in a revocable trust are managed by a trustee. The trustee can be the grantor or any other individual or corporate entity. The trust document can provide for contingent trustees in the case of the death or disability of the initial trustee, and thereby, provides for consistent and continual management of the trust's assets in the event of the grantor's temporary or permanent disability.

Situs (location) of trust - The situs of a trust does not need to be the same as the grantor's domicile. As a result, a trust can be established in any state whose laws are more favorable to the grantor's estate-planning goals.

Save time, avoid probate delays - The normal time periods for distribution of assets in an estate do not apply to distribution from a trust. The trustee has the ability to make timely distributions to beneficiaries in accordance with the trust document.

Disadvantages

No income or estate tax savings - Contrary to popular belief, a revocable trust by itself will not save estate taxes. Since the grantor has the right to revoke the trust, all trust assets are included in the grantor's gross estate at its fair market value for estate tax purposes.

While the grantor is living, all income earned by the trust will be taxed to the grantor. An estate also is allowed certain income tax benefits that a trust is not able to utilize, *e.g.,* fiscal year-end election.

Claims by creditors - In many states, the formal probate process can be used to cut off the claims of creditors. Typically, creditors have four to six months to present their claim or be barred from ever collecting. However, there is no deadline for filing a claim against a trust.

Assets held by trust - Assets must be retitled in the trust's name. This may lead to complications regarding loans secured by the asset or insuring the asset. Also, certain types of assets may be better off not held by a trust.

BKD can help

Revocable trusts as estate-planning tools have advantages and disadvantages. To see if this type of trust is right for your estate plan, contact your BKD advisor.❑

Activated reservists as employees

Employees in the military reserves called up for active duty are entitled to certain rights involving pay, benefits and job protection under the Uniformed Services Employment and Re-employment Rights Act (USERRA).

Reservists must provide as much advance notice as possible of the need for military leave. However, employers may not stand in the way of leave or penalize them for sudden activation.

Insurance benefits

Reactivated reservists are entitled to Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)-like health insurance benefits for 18 months even if the company is not covered by COBRA regulations. The protection may not be terminated even though the reservist obtains coverage through the military by being on active duty.

After returning to work, no waiting period may be imposed for health insurance coverage, and no pre-existing conditions may be excluded. Reservists also are entitled to many other nonseniority-related benefits, including year-end bonuses, vacations and sick leave accruals.

Employers are not required to pay an employee who is on military leave. However, some companies pay activated reservists the difference between the military and regular pay. Activated reservists may elect to use vacation leave to obtain pay during military leave, but employers may not mandate this practice.

When employees who have been on military duty submit applications for re-employment, employers must promptly rehire them either at the same position they held when they left or at the position they would have held had they remained employed during that time.

Re-application

Under USERRA, employees in uniformed service must re-apply on the first calendar day plus eight hours after completion of service if in uniformed service for less than 31 days. Re-application is required within 14 days after service ends, if in uniformed service for 31 to 180 days. Those employees who serve more than 180 days must reapply within 90 days after service ends.

When an employee has been gone for 31 days or more, employers may request documentation that a military member's application for re-employment is timely and the separation from service was under honorable conditions.

After a returning veteran is re-employed following a period of uniformed service, the period of uniformed service counts as service with the employer for retirement plan vesting and accrual purposes and may not be treated as a break in service.

Employer contributions

The employer must make up any missed employer contributions and allow the returning veteran to make up any missed employee 401(k), 403(b) or after-tax contributions provided for under the plan.

Make-up contributions made by or on behalf of a re-employed veteran are not subject to generally applicable plan contribution limits and are not considered for applying the qualified plan nondiscrimination, coverage, minimum participation and top-heavy rules.

When an employee returns from military service lasting more than six months, the employee may not be terminated without cause for at least one year after the date of re-employment.

For periods of military service between 31 and 180 days, the employee has six months of termination protection. Those who serve 30 days or less have no job protection.❑

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