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Advance Health Care Directives

Modern medicine can now keep a person alive in situations that, in years past, would have resulted in the individual's death. Frequently, a patient in such a condition is unable to communicate his or her wishes with regard to the type of medical care to be provided. In the absence of any other guidance, the attending physician will typically use all available means to keep the individual alive, even when death is certain.

However, many individuals feel that once death is inevitable, life should not be artificially prolonged through the use of such technology. The decision to start or withdraw such life-sustaining support, although always difficult, can be made easier with advance planning.

The term “advance health care directives” is commonly used to describe two key documents designed to address these end-of-life decisions:

- **Living Will**
- **Durable Power of Attorney for Health Care**

Individual state law governs the use of these documents. Individuals who live in more than one state may need to execute a living will and a durable power of attorney for health care for each state.

LIVING WILL

A living will, also known as a “directive to physicians,” is a written statement of the individual's health care wishes should he or she become seriously ill and unable to communicate. The document is designed to provide guidance to someone else appointed to make health care decisions for the individual, or to the attending physician if there is no health care agent. A living will might include:

- Directions as to pain medication.

- Directions as to when to provide, withhold, or withdraw artificial nutrition and hydration, and all other forms of health care, including cardiopulmonary resuscitation.
- A discussion of any religious beliefs that might impact medical treatment.
- Instructions for funeral and burial services.

Because it is impossible to foresee the future, the living will should be written in the broadest possible manner, to cover a wide range of situations.

DURABLE POWER OF ATTORNEY FOR HEALTH CARE

In a durable power of attorney for health care, an individual (the principal) appoints another person (the agent) to make health care decisions if the individual is incapable of doing so. A durable power of attorney for health care may employ a provision appointing a successor person to hold the power of attorney. Powers granted to the person holding the power could include:

- Ability to appoint successor.
- Access to medical records.
- Authority to transfer the principal to another facility or to another state.
- Ability to authorize a “Do Not Resuscitate” order.
- Postmortem powers to dispose of the remains, to authorize an autopsy, or to donate all or part of the principal's body for transplant, education, or research purposes.

(Source: AXA Advisors, GE23707, rev 06/06)

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The Tax Increase Prevention and Reconciliation Act of 2005

The Tax Increase Prevention and Reconciliation Act of 2005 was signed into law on May 17, 2006. It contains \$70 billion in net tax cuts and \$20 billion in revenue raisers.

The Tax Reconciliation Act impacts a broad cross-section of taxpayers. Below are some of the significant changes.

AMT RELIEF

The Tax Reconciliation Act extends and increases—for 2006 *only*—the AMT exemption amount for individuals. It also lessens the sting of the AMT for 2006 by allowing the use of certain nonrefundable personal credits.

Through December 31, 2006, taxpayers will be able to take advantage of **higher AMT exemption amounts**. The AMT exemption amount for married couples filing jointly is \$62,500 and for single taxpayers is \$42,500.

The Tax Reconciliation Act extends through 2006 the provision allowing taxpayers to use **nonrefundable personal credits** to offset AMT liability. Nonrefundable personal credits include the dependent care credit, the credit for the elderly and disabled, the credit for interest on certain home mortgages, the Hope credit for certain college expenses and the Lifetime Learning credit.

DIVIDEND AND CAPITAL GAINS RATE CUTS

In 2003 Congress lowered the maximum dividend and capital gains tax rates — for most, *but not all*, dividends and capital gains — to 15 percent for qualifying taxpayers. Taxpayers in the 10- and 15-percent tax brackets are eligible for an even lower rate of 5 percent. In 2008, the rate for taxpayers in the 10- and 15-percent tax brackets falls to zero. As originally enacted, these tax rate cuts were temporary. They were scheduled to expire at the end of 2008.

The Tax Reconciliation Act extends these cuts for two more years through December 31, 2010.

Extending this tax break represents a significant tax cut for many of those affected. Once the extension ends in 2011, capital gains will effectively be taxed at a 33.33 percent higher rate (20 percent instead of 15 percent); while those in the highest tax bracket (set to revert to 39.6 percent) will pay over 160 percent more tax on dividends.

CAPITAL GAINS

Self-created musical works. The Tax Reconciliation Act allows taxpayers to elect to treat the sale or exchange of self-created musical compositions or copyrights as the sale or exchange of a capital asset. This special treatment is effective for sales or exchanges in tax years beginning after the President signs the new law and before January 1, 2011.

Amortization of song rights. The Act permits a taxpayer that puts any musical composition or musical copyright into service to elect to use the five-year amortization period for certain expenses paid or incurred with respect to all musical composition and musical composition copyrights placed in service in that tax year. This will allow music publishers to amortize advances they make to song writers over five years.

SMALL BUSINESS EXPENSING

Since 2003, Congress has enhanced small business expensing under Code Sec. 179 several times to encourage business investment. The Tax Reconciliation Act continues this special treatment. The enhanced small business expensing thresholds in the *American Jobs Creation Act of 2004* are extended through December 31, 2009.

The maximum amount a taxpayer may expense is \$100,000 of the cost of qualifying property, reduced by the amount by which the cost of qualifying property exceeds \$400,000. Both amounts are indexed for inflation for tax years beginning after 2003 and before 2010. These amounts are increased for Gulf Opportunity Zone property. For 2006, the amounts are \$108,000 and \$430,000, respectively. Without the extension the expensing limit would have dropped to \$25,000 on a \$200,000 cap after 2007.

IMPORTANT CHANGES TO ROTH IRAS

The Tax Reconciliation Act eliminates the \$100,000 adjusted gross income ceiling for converting a traditional individual retirement account (IRA) to a Roth IRA, for tax years after 2009. A conversion is treated as a taxable distribution, but is not subject to the 10-percent early withdrawal penalty. Taxpayers who convert in 2010 can elect to recognize the conversion income in 2010 or average it over the next two years.

High-income taxpayers with substantial amounts in traditional IRAs previously were shut out of the benefits of conversion. Now, anyone can convert to a Roth IRA.

Contributions to a Roth IRA are not deductible, but the earnings are permanently tax-free. Also, Roth IRAs have no required minimum distribution at age 70 1/2.

OFFERS-IN-COMPROMISE

The Tax Reconciliation Act increases the amounts that must be paid by taxpayers submitting an offer-in-compromise. Under the new law, taxpayers are required to make partial payments of their liability in addition to any user fee now imposed by the IRS; however, the user fee will be applied to the outstanding tax liability.

For a **lump sum offer**, taxpayers will pay 20 percent of the amount offered. For an **installment payment offer**, taxpayers will make their proposed scheduled payments while the IRS considers the offer. If the IRS fails to process the offer within two years, the offer will be deemed accepted.

KIDDIE TAX

The kiddie tax rules require a child's unearned income to be taxed at the parents' tax rate, which is usually a higher rate.

Under current law, the kiddie tax applies if the child is under age 14, the child has net unearned income over \$1,700, and the parent can claim the child as a dependent. The Tax Reconciliation Act raises the age limit to 18.

Unearned income includes dividends, interest, capital

gains, rents and royalties. It also includes taxable Social Security benefits, pension and annuity income, and income received as the beneficiary of a trust. The kiddie tax does not apply to the child's earned income — wages, salary, tips and other compensation received for services rendered. These amounts are taxed at the child's lower rate.

The Tax Reconciliation Act provides an exception for distributions from certain qualified disability trusts. The kiddie tax also does not apply to a child who is married and files a joint return.

This provision is *effective immediately*, for the entire 2006 tax year.

Parents who had planned to sell a child's college stock portfolio after age 13 and before entering college have no opportunity now to accelerate that planning technique if the child is over 13. If the family was planning to postpone a sale until 2008, when the rate for capital gains would be zero, that's a loss of 15 percentage points on the tax otherwise not due on the sale of stock or other portfolio assets.

MORE ON THE WAY

To reach an agreement, and keep within budget constraints, the House-Senate conference committee removed some important provisions which will likely appear in stand-alone legislation, a "trailer" bill, or could be tacked onto the pending pension reform bill. Many are considered "off the table" for the rest of 2006.

These additional provisions include:

- ◆ Extending the state and local sales tax deduction
- ◆ The teachers' classroom expense deduction
- ◆ R&D provisions
- ◆ Some employment tax credits
- ◆ Other popular but temporary incentives.

(Source: CCH Tax Briefing: Tax Increase Prevention and Reconciliation Special Report, 5.17.06 and CCH *Federal Tax Weekly*, 6.1.06)

Recent Tax Changes

FEDERAL TELEPHONE EXCISE TAX REPEALED from the IRS.

The three percent federal telephone excise tax will no longer apply to long-distance calls. The tax is collected by telephone service providers and paid to the IRS. The IRS has instructed service providers to cease collecting and paying over the tax after July 31, 2006.

Credits or refunds of taxes paid on long-distance service billed after February 28, 2003 and before August 1, 2006 will be issued, along with interest.

Taxpayers will have to wait until they file their 2006 federal income tax returns. Taxpayers that received a credit or refund from their service provider cannot request a credit or refund

Interest on the credit or refund must be included as income on the taxpayer's income tax return for the tax year in which the interest is received or accrued. For most taxpayers, interest will be reported on their 2007 returns.

COMBAT ZONE PAY & RETIREMENT SAVINGS

H.R. 1499, the *Heroes Earned Retirement Opportunities Act*, signed by President Bush on Memorial Day, May 29, 2006, allows members of the Armed Forces to include combat zone compensation when determining the allowable income tax deduction for contributions to retirement savings plan.

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We are now even more equipped to help you with all your financial and accounting needs. Call us with your questions, or make an appointment to come see us at either our east or our west office. We are working together...for you.

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