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JULY 2022 NEWSLETTER

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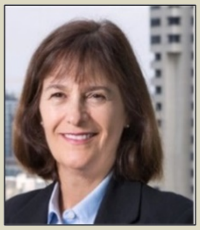
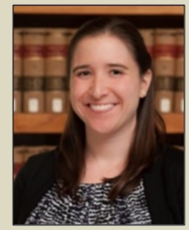
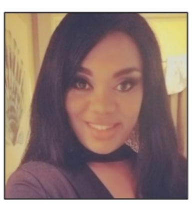


Firm News: We congratulate **Mary J. Peshel, J.D.** on being named as a 2022 *Super Lawyer*, and **Katie A. Lepore, CPA, J.D., LL.M., Taxation** on being named as a 2022 *Super Lawyers Rising Star*. Such awards are granted by our peers in the legal community and are a great honor. The Rising Stars designation is reserved for the top 2.5% of attorneys in San Diego under age 40. Congratulations, Mary and Katie! We are pleased to further congratulate **Katie** on being named by the *San Diego Business Journal* as one of the 2022 *Top 50 Women of Influence in Law*. The publication can be found here. Congratulations!

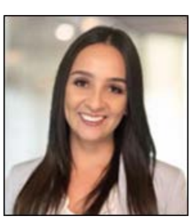


Firm News: We are pleased to further announce several new hires at MMPPH.

Samantha Casey is a second-year law student at the University of San Diego School of Law and is working at MMPPH as a law clerk this summer. Samantha is a member of USD Law's Transactional Law Team and is the Secretary of the Real Estate and Land Use Society. Originally from Chicago, she moved to San Diego to attend college at USD, where she graduated *summa cum laude* as a double major in Business Administration and Real Estate, receiving the Outstanding Scholarship Award in Real Estate. As an undergraduate, Samantha worked in San Diego as a legal assistant at a corporate law firm, and in Chicago as a wealth management intern and as a legal assistant at a trial firm. In her free time, she enjoys ocean swimming, practicing yoga, and traveling.



Paralegal Malia Thompson graduated from UC Riverside with a bachelor's degree in Psychology, and from San Diego Miramar Community College with an associate's degree in Paralegal Studies. In addition to her formal Paralegal education, training, and District Attorney's Office internship, Malia has Federal Programs experience with a non-profit organization serving the developmentally disabled. Malia has worked as a paralegal for about three years focusing on real estate law, criminal law, and probate law. At MMPPH, Malia will specialize in probate, trust, and civil litigation. Malia is a Notary Public and an active member of the San Diego Paralegal Association. She has a passion for the law and plans on applying for law school. Malia enjoys spending time with her family, traveling, singing in her church choir, and being outdoors.



MMPPH welcomes Paralegal Sandra Cobian to the staff. Sandra graduated from the University of San Diego with her Paralegal Certificate and has worked in the legal field for seven years. She graduated from the University of California, Santa Barbara with a Bachelor of Arts in Political Science. Sandra is a San Diego native and volunteers at the Legal Aid Society of San Diego. In her free time, she enjoys exercising and watching superhero movies.

MMPPH further welcomes Lili Whitney as a summer intern working to help transform and organize our document management system and streamline our digital electronic filing for paperless client files. She was born and raised in San Diego and is currently attending the University of California, Berkeley, where she is majoring in Environmental Policy and minoring in Food Systems. Outside of school, she volunteers with the County animal shelter and enjoys making music.

IN THIS ISSUE

ILLIQUID ESTATES: LESSONS TO LEARN FROM ELVIS

By Samantha Casey, Law Clerk

Have you gone to theatres to see *Elvis*, the latest Elvis Presley biopic? The film tells the story of Elvis' life and music career, but it does not go into the details of the errors and mishaps surrounding the Presley estate. According to *Forbes*, estimates of the "King of Rock n' Roll's" lifetime earnings range from $100 million to $1 billion. Yet, after Presley died in 1977, the King left an illiquid estate worth about $5 million with increasing debt.[1] How did one of the most famous musicians of all time end up with so little, leaving his sole heir, Lisa Marie Presley, financially unstable? The answer: poor estate planning leaving an illiquid estate.

Elvis was known to be a big spender, but whenever he spent during his life, he could pad his bank account by booking another tour, appearance, or movie. After his death, this was understandably not the case, and his illiquid estate and mounting expenses to maintain Graceland left the estate in despair. Then, the IRS valued the Presley estate higher than the amount on the estate tax return and imposed a $10 million estate tax.[2]

The Presley estate could not count on Elvis' royalties to pay off the estate and property taxes because Elvis' manager, Colonel Tom Parker, previously sold the rights to the royalties to RCA for a mere $5.4 million. Due to Colonel Parker's lofty manager fee of 50%, the Presley estate only received $1.35 million from the RCA deal after income taxes. Probate proceedings removed Colonel Parker from dealing with the Presley estate.[3]

While few of us will become the next King of Rock n' Roll, we can take some crucial lessons from the Presley Estate. This is especially the case now with some of the unknown factors surrounding estate taxes and the scheduled decrease in the estate tax exemption in 2026. The *Tax Cuts and Jobs Act* temporarily increased the estate tax exemption from $5,490,000 in 2017 to $11,180,000 in 2018.

[1] https://www.latimes.com/archives/la-xpm-1989-06-11-tm-2866-story.html

[2] https://www.forbes.com/sites/trialandheirs/2019/03/27/lisa-marie-presley-the-rise-and-fall-of-the-elvis-estate/?sh=51d728a962cf

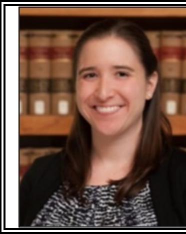
[3] *See* id.

The exemption is adjusted for inflation annually and is currently $12,060,00 per person in 2022.[4] This means married couples have a combined exemption of $24,120,000 in 2022. However, the *Tax Cuts and Jobs Act* is expected to sunset in 2026, and the exemption will return to the previous amount in 2017, adjusted for inflation, which many expect to be around $6 million per person.

Thus, assessing whether your estate has a liquidity problem is increasingly important. Liquidity is needed to pay off estate taxes and other costs that arise after death, including income taxes, credit card debts, final medical expenses, legal and accounting fees, and other items. Any amount of taxable estate over the remaining exemption can be taxed at rates up to 40% federally, and possibly incur state estate tax as well. Illiquid estates are often comprised of mostly real estate and business interests, especially closely held family businesses. Illiquid estates, like the Presley estate, may be forced to sell off assets in order to cover estate taxes, property taxes, and other expenses. Occasionally, liquidation can cause high tax bills from recognition of capital gains.

The alternative to selling assets in an illiquid estate to pay estate taxes is an election under Internal Revenue Code Section 6166 to pay a portion of the estate tax attributable to a closely held business interest in installments for up to 10 years.[5] However, in addition to high interest rates, an estate only qualifies for a Section 6166 election if the value of the decedent's interest in the closely held business surpasses 35 percent of the adjusted gross estate. Moreover, the decedent must have been a United States citizen or resident at their death, and the estate must have made the election by including a complete notice of election with a timely filed federal estate tax return.[6] Finally, the first of the deferred annual payments must be paid by the fifth anniversary of the original due date of the estate tax liability not deferred under Section 6166, not including any filing extensions.

We can learn from the King. "Don't Be Cruel" to yourself and your beneficiaries; check in on your estate's liquidity and discuss the need for liquidity with your estate planning attorney. Bear in mind that barring other action from Congress, the *Tax Cuts and Jobs Act's* high exemption is scheduled to expire in the next few years.



ANTI-CLAWBACK REGULATIONS

By Katie A. Lepore, CPA, J.D., LLM., Taxation

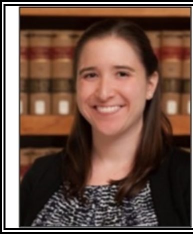
On April 26, 2022, the Treasury Department released additional clawback Proposed Regulations, supplementing Regulations issued in 2019. These so-called clawback Regulations relate to estate and gift taxation, because of the fluctuation in the lifetime unified exemption amount from transfer taxes per taxpayer, which has been relatively high in recent years due to the *Tax Cuts and Jobs Act* ("TCJA"). Thus, a situation arises where taxpayers could make lifetime gifts now, up to $12,060,000, without having to pay transfer taxes, fully within the law. But, that raised a question of whether any gifts made using this higher exemption would be "clawed back" into the person's taxable estate at death, if the exemption were lower at that time.

Regulations issued November 22, 2019 clarified that individuals who use their lifetime estate and gift tax exemption while it is a higher amount (from 2018 to 2025) will not have the gift amounts "clawed back" into their estate once the exclusion drops in 2026.

However, the 2022 Regulations except from these anti-clawback rules any inter-vivos transfers that should be includable in the gross

[4] https://www.irs.gov/businesses/small-businesses-self-employed/estate-tax
[5] https://www.irs.gov/pub/irs-drop/n-07-90.pdf
[6] 26 U.S. Code § 6166 - Extension of time for payment of estate tax where estate consists largely of interest in closely held business

estate at death. Thus, estate planners and tax advisors recommending such tools as GRATs, QPRTs, some promissory notes, and other techniques may wish to reconsider such strategies in light of the 2022 Proposed Regulations, or at least discuss the implications with their clients. For example, certain techniques wherein the taxpayer retains title, ownership, or other retained rights to an asset may be at risk.



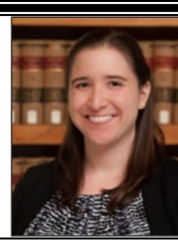
FEDERAL TAX NEWS
By Katie A. Lepore, CPA, J.D., LLM., Taxation

Retirement Bill Passes House. *H.R. 2954, The Securing a Strong Retirement Act of 2022,* often dubbed "Secure 2.0" passed the House on March 29 in a strong bipartisan 414-5 vote. It is currently with the Senate Finance Committee and builds on the *SECURE Act* of 2019. The bill's goal is to ease the ability of employers and businesses to offer tax-qualified retirement plans to employees to encourage growth of tax-preferred retirement savings. Some highlights included in the bill are: raising the age for required minimum distributions, allowing larger catch-up contributions for older employees, and allowing employers to treat student loan payments made by employees as elective deferrals to allow matching by the company. It also may require certain employers to automatically enroll employees in a retirement plan.

SECURE Act Re-Vamp. Senate leaders and committees have been meeting to discuss the *Retirement Improvement and Savings Enhancement to Supplement Healthy Investments for the Nest Egg* (RISE & SHINE) Act, which provides better access to employer-sponsored retirement plans, though it excludes a House-provision requiring that new employees be automatically enrolled in retirement plans, as discussed above. Additionally, the *Enhancing American Retirement Now Act* (EARN) was marked up by the Senate Finance Committee in late June.

Actuarial Tables Updated. The IRS has issued proposed regulations to update the actuarial tables under Section 7520 to reflect 2010 Census data. The tables are used to value life estates, remainder interests, and other items, and will reflect longer life expectancies. The tables generally would result in higher values for life estates and lower values for remainder interests.

Senator Sanders Proposes Increase to Social Security. Senator Bernie Sanders has proposed increasing Social Security benefits by $2,400 annually. The additional benefits would be funded by lifting the cap on the earnings subject to Social Security tax, currently set at $147,000. The hope is that such a move would keep the Social Security program solvent for another 75 years.



CALIFORNIA TAX UPDATE
By Katie A. Lepore, CPA, J.D., LLM., Taxation

BOE Provides Guidance on Parent-Child Transfers. The California State Board of Equalization released Letter to Assessors 2022/012 on February 24 to provide guidance on new changes to the parent-child and grandparent-grandchild exclusion after Prop 19's implementation. Letter to Assessors 2022/009 issued February 17 addresses Prop 19's changes to base-year value transfers.

Regulations Reduce Short-Term Rental Availability. The California Coastal Commission unanimously voted in March to approve new regulations to drastically reduce the number of short-term rentals in San Diego. The number of short-term rentals is expected to decrease by at least 48%, and specifically at least 27% in

Mission Beach.[7] Landlords for short-term rentals will now have to enter a lottery to obtain a license for the right to rent short-term rentals for more than 20 days a year. Such rules are scheduled to be reviewed in 7 years and should be effective in October.

Pass-Through Tax Paid Electronically. California individual taxpayers who have tax liability exceeding $80,000 are required to pay tax and estimated payments electronically. Similarly, the FTB has issued a News Flash that any S-corporations or LLCs classified as S-corporations with tax liability exceeding $80,000 are required to make any pass-through entity elective payments under *AB150* electronically.
Eviction Moratorium Extended. On March 31, the California legislature approved *AB 2179* to extend the state's eviction moratorium through June 30, 2022 for certain tenants. The cited reasons include delay in the processing of applications by state and local jurisdictions for tenant rent relief payments.

Governor's Budget. Governor Newsom released his 2022-2023 budget, including an unprecedented $97.5 billion surplus. A large portion of the budget, as well as surplus, is to be spent on assisting Californians with rising inflation, infrastructure and climate investments, building affordable housing, and implementing plans to continue fighting COVID-19.

Measure C Court Battle Continues. A Superior Court Judge hindered an attempt by San Diego Mayor Todd Gloria and City Attorney Mara Elliott to allow a 2020 ballot measure to continue forward. The measure would institute a higher hotel tax to fund a Convention Center expansion, infrastructure updates, and homeless services. The ongoing debate is whether a two-thirds approval is needed or a simple majority. Similar debates have taken place in other state courts. Measure C passed with a 65% approval, just shy of a two-thirds passage. The City plans to appeal.

[7] https://www.nbcsandiego.com/news/local/coastal-commission-stamps-newly-short-term-rental-regulations-could-cut-rentals-in-san-diego-by-nearly-half/2891234/

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