ESTATE PLANNING

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WHAT IS ESTATE PLANNING?

- WHAT YOU OWN
- GOES TO WHO YOU WANT
- WHEN YOU WANT
- HOW YOU WANT

Estate Tax Planning

The Substantial Cost of Not Planning

Husband & Wife die in Illinois 2007:

Taxable Estate	Estate Taxes No Planning	Estate Taxes With Planning
$2,000,000	$0	$0
$2,500,000	$295,685	$0
$3,000,000	$542,003	$0
$3,500,000	$790,018	$0
$4,000,000	$1,039,692	$0

Estate Tax Repeal? – Business as Usual

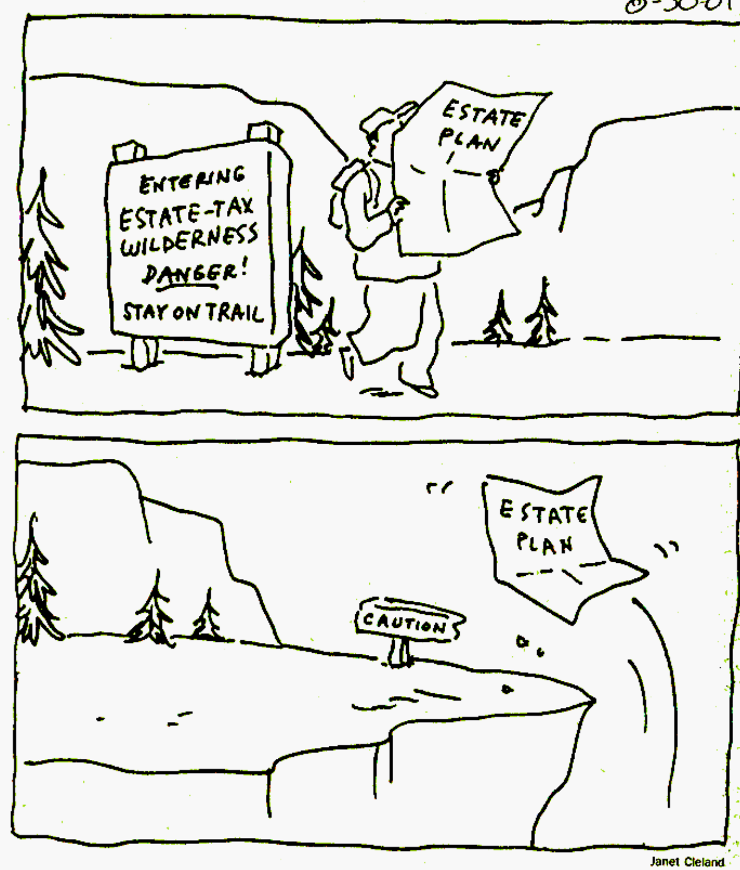
TRA of 2001

- **Estate Tax Exemption**
  - **$2M** for 2007, 2008
  - **$3.5M** for 2009
  - Estate Tax **Repealed** 2010 ?
    (carryover" basis regimen)
- Illinois Estate Exemption "capped" at $2 M
- Gift Tax - $1M Exclusion
- Prediction:
  $3.5 to $5M Exemption

Changes in Estate Tax Could

Bring About a Bad Heir Day

8-30-01



Custom Drafted Trusts

- Delayed Distributions Based on Age or Educational Achievement
- Drug, Alcohol or Impaired Child
- Educational Trusts for Grandchildren
- Planning for Second Marriages
- Creditor Protection
- Disabled Child
  - "Special Needs Trusts" to Prevent Disqualification of Governmental Benefits

Will $$$ Help or Hurt ?

- My Wealth should not be a Disincentive for Children to become Productive Members of Society
- I want my Children to Have enough to Do Something, not Enough to Do Nothing!!!

Educational Trusts/Gifts to Minors

- Trust established during lifetime
  - Give up to $12,000 each year (adjusted for inflation)
- Trust established after death - funded by portion of living trust assets (i.e., 25%)
- Unlimited exclusion for gifts directly to school or medical provider
- Trust May be Income Tax "Defective"
  - Grantor Pays Income Taxes

    = Tax Free Additional Gift

Basic Estate Planning Goals

- Making sure that <u>What</u> you own, goes to <u>Who</u> you want, <u>When</u> you want and <u>How</u> your want
- Planning for Disability
- Minimizing Estate and Gift Taxes
- Minimizing Probate Costs
- Health-Care Decisions

Common Estate Planning Mistakes

- Assets Passing Outside Will or Trust
- Improper Use of Joint Tenancy
- Improper Beneficiary Designations
- Wrong Executor or Trustee
- Procrastination
- Not “Funding” your Living Trust

Probate:
The legal process of proving and administering a will

- Expensive
- Time consuming
- May delay distributions to beneficiaries
- Court supervised
- A matter of public record

Probate can be avoided!

Revocable Living Trust Benefits for Survivors

- Avoids probate upon death
- Avoids guardianship upon incapacity
- Avoids or reduces Estate Taxes
- Protects inexperienced or incapable beneficiaries from managing assets

Revocable Living Trust

- You Can Be:
  - * Grantor, Trustee & Beneficiary
  - * **No Loss of Control Over Assets**

- "**Trust Funding**" - transfer of legal title to Trust for Trustee to administer
  - –To reduce estate taxes, generally need to balance Husband's and Wife's trusts

Federal & IL Estate Taxes

- **Current Law for 2007**
  - Maximum Federal Rate = **45%**
  - Illinois Estate Tax ("capped $2M) adds up to 24% more tax
  - **First $2 M Exempt** ("Estate Tax Exemption")
  - **Single:** No Estate Taxes if Assets Less Than $2 M
  - **Married:** No Estate Taxes if Assets Less Than $4 M
    AND you Plan Correctly
- **Tax Reform Act of 2001**
  - 2009 - $3.5M Exemption
  - 2010 - Federal Estate Tax Repealed
  - 2011 - Estate Tax Reenacted w $1M Exemption??
  - Gift Tax retained with $1,000,000 Exclusion

Estate Tax Planning

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Transfer Tax Objectives

- Effectively use <u>both</u> spouse's exclusions

HIS	**+**	**Hers**

= Estate and Gift Tax Savings

- Avoid "stacking" – Less estate taxes if <u>both</u> estate tax exclusions are used

NO ESTATE TAX PLANNING

(Presume both deaths 2007)	Husband Dies 1st	Wife Dies 2nd
ASSETS	$0	$4,000,000
UNIFIED CREDIT	**($2,000,000)**	($2,000,000)
NET ESTATE	$0	$2,000,000
ESTATE TAX	$0	**$1,039,692**

Husband's estate loses benefit of his $2 M credit.

ESTATE TAX PLANNING

(Presume both deaths 2007)	Husband Dies 1st	Wife Dies 2nd
ASSETS	$2,000,000	$2,000,000
UNIFIED CREDIT	**($2,000,000)**	**($2,000,000)**
NET ESTATE	$0	$0
ESTATE TAX	**$0**	**$0**

Both $2 M Unified Credits are Utilized.

Trust Drafting Choices for Estate Tax Planning

- Traditional “A/B” Plan;
- Disclaimer Trusts
- “Single” Marital Trusts
- Joint Trusts
  (wave of the future?)

Gifts can REDUCE Estate Taxes

- Outright Gifts (no “strings”)
- Gifts in Trust (““strings”)
- $12,000 per year, per beneficiary exclusion
- $1,000,000 additional lifetime exclusion
- Many “Advanced” Techniques are Gift Driven
  - GRATS & QPRT
  - FLPs
  - Grantor Trusts

Estate Tax Reducing Techniques

- Credit Shelter Trusts
- Gifts
- Irrevocable Life Insurance Trusts
- Charitable Remainder Trusts
- Foundations
- Other Advanced Planning Techniques
  - FLPs, Grantor Trusts, QPRTs, GRATS, CLTs
  - Dynasty Trusts

QPRT

"QUALIFIED PERSONAL RESIDENCE TRUST"

- <u>Residence</u> transferred to Trust for a Term of Years (i.e., 7 years)
- <u>Reduced Gift Cost</u> of Transfer
  - Gift Reduced by "Retained Interest"
- End of Term, Gift Completed
  - Grantor can then Lease Residence
  - Lease Payments = Tax Free Gifts
- Death before Term = Gift Ineffective
  - No Worst off than if Nothing Done

QPRT Example

- $2,000,000 Residence
- Grantor Age 78
- 6-Year Term
- 5.8% AFR

- **$943,620 Gift!!!**
- $1,056,380 Gifted "Tax Free"
- Grantor can Rent to Trust after 6 years

GRATS

"Grantor Retained Annuity Trusts"

- Similar to QPRT
- Property transferred to Trust in Exchange for an Annuity Fixed # of Years
- Reduced Gift Cost of Transfer

  Gift Reduced by "Retained Interest"
- End of Term, Gift Completed
- Death before Term = Gift Ineffective

CRT

“Charitable Remainder Trust”

- A CRT enables an individual to:
  - Avoid <u>capital gains taxes</u>
  - Increase <u>income</u>
  - Receive <u>income tax deduction</u>
  - Receive <u>estate tax deduction</u>
  - Make substantial future <u>contributions to charity</u>

ILIT
“Irrevocable Insurance Trust”

- <u>General Rule</u>: Life Insurance Proceeds Subject to Estate Tax
- <u>Exception</u>: Insurance in ILIT
  - Insurance Owner retains NO “Control”
  - Family Members are Beneficiaries
- Premiums = Gift to Beneficiaries
- Transfer Existing Policy to ILIT
  - 3-Year “Waiting Rule”

GOALS - IRA
Beneficiary Planning

- **INCOME TAX DEFERRAL**
  - "Stretch" out IRA as Long as Possible
- **CONTROL ISSUES**
  - Minor or Irresponsible Children
  - 2nd Marriages
- **ESTATE TAX ISSUES**
  - Is IRA needed to "Fund" $2M Estate Tax Exclusion?

Before Death of IRA Owner
Uniform Lifetime Tables

Age	Payout %
71	3.8%
74	4.2%
77	4.7%
80	5.4%
83	6.2%

Age	Payout %
86	7.1%
89	8.4%
92	9.8%
95	11.6%
98	14.1%

After Death of IRA Owner Planning Makes a Difference

- IRA Beneficiary Designation Controls RMDs
- Significant Differences in RMDs Depending on Who is IRA Beneficiary
- Balancing Factors
  - Income Tax Deferral
  - Control
  - Estate Tax

Key Decisions in Planning

- Primary Beneficiaries
- Contingent Beneficiaries
- Use of Trust as Primary or Contingent Beneficiary
- Tax Planning Language in Trust & IRA Beneficiary Form

Who should be Primary IRA Beneficiaries?

- **Spouse**
  - Harmonious 1st Marriages
  - "Stretch-Out" Benefits of Spousal IRA Rollover
  - Trust or Children are Secondary Beneficiaries
- **Trust**
  - 2nd Marriages or "Control" Issues
  - Less Income Tax Deferral
- **Children or Grandchildren**
- **Charities** - No Income Tax Paid on Gift

IRA Beneficiary Guidelines

Status	Factors	Primary	Secondary	
Married	•Harmonious Marriage	Spouse	Trust	
	•IRA not needed to fund \$2M Estate Tax Trust & Children are Responsible	Spouse		Children
Married	•2nd Marriage, or	Trust	N/A	
	•Want Trust "Control"	Trust		
Single	•Responsible Children	Children	N/A	
	•Young or Irresponsible Children	Trust		

Asset Protection

Creating Hurdles To Prevent Creditors from Seizing Assets

- Does not involve Fraud, Perjury, Excessive Secrecy or Fraudulent Transfers

- Own <u>Property in Protected Form</u> to take away the economic incentive for a lawsuit against you

LIABILITY INSURANCE

- General Rule
  - Purchase <u>as much</u> as possible
- Every Household
  - Umbrella Insurance policy
    - * $2 Million to $5 Million
- Every Business
  - Liability Insurance Policy

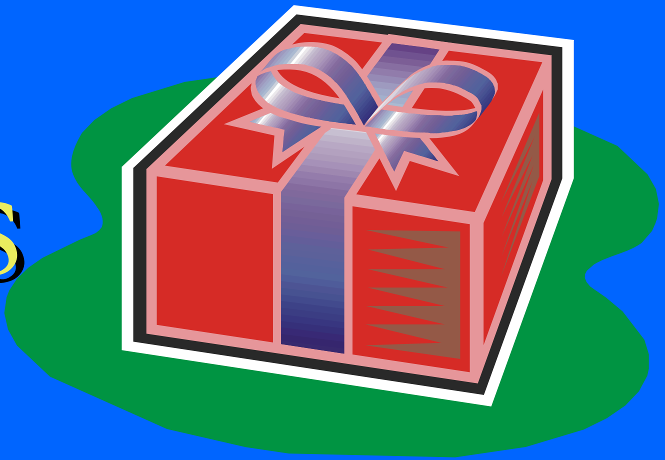
Common Mistakes

- General Partnerships (not LLPs/LLCs)
  (Joint & Several Liability Other Partners)
- Spouse Involved in Business
- Personal Guarantees
- Taxes (Income, Employment Taxes)
- Single-Member LLC that should have Two Members for "Outside In" Protection
- Non-Separation of Risks

Fraudulent Transfers

- Once Liability Occurs, Creditors may Void Transfers
- After Transfer Is Debtor Solvent? **Assets > Liabilities?**
- Did Debtor receive Reasonably Equivalent Value?

Gifts

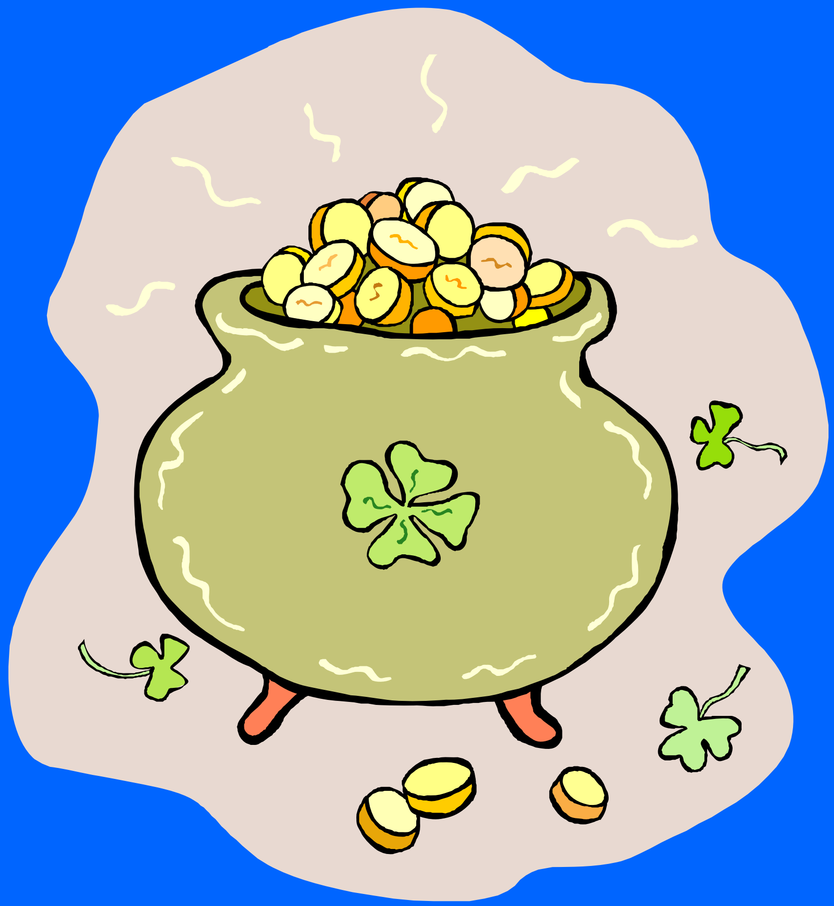


- Simple
- Outright or Gifts in Trust
- Gifts to Less Vulnerable Spouse
- Gifts to Children (in trust?)
- Problems
  - Loss of Control
  - Divorce
  - Donee is Sued
  - Gift Tax (N/A spousal or incomplete gifts)?
  - Constructive Trusts & Fraudulent Transfer?

Drafting Trusts for Asset Protection

- Powers of Appointment to Change Trust
- Multiple Beneficiaries & Trustees
- Trustee Power to <u>Suspend Distributions</u>
  - Financial hardship; Alcohol or Drug Abuse
- "<u>Shifting Trusts</u>" upon Triggering Event
  - Insolvency, Bankruptcy, Creditor Action
  - Beneficiary's Interest Ends or Changes to Discretionary Trust
- Impose a <u>Condition Precedent</u> to Distributions
  - Solvency or Distributions "Match" Beneficiary's Earnings

Beneficiary Controlled Trust

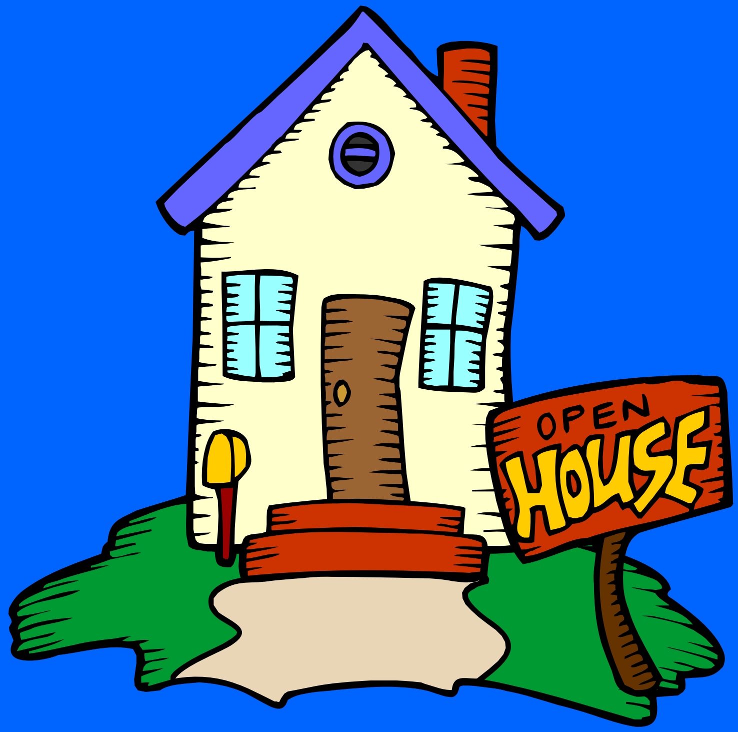


- Superior Asset Protection vs. Outright Gift
- Independent Trustee or Co-Trustee?
- Beneficiary Controlled at Certain Age
- Upon beneficiary's death, passes tax free to lower generation

Major IL Creditor Exemptions
(Judgment Creditors & Bankruptcy)

- Tenancy by Entireties (Real Estate)
- Life Insurance & Annuities
  - Death Proceeds
  - Cash Value if payable to Debtor's "Dependent"
- Retirement Plans
  - Covers most Retirement Plans

IL Tenancy By the Entireties



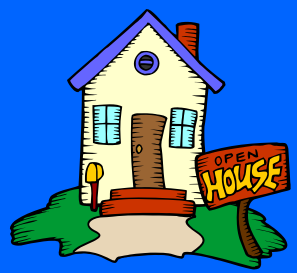
- Real Estate
  - Husband and Wife Ownership
  - Principal Residence
  - Obtain Protection by Deed
- Creditor of One Spouse Cannot Enforce Judgment During Marriage
- Debts not Protected
  - Injuries on premises
  - Dog bites
  - Teenager's Actions
  - IRS debts

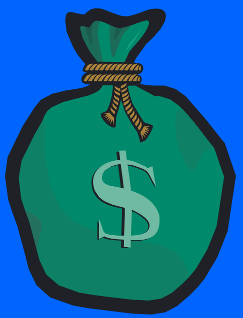
ASSET PROTECTION ENTITY SELECTIONS

- LLC (Limited Liability Company)
- S Corporation
- C Corporation
- <u>Above Entities - Liability Protection</u>
    - * <u>Personal Assets</u> of Owners not Personally Liable for <u>Business Debts</u>
    - * N/A to Personal Guarantees, Torts and Malpractice.

“Inside Out” Protection

Protects Owners from “Internal” Liabilities

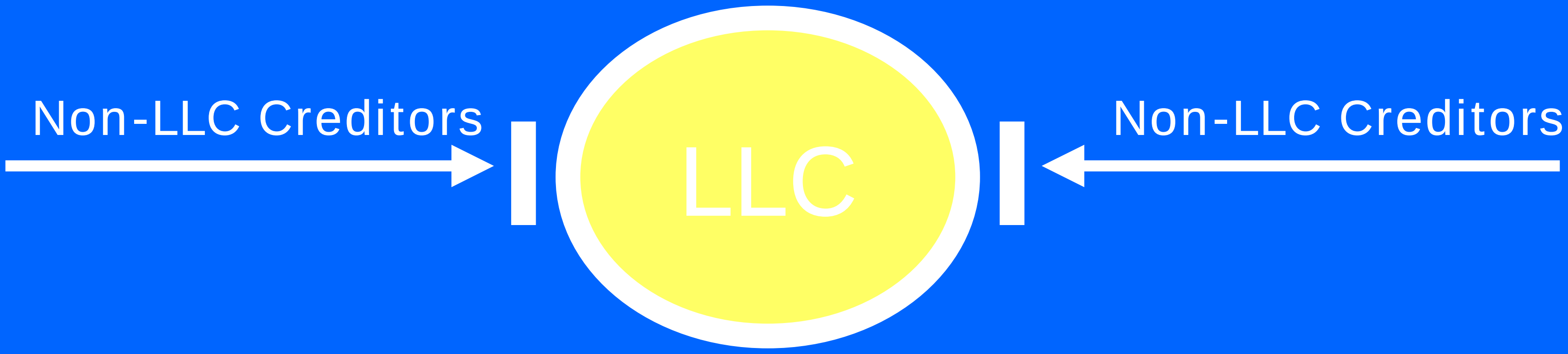




- Corporations & LLCs
- Business Risks Do Not Taint Personal Assets
  (Owners no Personal Liability for Business Liabilities)
- No Protection for Guarantees, Torts, Malpractice & LLC Distributions to Members during Insolvency

“Outside In” Protection

Protects LLC from “External” Liabilities



- Non-LLC Risks Do <u>Not</u> Taint LLC Assets
- Not Available to Corporations
  (Creditors can Seize Stock)
- Charging Order = Creditor’s Remedy

When To Check Your Estate Plan

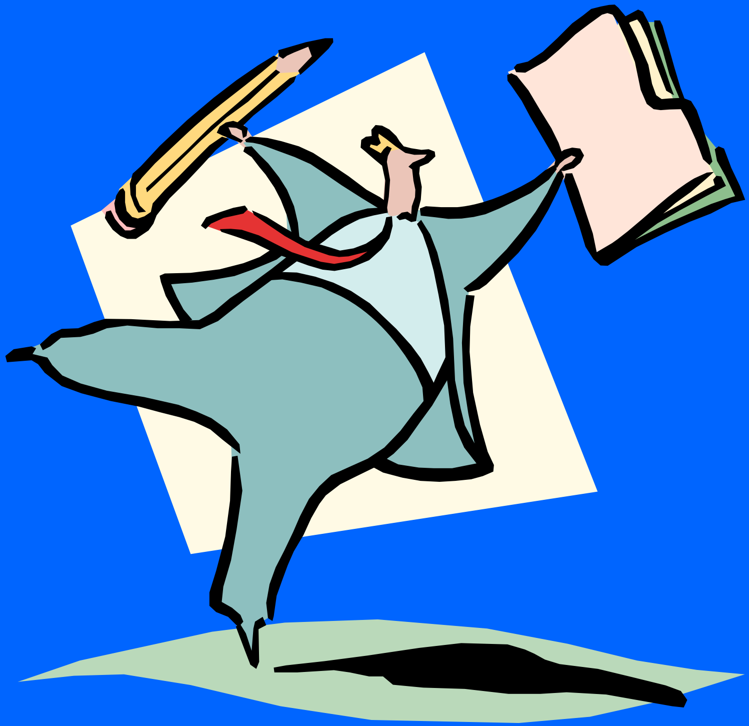
- Births and deaths
- Moves between states
- Marriages
- Changes in your assets
- Divorces
- Business changes
- Inheritance
- Tax law changes

Keep Money In The Family

- "There are two systems of taxation in our country; one for the informed and one for the uninformed."

(Judge Honorable Learned Hand - Appeals Court Justice)

THE END!!!



- Free Legal Consultation
  - Estate Planning
  - Asset Protection
- Thank You

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