

# DEATH & TAXES

PLANNING ADVICE FOR THE TWO CERTAINTIES IN LIFE

## FEATURED

### **Recent (and pending) publications update - Wall Street Journal, Forbes, Trusts & Estates Magazine.**

I am pleased to announce several recent publications (and one pending) relating to my work in the self-directed IRA legal arena. The first article was written by [Laura Saunders of the Wall Street Journal \(September 2, 2016\)](#) and it relates to an idea that is being heavily promoted online recently involving individuals buying gold within their IRA and then storing the gold in their homes (or buried in the backyard). As with many investment ideas within the SDIRA world, a "Home Storage Gold IRA" sounds fun (and easy!) in theory, but the devil is in the details. For example, there is very little legal guidance on the topic (case law, IRS rulings, etc.), and the promoters of this idea (who, not surprisingly, are the same people that want to *sell* you the gold!) overly rely on the limited statutory authority. As I explained to Ms. Saunders, the legal analysis in this area is complex, but at the end of the day, I do *not* recommend having a SDIRA buy precious metals and store them in the IRA owner's house and/or a safe deposit box (whether in the IRA owner's name or an IRA-owned LLC's name).

This is particularly critical with regards to bullion bars, but the law is also unsettled with regards to American Eagle coins as well. Again, the issue is *storage*, not whether it is legal to buy precious metals within an SDIRA in general.

The second article is a full feature of my practice and was written by [Ashlea Ebeling of Forbes \(October 19, 2016\)](#) and appeared in the November 8, 2016 issue of *Forbes Magazine on stands now*. I was happy to also do some indirect promotion of a Seattle company ([VICIS](#)) that is doing ground breaking work related to reducing head trauma in football. *Side Note* -when this article came out alongside a picture of me next to



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Warren's legal practice is focused solely on one-on-one tax consulting and clear document drafting. Warren is a regular presenter and writer on several of the most cutting-edge tax law topics in the nation.

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Fairview Law Group is dedicated to providing innovative and high-quality legal solutions that are tailored to the goals of our clients. Our tax attorneys work in the areas of: self-directed IRA consulting, estate planning, probate, and general business counseling.

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one of the helmets, my wife commented "your head is as big as the helmet!" -- Nothing like a spouse to find a funny way to keep you grounded! :)

The third article is pending, but will be published in the December issue of *Trusts & Estates Magazine* under the title "*The Care and Feeding of Large IRAs*". I was very honored to be asked to co-author this piece by [Natalie B. Choate](#), an attorney in Boston, MA who is a prolific writer, presenter, and legal mind on life and death planning with retirement accounts. [Her book](#) is essentially a bible for estate planning attorneys throughout the country. Our article discusses why it's critical for an "internal audit" to be done on all large IRAs, particularly accounts containing "non-traditional" (i.e., not publicly traded) assets. The article goes into specific detail regarding how to protect clients from IRS scrutiny, for example, by reviewing specific IRS forms and ensuring that no "red flags" exist. Because one misstep can potentially result in the complete invalidation (and taxation) of the IRA, this "care and feeding" is all the more important the larger the IRA becomes.

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#### **SELF DIRECTED IRA**

#### **Election surprise - potential impact on the self-directed IRA legal landscape?**

I know, I know, everyone is tired of talking about the Presidential election, but I wanted to say just a few quick words about the potential impact of the new administration (and congress), as those changes relate specifically to self-directed IRAs.

As some of you might be aware, Senator Ron Wyden (D-Oregon; current Ranking Member of the Senate Finance Committee) presented some proposed legislation on September 8, 2016 (entitled "The Retirement Improvements and Savings Enhancements (RISE) Act of 2016"), which if passed, would profoundly affect Roth IRAs, inherited IRAs, and any IRA that holds "non-traditional" assets. Among other things, the legislation would eliminate Roth contributions, force distributions out of Roth IRAs during the account holder's life, eliminate favorable "stretch" treatment to IRA beneficiaries, and cap Roth IRAs values at \$5 million. Also, the most extreme version of the legislation would require that all non-traditional assets (e.g., real estate, private

equity, etc.) purchased by a retirement account would need to get appraised before being purchased. This would essentially force retirement accounts to always pay "fair market value", which is completely counter to the Tax Code's definition of fair market value which is the value that is agreed upon when assets are sold between two unrelated people - i.e., a willing buyer and willing seller. Effectively, this provision would force all retirement accounts to invest into only publicly-traded assets - thereby affecting at least \$1 trillion of retirement funds. Here is a link to [my blog post in which I have a verbatim email I wrote to Senator Wyden critiquing the legislation](#) (on technical, not political, grounds).

With Republicans now having control over the legislative and executive branches it is even more likely that Senator Wyden's rather radical ideas with regards to Roth IRAs and non-traditional IRA investments will *not* become law. However, I do believe that federal legislators will continue to sharpen their focus on retirement accounts going forward. After all, the most recent statistical data shows that the total value of all US retirements assets is now \$24.5 trillion, a historical record.

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## ESTATE

### **2017 Estate Tax Update.**

Below is a summary of items to consider going into 2017 with regards to federal estate tax exemptions. Also, because we are based in Washington, I have included Washington state exemption figures as well.

#### **Federal Estate Tax, Gift Tax, and Generation-Skipping Tax (GST) Exemptions**

For 2017, the federal estate and gift tax exemption is \$5,490,000 million per individual. This is a \$40,000 increase over the 2016 exemption, which was \$5,450,000 per person. This means an individual can shield up to \$5.49 million from federal estate and gift tax and a married couple will be able to shield \$10.98 million.

Estates and lifetime gifts in excess of this amount are subject to a 40% tax.

#### **Washington State Estate Tax Exemption**

The 2016 Washington state estate tax exemption is \$2,079,000 per person. Washington has yet to officially release the exemption amount for 2017.

Washington estates in excess of the exemption amount are subject to a 10-20% Washington State Estate Tax (depending on the size of the estate over the exemption amount, [see here](#)). Washington doesn't currently impose a gift tax, which makes lifetime gifting particularly important for Washington clients.

Even though the state estate tax exemption has been incrementally increased over the years to \$2,079,000, the filing threshold for the Washington State Estate and Transfer Tax Return remains at \$2,000,000. Each estate over \$2,000,000 is required to file a Washington State Estate and Transfer Tax Return.

### **Federal Gift Tax *Annual* Exclusion**

The annual exclusion against federal gift tax remains at \$14,000 for 2017. This means that for spouses, they can give up to \$28,000 (cumulatively) to as many people as they want. Over the long term, giving organized/planned annual gifts to future generations can be a very effective estate planning tool.

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#### **A FINAL WORD...**

I know that for many of my clients, colleagues, and friends, 2016 was a fruitful year, but also a very stressful one. I hope everyone has the opportunity to enjoy their families, friends, and loved ones during the holiday season and we can all come together for a successful and fulfilling 2017.

**HAPPY HOLIDAYS!!**

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