Estate Planning Matters

Kramer Radin, LLP

Law Firm

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Senior Shoppers Live Longer

A new study from Taiwan, published in the *Journal of Epidemiology and Community Health,* reports that people aged 65 and over, who shop as frequently as every day and who were living independently at home, are likely to live longer than less frequent shoppers. Interestingly and perhaps counter intuitive to some of us, men appeared to benefit more from shopping than women. The study included nearly 1,850 people who took part in the 1999-2000 Elderly Nutrition and Health Survey in Taiwan (NAHSIT Elderly).

48% of the participants never or rarely shopped during the week, 22% shopped between 2 and 4 times a week, 17% shopped every day and the rest shopped once a week. Those who went shopping more than once a week tended to be men. This group had a higher proportion of smokers and drinkers, they tended to have better physical and mental health, took more regular exercise and were more likely to have a network of dinner companions.

Compared with the least frequent shoppers, those who shopped every day had a 27% lower risk of death. For men, this figure was 28%, compared to 23% for women.

The researchers conceded that perhaps the ability to shop is just reflective of a person's health, and frequent shoppers are just healthier people. But they said it could also work the other way around: frequent shopping itself may benefit health, for instance by increasing the opportunity to buy food, take an interest in one's diet and health, meet friends and to exercise in a way that is easier and requires less motivation than formal methods.

Our conclusion is shop-it helps the economy! Do some mall walking-it's good for your health! Get out of the house and have dinner with friends-you'll live longer!

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Tax Update

President Obama signed the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 into law on December 17, 2010. Some of the highlights of the 2010 Tax Relief Act include the following:

Estate Tax: The 2010 Tax Relief Act revives the estate tax for decedents dying after December 31, 2009, but at a significantly higher applicable exclusion amount and lower tax rate than had been scheduled. The maximum federal estate tax rate is 35% with an applicable exclusion amount of $5 million. This new estate tax regime, however, is itself temporary and is scheduled to sunset on December 31, 2012. There is no California estate tax.

Portability: The 2010 Tax Relief Act provides for "portability" between spouses of the estate tax applicable exclusion amount. Generally, portability would allow a surviving spouse to elect to take advantage of the unused portion of the estate tax applicable exclusion amount of his or her predeceased spouse, thereby providing the surviving spouse with a larger exclusion amount. A "deceased spousal unused exclusion amount" would be available to the surviving spouse only if an election is made on a timely filed estate tax return. Portability would be available to the estates of decedents dying after December 31, 2010. The portability election will sunset on January 1, 2013. **Portability has received a lot of press. However, here in California, with our community property laws, it is seldom valuable.**

Gift Tax: For gifts made in 2011, the 2010 Tax Relief Act provides that gift tax is reunified with the estate tax with a top gift tax rate of 35% and an applicable lifetime exclusion amount of $5 million.

Qualified Capital Gains and Dividends: The maximum federal 15% tax rate on qualified capital gains and dividends will be retained for two years, through December 31, 2012. The maximum California rate remains at 9.9%.

Did You Refinance Your Home? Time to Check Your Deed

If you have ever refinanced your home, you will probably remember signing a stack of documents. One of those documents may have been a deed transferring title to your home out of your trust and into your name as an individual, or into the names of you and your spouse as joint tenants. While this may have seemed like an insignificant piece of paper, it could have significant tax and estate planning consequences for you and your heirs.

Anna and Bob, a married couple, bought their home in Los Altos in 1970 for $60,000. In 1986, Anna and Bob set up a trust and, through that process, signed a deed transferring title to their home into their trust. In 2003, Anna and Bob refinanced the loan secured by their home. One of the many documents they signed during the refinancing was a deed transferring the property out of their trust and into their names as joint tenants. They did not execute a deed transferring title back to the trust following the completion of the refinancing. Bob passed away in 2011. The house is now worth $1,500,000. Anna would like to sell the home and move into a retirement community. The problem is that title is still held in Anna and Bob's names as joint tenants. As Bob is deceased, Anna cannot sign a deed on his behalf.

"Capital Gains Taxes Could be Avoided"

Anna could take the option of recording a "notice of death of joint tenant" with the County Recorder to receive clear title. This document, while easy to prepare, would not necessarily be inexpensive. When the home was taken out of trust and placed into joint tenancy, it was no longer deemed to be held as community property for tax purposes. As a result of Bob's death, his half of the property would receive a "step-up" in basis to $750,000, but Anna's half would not. That means the IRS would view the tax basis of Anna's half of the property as valued at $30,000 (one half the purchase price). If Anna were to sell the entire property for $1,500,000, her half would be taxed as follows: sale price of $750,000, less basis of $30,000, less IRS exemption of $250,000 = capital gain of $470,000. When that number is multiplied by the maximum combined federal and state capital gains tax rate of 24.9%, Anna could owe approximately $117,030 in capital gains taxes.

Those capital gains taxes could be avoided if the entire community interest in the home were to receive a step-up in basis by being titled in the name of the trust. This could have been accomplished by Bob and Anna through a deed executed after the refinancing was completed. Once Bob passed away, Anna would need to obtain a court order to transfer Bob's share back into the trust. While there would be attorney's fees associated with obtaining such a court order, they would be far less than the capital gains tax exposure.

If you have refinanced your home since setting up your trust, we would recommend you review a copy of your Trust, we would recommend you review a copy of your deed to make sure the property remains titled in the name of your trust (or more precisely, in the name of the trustees of your trust). Our firm can assist you in obtaining the most current deed for your home from the County Recorder and, if title is not held in the name of the trust, we can prepare a new deed for your signature. If your spouse has passed away, check with us before filing anything with the County regarding your property; we might be able to help you avoid capital gains taxes by obtaining a court order to modify title.

There are other good reasons for holding your home and other assets in trust, such as allowing your heirs to avoid probate and potentially save on estate taxes. If you haven't set up a trust, contact us to set up a complimentary consultation.

Humane Society of Silicon Valley

Rather than engage in the typical white elephant or holiday gift exchange this last December, the staff here at Kramer Radin, LLP decided to utilize our collective talents to help animals in need. Armed only with colorful soft fabric and several pairs of scissors, a good time was had by all creating these soft blankets and toys for the dogs and cats awaiting adoption at the Humane Society of Silicon Valley.

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