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Date: January 29, 2021
To: Clients & Friends
From: Mari J. Galvin, Partner

Few are sad to say goodbye to 2020. It was a challenging year. All of us at Cassin & Cassin hope that you and your loved ones are well.

As we welcome a New Year, we will be monitoring any changes to the law that may affect your estate plan. Attached please find a chart outlining inflation adjusted transfer tax exemptions as of January 1, 2021.

Notable 2020 changes in New York include: (1) Executive Orders signed by Governor Cuomo that have allowed us to supervise the due execution of Wills through the authorization of remote witnessing and notarization, and (2) the enactment of legislation amending the statutory short form and other powers of attorney for purposes of financial and estate planning, including the repeal of the statutory gift rider.

There were numerous Federal executive and legislative actions in 2020 to assist businesses and to manage the pandemic, so a 2019 bill known as the Secure Act that became effective as of January 1, 2020 may have slipped under the radar for many as other news captured the headlines. The Secure Act made significant changes to the taxation of distributions from qualified retirement plans, including IRAs, upon death.

Remote Witnessing and Notarial Acts

On June 30, 2000, Public Law 106-229 was enacted by Congress to authorize “electronic records and signatures for transactions in or affecting interstate or foreign commerce” (the “E-Sign Act”). Two decades later, several states, including New York, still do NOT allow remote online notarization (“RON”). However, in response to the need for electronic signatures during the pandemic, New York issued Executive Order 202.7 on June 5, 2020 authorizing notarial acts by

“audio-video technology”. This emergency order set forth a process that is required to perform a valid notarial act remotely. In addition, the Governor also signed Executive Order 202.14 permitting the remote witnessing of Wills, Health Care Proxies and other estate planning documents.

One last clarifying point that should be understood is that New York DOES allow electronic signatures. Under the Electronic Signatures and Records Act (“ESRA”), “signatures” made via electronic means will be legally binding just as hand-written signatures now are; provided, however, when a signature requires a notary, ESRA regulation 9 NYCRR 540.7 shall govern. The regulation states that where an instrument affecting real property requires a notary, the notary shall only perform a notarization “in person,” meaning in a manner that complies with the provisions of Executive Order 202.7 for the duration of such Order.

New Durable Power of Attorney for the State of New York

Before discussing the new form, rest assured that your validly executed New York Durable Statutory Short Form Power of Attorney is still valid. The Bill was signed by the Governor on December 15, 2020 and becomes effective on June 13, 2021.

By way of background, the existing New York Statutory Short Form Durable Power of Attorney was enacted in 2009 (and amended in 2010) in response to several highly publicized abuses by agents under the prior form. Most notably was the case of NYC philanthropist Brooke Astor whose son, Anthony D. Marshall, and her attorney, Francis X. Morrissey, Jr. were convicted of criminal charges, including first-degree grand larceny, that resulted in prison terms.

The new statutory form has at its foundation simplification, usage, and enforcement. The new form simplifies the granting of gifting authority to an agent by eliminating the need for a separate Statutory Gift Rider. Now gifting can be authorized in the modification section of the statutory short form. In addition, the basic gifting amount was increased from \$500 per year to \$5,000. Further to simplification, the bill clarified that an agent will be considered a personal representative for the purpose of health care financial matters. However, the draftsman of a new power of attorney should be careful with respect to the authority to change joint bank accounts, which must be expressly authorized, and, delegation between two or more agents with respect to banking transaction.

Regarding the usage of the form, the bill amends the statute to allow for substantially conforming language to be used in the power of attorney form to avoid unnecessary rejection. Therefore, if a draftsman makes “de minimis differences, such as insignificant mistakes in spelling, punctuation, or formatting” of the form, a third-party must still accept the form; and, furthermore, the bill provides a safe-harbor provision for those who, in good faith, accept an acknowledged power of attorney. Third parties have 10 days to honor or reject a power of attorney and can be sanctioned if they unreasonably refuse to accept a valid power of attorney. If rejected, the proponent of the power of attorney has no timeline to respond, but once the proponent responds, the rejecting

party has 7 days from the response to honor or reject. Note: in order to alleviate processing pressures for Medicaid applications within that time frame, the Department of Health, including social services districts, are exempt from the requirement that third-parties accept or reject a power of attorney form within 10 business days.

To be valid, the new form must be signed in front of two witnesses and acknowledged in the same manner as the conveyance of real property, which requires a notary public or other individual authorized to take acknowledgements to acknowledge the form. The notary may be a witness but any person who may receive a gift should not be a witness.

The Secure Act and your IRA Beneficiary Designations

Effective January 1, 2020, the Secure Act made significant changes that may affect how IRA benefits are taxed to your beneficiary(ies) after you die. Here is what has and has not changed.

What has NOT changed:

- Need to designate beneficiaries WITH CARE AND PROPER LANGUAGE.
- Spousal “inherited” IRA and Spousal Rollover are the same, meaning a surviving spouse can stretch an IRA over his/her lifetime or the remaining life expectancy of the account owner.
- The lifetime stretch for “inherited” IRA is also allowed for IRAs payable to what is now called an ELIGIBLE DESIGNATED BENEFICIARY (a new classification of beneficiaries that includes *certain* “Designated Beneficiaries” under the old rules).
- ELIGIBLE DESIGNATED BENEFICIARIES who may “inherit” an IRA and still obtain a lifetime stretch are:
 - 1) Surviving spouse
 - 2) Minor children of account owner; however, the new 10-year rule applies once the child reaches age of majority
 - 3) Disabled individuals
 - 4) Chronically ill individuals
 - 5) Beneficiaries who are not more than 10 years younger than decedent

What has changed:

- Required Minimum Distributions (RMD) begins April 1 following the year the account owner attains **age 72**.
- There is NO lifetime stretch for “inherited” IRA payable to a **DESIGNATED (non-eligible) BENEFICIARY**: the 10-year rule applies, meaning the entire IRA must be paid out to the beneficiary, and taxed, within 10 years.
- Properly drafted accumulation and conduit trusts still qualify as a **DESIGNATED (non-eligible) BENEFICIARY**, meaning the distribution to the qualifying trust must be completed, and taxed, within 10 years.
- **OTHER BENEFICIARIES**: IRAs payable to an estate, charity or non-qualifying trust, if death before RMDs start, then the 5-Year Rule applies, or, if death after RMDs start, the “Ghost” Rule (decedent’s life expectancy) applies.

Gifts to Charity(ies) from your IRA are still a good idea because distributions after you die are still subject to income tax but, in the case of a charitable beneficiary, may be offset by a charitable deduction. Here again, the beneficiary designation and timing of distributions must be carefully constructed and monitored as rules regarding the eligibility of certain trusts may be negatively impacted if the charitable distribution is not completed by a certain date.

CASSIN ANNOUNCEMENTS

During 2020 we announced the launch of our Matrimonial and Family Law Practice which will offer services such as marital, divorce, custody, child support and maintenance, and parent/grandparents' rights agreements, and, added a Restructuring and Workouts Practice group.

Matters pertaining to the Trusts & Estates Practice Group are posted on Cassin's website at: <https://www.cassinllp.com> or Linked-In at <https://www.linkedin.com/company/cassin-&-cassin-llp>.

Cassin employees returned to offices in the later part of 2020. Our reopening was planned after careful thought and the implementation of strict rules that adhere to CDC recommendations and guidelines. While vaccination is rolling out, COVID-19 still exists and remains a threat. The safety of every employee and client is of our utmost concern.

STAY SAFE and BE WELL

Mari J. Galvin, Esq.

2021 TRANSFER TAXES

Are you or your clients considering a change in domicile? Seek professional advice before any final decisions. Ensure that you meet all requirements to establish domicile in your new tax state.

	Federal	New York	New Jersey	Connecticut
Estate Tax	Yes	Yes	No	Yes
Inheritance Tax	No	No	Yes	No
Gift Tax	Yes The gift tax exclusion amount remains at \$15,000/person/year.	No Until December 31, 2025, certain gifts made within three years of death are clawed back into the taxable estate.	No	Yes
Generation Skipping Transfer Tax	Yes	No	No	No
Basic Exclusion Amount (BEA)	\$11,700,000 with annual cost of living adjustment based on Chained-CPI	\$5,930,000 The above is effective through 12/31/2021. Annual cost of living adjustment based on Federal 2014 index.	N/A	2018=\$2,600,000 2019=\$3,600,000 2020=\$5,100,000 2021=\$7,100,000 2022=\$9,100,000 2023 = Federal exemption amt.
Inheritance, Estate and/or Gift Tax Brackets and Tax Rates	<u>Lowest:</u> \$0-\$10,000 @ 18% <u>Highest:</u> Over \$1,000,000 @ 40% Note: tax is on the gross taxable less deductions and plus taxable gifts. From this tentative tax certain credits, gifts taxes paid, and the BEA tax equivalent is subtracted.	<u>Lowest:</u> \$0-\$500,000 @ 3.06% <u>Highest:</u> Over \$10,100,000 @ 16%	<u>Based upon Heir's relationship to Decedent</u> Class A - surviving spouse, civil union partner, parents, children, grandchildren and stepchildren = exempt; no inheritance tax Class B – eliminated = n/a Class C – brother, sister, son/daughter-in-law and civil union partners of children = over \$25,000 @ 11% - 16% (after built-in exemptions) Class D – niece, nephew, aunt, uncle, step-grandchild(ren), friend, non-relative = 15% - 16%	<u>Lowest:</u> on taxable estate over BEA @ 10% in 2020, 10.8% in 2021, and 11.6% in 2022. In 2023 and beyond there is a single rate of 12% <u>Highest:</u> 12% <u>CAP</u> As of 2021, decreased to \$15 million from \$20 million. This is the estate tax on estates of \$129,000,000.

			Class E – charitable institutions = exempt; no inheritance tax	
Portability	Yes	No	No	No
Special Considerations	TCJA sunsets on December 31, 2025. If legislative action does not happen to make permanent the ‘doubling’ of the federal exemption amount, the federal exemption reverts to \$5 million, as adjusted for inflation from 2014.	‘Cliff’ remains which eliminates the BEA for taxable estates that exceed 105% of the State’s BEA As of 4/1/2019, NYS requires a NY QTIP election be made directly on a NY return; a federal proforma return is no longer sufficient.		The phase-in of CT’s increased exemption amount is from 2019-2023 and may sunset with the federal law at the end of 2025. ----- Effective 1/1/2020, CT adopted significant changes to its trust law, including: 1) Connecticut Uniform Trust Code; 2) Connecticut Uniform Directed Trust Act; 3) Connecticut Qualified Dispositions in Trust Act; and 4) Connecticut Uniform Rule Against Perpetuities Act.

IRS Publication 555 – Main Content provides:

You have only one domicile even if you have more than one home. Your domicile is a permanent legal home that you intend to use for an indefinite or unlimited period, and to which, when absent, you intend to return. The question of your domicile is mainly a matter of your intention as indicated by your actions. You must be able to show that you intend a given place or state to be your permanent home.

Factors considered in determining domicile include:

- Where you pay state income tax,
- Where you vote,
- Location of property you own,
- Your citizenship,
- Length of residence, and
- Business and social ties to the community.

Amount of time spent.

The amount of time spent in one place doesn't always explain the difference between home and domicile. A temporary home or residence may continue for months or years while a domicile may be established the first moment you occupy the property. Your intent is the determining factor in proving where you have your domicile.

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