

## TABLE OF CONTENTS



## • DO I STILL NEED MY TRUST?

PAGE 1

## • ATTENTION: CURRENT BECE FARM CLIENTS

PAGE 2

## • DID YOU KNOW?

PAGE 2

## • TAKE ADVANTAGE OF VALUATION DISCOUNTS FOR GIFTING BEFORE NEW REGULATIONS TAKE EFFECT IN DECEMBER

PAGE 3

## • GEARHARDT JOINS BARRETT, EASTERDAY, CUNNINGHAM &amp; ESELGROTH LLP

PAGE 3

## DO I STILL NEED MY TRUST?

With the repeal of the Ohio estate tax, the increase in the federal applicable exclusion amount to \$5,450,000 for 2016, and portability of the exclusion amount between spouses, fewer people need a trust to help minimize estate taxes. What should you do if you already have a trust? You may want to evaluate the purposes for which you created the trust to see if they are still valid.

**A number of valid reasons remain for keeping an existing trust or creating a new one, such as the following:**

**1.** Many people want to give their children creditor protection. According to the Ohio Trust Code, the only exceptions to this creditor protection are: “(1) The beneficiary's child or spouse who has a judgment or court order against the beneficiary for support, but only if distributions can be made for the beneficiary's support or the beneficiary is entitled to receive mandatory distributions under the terms of the trust; (2) A claim of this state or the United States to the extent provided by the Revised Code or federal law.”

**2.** Because real estate values have increased significantly, many farm families or other business owners still need to plan for the federal estate tax. An exclusion “ported” (transferred) to the surviving spouse does not increase with inflation over the surviving spouse's lifetime, so it may not protect as much value as the trust. The generation-skipping transfer tax exemption and the election to value farm land at its agricultural use value do not port to the surviving spouse. Without the trust, you may lose up to half of these benefits for couples if the combined estates exceed the single applicable exclusion amount.

**3.** Whether the applicable exclusion amount will remain at the current

level is unknown. The candidate on the Democratic ticket proposes lowering the amount to \$3,500,000.

**4.** Many people established their trusts to help avoid the probate process, and they have transferred assets to the trustee(s) to help accomplish this goal. The trust will still help with this purpose.

**5.** Many people use their trusts as a management vehicle to set forth the rights, such as rental or purchase rights, among family members.

**6.** Some people want someone other than a child to manage the assets.

Given these trust benefits, many people have no reason to change their existing trust plans. However, those with smaller estates may have reason to reconsider how some assets may be titled. For example, if husband has a brokerage account titled in the name of the trustee of his trust, the stocks and bonds in that account will receive a step up (or step down) in basis at the time of his death. If he dies after his wife, income tax is not an issue, but if he dies first, the basis step up still occurs at his death. In this event, we do not know how long the wife may live, and the values could change significantly during this time. Because the trust was designed to keep these assets out of the taxable estate of the surviving spouse, no step up in basis occurs at the second death.

Alternatively, this couple could choose to retitle the account joint with right of survivorship between the two of them, with a Transfer on Death designation to one of the trusts. This will provide a change in basis at both deaths. The main downsides to this approach are (i) the loss of creditor protection to the surviving spouse and (ii) the potential estate taxes if Ohio or federal law changes before the death of the surviving spouse.



## ATTENTION: BECE FARM CLIENTS WHO SOLD CORN

As one of our valued clients, Barrett, Easterday, Cunningham & Eselgroth LLP (“BECE”) would like to take this opportunity to inform you about an agricultural lawsuit that you are eligible to join if you were impacted by the drop in U.S. corn prices in recent years.

In 2009, Syngenta released in the U.S. market a new strain of corn called Agrisure Viptera. This seed was released and marketed to farmers before it received import approval from China. Without proper import approval, China rejected shipments of American corn in 2013 and 2014, causing a dramatic disruption to the market for U.S. corn.

All corn growers, regardless of whether or not they planted Viptera or other Syngenta seed, were impacted by this market disruption. In addition to individual farmers, landlords, elevators, transporters, and others in the supply chain may be able to file a claim.

For the benefit of our clients, BECE has partnered with Watts Guerra LLP, a Texas-based firm with a record of success in large agricultural cases similar to this. Together with Watts Guerra LLP and other law firms in corn-growing areas, we represent thousands of corn farmers across the Midwest. This is not a class

action lawsuit; it is a mass tort action in which farmers are represented individually to seek actual damages.

If you are interested in joining this lawsuit, it’s a simple process. Contact the BECE office for our one-page contract, which allows us to get started on your case.

BECE and the other law firms involved are representing farmers on a contingency fee basis, meaning you will pay nothing unless we are successful in recovering money owed to you by Syngenta. If we’re successful, 40 percent of the recovery will be used to pay attorney fees and the expenses involved with building this case.

Please be aware that the judge has given us additional time to collect plaintiff facts sheets. It’s not too late for you to sign up. If you would like to participate, we urge you to contact us as soon as possible to receive our one-page representation agreement.

We understand that this is an important decision and you may have questions about the case. Please do not hesitate to contact David Barrett or one of the other lawyers at BECE with any questions or concerns. Our office phone number is 614-210-1840; or e-mail David Barrett at [dbarrett@farmlawyers.com](mailto:dbarrett@farmlawyers.com).



*The information provided in this newsletter is for educational purposes only and should not be used as a substitute for professional advice, as there are often many exceptions to the general rules. Before applying any of this information to a specific legal problem, readers are urged to seek advice from an attorney.*

&

## DID YOU KNOW?

As of July 1, 2016, the average retiree in Ohio with income of more than \$2,200 per month will be ineligible for Medicaid unless the retiree establishes a Qualified Income Trust. For more information, see <http://medicaid.ohio.gov/INITIATIVES/DisabilityDeterminationRedesign.aspx>.





## TAKE ADVANTAGE OF VALUATION DISCOUNTS FOR GIFTING BEFORE NEW REGULATIONS TAKE EFFECT IN DECEMBER

Valuation discounts have been an important aspect of estate planning for decades; however, the Obama administration is trying to limit the use of valuation discounts. The value of gifts and the value of assets in an estate are typically valued by taking into account discounts for lack of marketability and, where a minority interest exists, for lack of control. These discounts combined often reduce the value by approximately 35% and are based on empirical studies by appraisers, accountants and others.

During the first week of August, the Obama administration issued proposed Treasury Regulations that are intended to ignore these realities. Mark Mazur, assistant secretary for tax

policy at the Treasury Department stated that the regulations will “close a tax loophole that certain taxpayers have long used to understate the fair market value of their assets for estate and gift purposes.” However, all of the courts around the country have said that the real fair market value takes these discounts into account. The IRS has been unsuccessful making these arguments in court and is now trying to change the rules.

The Regulations are not likely to become final until the end of the year. This leaves a short window of opportunity to make gifts using these long-standing discounts before the Regulations become final.

*IRS Circular 230 Disclosure: In accordance with IRS regulations, please be advised that to the extent this communication contains any federal tax advice, such advice is neither intended nor written to be used (and cannot be used) for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code, nor for promoting, marketing or recommending to another person any transaction, arrangement or matter addressed in this newsletter.*



## GEARHARDT JOINS BARRETT, EASTERDAY, CUNNINGHAM & ESELGROTH LLP



Larry R. Gearhardt of Covington, Ohio has joined Barrett, Easterday, Cunningham & Eselgroth LLP (BECE) in an “of counsel” capacity.

Gearhardt’s wealth of experience dovetails well with BECE’s focus on providing legal services to the agricultural industry. Most

recently, he has been directing The Ohio State University’s Income Tax Schools and serving as the resource person on tax issues for OSU Extension. He serves on the Rural Tax committee, which reviews and edits IRS Publication 225 (the Farmer’s Tax Guide) on behalf of the Internal Revenue Service.

Gearhardt has combined his love of farming and law throughout his career. While actively farming, Gearhardt has engaged in the private practice of law in Miami County. He developed the Legal and Local Affairs department at the Ohio Farm Bureau Federation (OFBF) and gained in-depth knowledge of federal, state, and local government as OFBF’s senior director of State Legislative Affairs.

In 2011 the American Agricultural Law Association honored Gearhardt for Excellence in Agricultural Law. He earned his law degree from The University of Toledo College of Law, and his bachelor’s degree from Wittenberg University in Springfield, Ohio.

Gearhardt is known for his ability to communicate complex topics in an understandable way. Besides taxation, he has worked in many other areas of law, including eminent domain, drainage law, environmental rules and regulations, transportation, oil and gas development, land use and zoning, and conservancy districts. Now that he is with BECE, Gearhardt remains available to speak at meetings throughout Ohio on various legal topics including the following:

- Ohio Drainage Law
- Ohio Fence Law
- Current Agricultural Use Value for Ohio Real Property Taxation
- Real Property Law and Issues
- Farm Rental Agreements
- Farm Tax Issues

Call our office at 614-210-1840 to make arrangements for Larry Gearhardt or one of our other attorneys to speak on these or other topics.

B E C E

— BARRETT EASTERDAY —  
CUNNINGHAM & ESELGROTH LLP

7259 Sawmill Road  
Dublin, Ohio 43016

PRESORT STD  
U.S. POSTAGE  
**PAID**  
COLUMBUS, OH  
PERMIT NO. 8392

ADVERTISING MATERIAL

B E C E

— BARRETT EASTERDAY —  
CUNNINGHAM & ESELGROTH LLP



SUMMER 2016 NEWSLETTER

© 2016 Barrett, Easterday, Cunningham & Eselgroth, LLP

