TAX TIP$

by Michael A. Lampert

Documentary stamps and transfers between spouses

Recently the Elder Law Listserv has had a series of comments regarding documentary stamps on transfers between spouses. This article briefly covers this topic as well as provides an update on current law.

Florida Statutes § 201.02 imposes a documentary stamp tax on interspousal transfers of encumbered real estate. When one spouse adds the other to a deed on encumbered real estate, this often leads to the surprise documentary stamp tax result. In that case, a tax would be imposed on one-half of the mortgage note balance.

There has long been an exception in the law for conveyances incident to divorce. Therefore, the tax result was better if the client got divorced. The Tax Section and other sections of The Florida Bar, the Florida Land Title Association, and other groups advocated for a change to the law, in what I refer to as the "Defense of Marriage Doc Stamp Act."

Last year the Legislature made the change—sort of. Fla. Stat. § 201.02(7) was added to exempt the conveyances of homestead property between spouses, even if the property is encumbered. That change, enacted July 1, 2018, was limited to transfers within one year of marriage. The reasoning for the time limit was that removing the one-year limit would cost the State too much revenue.

Good news: The Florida Legislature decided that removing the one-year limit would not cost that much in revenue after all. CS/HB 7123 removed the one-year limitation. The governor signed the bill on May 15, 2019, and it became effective July 1, 2019.

Note: This new law only applies to homestead property, not to *non*-homestead property, transferred between spouses.

Note: The law still does not apply to gift transfers of encumbered real estate to others, such as to children.

Practice tip: If a lender requires the spouse, who is being added to the deed, to sign on to the mortgage note, a surtax may apply.

Taxpayer First Act of 2019

Congress enacted the Taxpayer First Act of 2019 (TFA). This Act became effective July 1, 2019, although some provisions have a later effective date. The TFA is almost completely focused on IRS procedures and operations. It has been described as the largest change to IRS structure and procedure in 20 years.

The TFA has provisions addressing broad areas. Some of the provisions of particular interest to elder lawyers include:

- Renaming the Appeals Office to the Independent Office of Appeals under a chief of appeals. Certain other procedural changes will, it is hoped, enhance taxpayer appeal rights within the IRS.
- The secretary of the Treasury has one year from the date of enactment to submit to Congress the IRS's Customer Service strategy. This may include co-locating with other federal services, increased self-service availability, and the use of best practices such as those used in the private sector. Interestingly, the Act even addresses customer service training and materials that are to be "easily understood" by IRS customer service employees.
- Consolidation and some enhancement of innocent spouse/injured spouse provisions to address joint liability situations between spouses.

Applicability for elder lawyers: This provision clarifies and codifies the ability to argue in Tax Court cases where one spouse seeks to be relieved from joint tax liability from a spouse, particularly a former or deceased spouse. It also enhances the ability to obtain a refund of taxes paid by the "innocent spouse" but applied to the other spouse's tax liability.

- Treasury is to submit to Congress a plan to comprehensively redesign the IRS's organization. This plan is to prioritize taxpayer services and to combat cybersecurity and other threats to the IRS.
- Funds to be made available for a Volunteer Income Tax Assistance Matching Grant program.

Applicability for elder lawyers: The grants may assist lower income and underserved populations to obtain free tax preparation services.

- The IRS may also provide information to taxpayers regarding the availability of Qualified Low-Income Taxpayer Clinics.

Applicability for elder lawyers: Some clients need, but truly cannot afford, competent tax counsel.

- Change in "music on hold" to instead provide helpful information to the caller, which may include information on scam avoidance, identity theft, and similar issues.
- Regulations to be enacted to create procedures to address funds that were incorrectly not transferred to the taxpayer's financial account.

Applicability for elder lawyers: Currently payments that are incorrectly deposited to the wrong taxpayer, such as tax refunds, can be very difficult to trace and correct. It is hoped that this new law and the regulations to be enacted will make it easier to find out the status of, and cause a refund to, the client of funds that may have been improperly sent to someone other than the client. The IRS is even supposed to coordinate with financial institutions.

- Further improvement regarding cybersecurity and identity theft, and creation of an Identity Protection Personal Identification Number (IP PIN) program. The new law expands the availability of IP PINs.

Applicability for elder lawyers: It is hoped that these increased efforts will help to reduce identity theft, for which elder clients are particularly at risk. The IRS is also expected to have a single point of contact for identity theft cases.

Possible challenge: With the existing IP PIN program, it is not uncommon for taxpayers to lose or forget their IP PIN. This creates additional challenges in identifying taxpayers when they file their income tax return.

- Increased civil and criminal penalties for improper disclosure or use of information by tax return preparers.
- Online preparation and filing for 1099 forms. Unfortunately, the implementation deadline for this is Jan. 1, 2021.
- Income Verification System (IVS) enhancement. Primarily utilized in loan transactions, currently there are procedures where with the taxpayer's consent, a financial institution can verify income or other items. The new law directs the IRS to implement a fully online program (for a fee) to provide the information. The new law also restricts the use of the information received under the IVS program to the purpose for which it is requested. Before the TFA, the information requested could be used for other purposes.

Applicability for elder lawyers: The enhancement may simplify procedures for a client obtaining loans and also reduce the amount of targeted marketing that uses otherwise confidential IRS data.

- Increased ability to pay taxes by credit card directly rather than through a private gateway; however, the taxpayer still has to pay the credit card fee.
- Private debt collectors: The new law limits private debt collectors hired by the IRS from collecting from taxpayers who derive substantially all of their income from SSDI or SSI or have adjusted gross income not more than 200% of the applicable poverty level.

Applicability for elder lawyers: This should reduce the push to collect from clients who really cannot afford to pay anything, yet are bullied into paying by the private debt collector.

How is the TFA paid for? As a practical matter, the IRS is being asked to do more without an increase in its budget. By increasing the minimum failure-to-pay penalties (one of the few non-IRS procedural changes in the TFA), this Act will, by Congressional standards, be paid for.

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