TRUST AND ESTATE PLANNING FOR COLLECTIBLES, ART & OTHER UNUSUAL ASSETS

First Run Broadcast: September 17, 2019
1:00 p.m. E.T./12:00 p.m. C.T./11:00 a.m. M.T./10:00 a.m. P.T. **(60 minutes)**

Art, collectibles, cars, jewelry and other unique assets, perhaps handed down for generations in a family, may form a large share a client's estate. Unlike more traditional assets, these non-traditional assets pose special challenges for planners. There are issues of valuation – how do you value a painting, even by a well-known artist? – and liquidity. Though very valuable, these objects do not have liquid markets. There are also many issues surrounding the lifetime or post-mortem transfer of control of these assets, tax issues, and, in some instances, intellectual property issues. These and many other issues can be fascinating but also frustrating. This program will provide you with a practical guide to trust and estate planning for art, collectibles, jewelry, and other unique assets.

- Trust and estate planning issues for art, collectibles, jewelry, cars, and other unique assets
- The problem of valuing unique objects
- Liquidity and paying taxes and expenses for objects with great value but small markets
- Irrevocable trust planning for art and collectibles
- Lifetime and post-mortem charitable giving during the donor's lifetime
- Succession planning for unique objects
- Issues related to fractional ownership interests
- Art executors and special powers of attorney
- Estate administration issues

Speakers:

Jeremiah W. Doyle, IV is senior vice president in the Boston office of BNY Mellon Wealth Management, where he provides integrated wealth management advice to high net worth individuals on holding, managing and transferring wealth in a tax-efficient manner. He is the editor and co-author of "Preparing Fiduciary Income Tax Returns," a contributing author of Preparing Estate Tax Returns, and a contributing author of "Understanding and Using Trusts," all published by Massachusetts Continuing Legal Education. Mr. Doyle received his B.S. from Providence College, his J.D. from Hamline University Law School, and his LL.M. in banking from Boston University Law School.

Blanche Lark Christerson is a managing director at Deutsche Bank Wealth Management in New York City, where she works with clients and their advisors to help develop estate, gift, tax, and wealth transfer planning strategies. Earlier in her career she was a vice president in the estate planning department of U.S. Trust Company. She also practiced law with Weil, Gotshal & Manges in New York City. Ms. Christerson is the author of the monthly newsletter "Tax Topics." She received her B.A. from Sarah Lawrence College, her J.D. from New York Law School and her LL.M. in taxation from New York University School of Law.

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Trust & Estate Planning for Collectibles, Art & Other Unusual Assets Teleseminar
September 17, 2019
1:00PM – 2:00PM
1.0 MCLE GENERAL CREDITS

VBA Members $75
Non-VBA Members $115

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Sponsor:	Vermont Bar Association
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Seminar Title:	Trust & Estate Planning for Collectibles, Art & Other Unusual Assets
Location:	Teleseminar - LIVE
Credits:	1.0 MCLE General Credit
Program Minutes:	60 General

Luncheon addresses, business meetings, receptions are not to be included in the computation of credit. This form denotes full attendance. If you arrive late or leave prior to the program ending time, it is your responsibility to adjust CLE hours accordingly.

TAX AND ESTATE PLANNING FOR ART & COLLECTIBLES

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I. Introduction
   a. Estate tax disaster – Estate of Ileana Sonnabend
   b. The DiGrazia solution – burn it

II. Income Tax Issues
   a. Three income tax issues:
      i. Can I deduction the expenses incurred to maintain the collection?
      ii. Can I deduct any losses?
      iii. How are gains taxed?
         1. Ordinary income
         2. Gain on collectibles taxed at 28% plus possibility of 3.8% surtax
         3. Possibility of §1031 exchange
   b. Income tax answers depend on status as dealer, investor, collector or creator

III. Estate Tax Issues
   a. Applicable exclusion amount - $5,490,000 per person indexed for inflation
   b. Estate tax rate: 40%
   c. Illiquid nature of collectibles
   d. Possible deductions:
      i. Marital deduction
      ii. Charitable deduction

IV. Charitable Giving Solution
   a. Factors:
      i. Amount of deduction: fair market value or cost basis
      ii. Type of property: cash, long term capital gain, ordinary income
         1. Define long term capital gain and ordinary income property
      iii. Type of organization: public charity or private foundation
   b. Lifetime gifts to charity – related use rule
      i. Applies to long-term capital gain tangible personal property
      ii. Examples
      iii. Sale of tangible personal property worth over $5,000 by charity within 3 years of gift
   c. Gift of future interests
      i. Example: give painting to charity but retain right to keep it in home for life

    ii. Example: doctor with medical books
d. Partial interest rule – no charitable deduction but subject to 9 exceptions
    i. Trap: work of art and its copyright treated as two interests in one property
e. Fractional gifts of art
    i. (a) Timing limitation and (b) possession and use limitation
f. Bargain sale
g. Loan
    i. Loan of artwork to a public charity for use related to its exempt function is not a taxable gift.
    ii. Loan to a foreign museum is not covered by the above exemption
h. Charitable remainder trust (CRT)
    i. Benefit:
        1. CRT can sell property without incurring a tax hit
    ii. Tax traps:
        1. Income tax deduction delayed until property is disposed of by the CRT
        2. Related use rule applies: income tax deduction is lower of fair market value or cost basis
        3. Charitable deduction is actuarial value of remainder interest times the lower of fair market value or cost basis
i. Private operating foundation as a way to get tax benefits and maintain some control over the collection
    i. Allows donor to retain control of governance, maintenance and operation
    ii. Benefits:
        1. Long-term capital gain property transferred to foundation eligible for income tax charitable deduction equal to fair market value up to 30% of AGI
        2. Assets transferred to foundation are not subject to gift or estate tax
        3. No gain when foundation sells assets
        4. Foundation may be able to avoid sales tax on art it purchases
        5. Donor can maintain control over management and use of art
        6. May pay family member reasonable compensation for services
        7. Serves as a way to bring the family together
    iii. Qualifications: Pass income test and either (1) asset test, (2) endowment test or (3) support test
    iv. What donor can and cannot do:
        1. Allowed: donate a residence and works of art to be used as a museum open to the public
        2. Not allowed: maintain art in donor's residence – self-dealing
j. Testamentary charitable gift
    i. Estate tax deduction available

ii. Unlike income tax rules, there is no distinction between a public charity and a private foundation for estate tax purposes
iii. There is a related use rule for a testamentary charitable transfer when there is a retained copyright interest
iv. No income tax charitable deduction for testamentary transfers
    1. Thus, lifetime charitable transfer is more tax efficient

k. Appraisals and substantiation rules
    i. Qualified appraisal by qualified appraiser needed for income tax deduction of gift over $5,000
    ii. Must be timely prepared – no earlier than 60 days before gift nor later than filing date of income tax return
    iii. Form 8283 – appraisal summary
    iv. Need 8x10 inch transparency
    v. Attach appraisal to income tax return for art worth $20,000 or more

V. Gifts to individuals
  a. Testamentary bequest
    i. Draft as specific bequest
    ii. Address payment of storage and delivery costs
    iii. Draft to support selling expenses
  b. Annual exclusion gifts
  c. Applicable credit gifts
  d. Undivided fractional interests
    i. Is a valuation discount available?
      1. <u>Stone</u> case
  e. Art family limited partnership or limited liability company
  f. Marital deduction
  g. Formalities of transfer

VI. Conclusion