



# DON'T TAX YOURSELF

A Publication of Bowditch & Dewey's Estate, Financial & Tax Planning Group

## Massachusetts Supreme Judicial Court Ruled Irrevocable Income-Only Trusts a Viable Tool in Long-term Care Planning

BY KRISTIN WILDMAN SHIRAHAMA • JUNE 1, 2017

In *Mary E. Daley v. Secretary of the Executive Office of Health and Human Services* and *Lionel C. Nadeau v. Director of the Office of Medicaid*, which were consolidated in an appeal to the Massachusetts Supreme Judicial Court, the SJC ruled in its May 30, 2017 decision that Irrevocable Income-Only Trusts (IIOTs) can be a viable tool in long-term care planning. The *Nadeau* case involved an applicant who placed a home into an IIOT with a lifetime right to use and occupancy while the *Daley* IIOT held a remainder interest, the applicant retaining a life estate interest in the primary residence. The Court found that the homes were not countable assets because the right to use and occupancy, either under terms of the trust or through a life estate, is an income interest which does not affect MassHealth eligibility. The income interest does, however, affect the amount the applicant must pay toward his or her nursing home placement because income, less some allowable deductions, is applied toward the cost of nursing home placement.

While this ruling is favorable, the SJC remanded both cases for MassHealth to resolve additional issues. In *Nadeau*, the case was remanded for MassHealth to determine whether the grantor's right to appoint principal to charities means that the trust assets are countable, because hypothetically this power could be used to appoint the principal to a nonprofit nursing home to pay for nursing home care. The court indicated that approximately one quarter of Massachusetts nursing homes are operated by nonprofit organizations. This is concerning because the ability to appoint the trust property to a charity is a power retained so that the trust is considered a "grantor trust" for income and estate tax purposes. The SJC also remanded the cases for MassHealth to determine if the trustee's ability to distribute trust principal to the grantors to pay income taxes means that a portion of the trust is a countable asset. Concern is once again raised about whether the inclusion of grantor trust provisions, which provide tax efficiency, are at odds with MassHealth eligibility for the grantor.