SHIPMAN & GOODWIN LLP®

COUNSELORS AT LAW

MAY 2011

Trusts & Estates Alert

Retroactive Connecticut Estate and Gift Tax Legislation Passed

The Connecticut General Assembly has passed, and Governor Malloy has signed, tax legislation that retroactively reduces the Connecticut Estate Tax Exemption to $2 million from $3.5 million for the estates of Connecticut residents dying after December 31, 2010. The legislation also reduces retroactively the Connecticut Gift Tax Exemption from $3.5 million to $2 million for gifts made by Connecticut residents after December 31, 2010. The legislation does not alter the maximum rate applicable to taxable estates and gifts. The maximum rate remains at 12%.

When we wrote to you earlier this year regarding the impact of recent changes to the federal estate tax laws, we explained that the difference between the federal exemption amount (currently $5 million) and the Connecticut exemption amount could be problematic as many current estate planning documents contain formula clauses that reference only the federal exemption, and, therefore, could result in a Connecticut estate tax that would come due at the death of the first spouse. This problem is exacerbated by the reduction in the Connecticut estate tax exemption from $3.5 million to $2 million. Therefore, although waiting to see what Congress does in 2013 (when the present $5 million exemption is set to expire) is certainly an option, most clients should consider contacting their attorney in the Trusts & Estates practice group to review the impact of the new legislation. In addition, clients should keep in mind when making taxable gifts that, although the federal gift tax exemption is $5 million, the significantly lower Connecticut gift tax threshold of $2 million may result in Connecticut gift tax even where no federal gift tax applies.

Filing Requirement for Foreign Bank Accounts

On February 24th, the Department of the Treasury, acting pursuant to the authority of the Bank Secrecy Act, issued Final Regulations ("Regulations") regarding filing requirements for certain persons and entities with respect to foreign bank accounts and accounts with foreign financial institutions.

These Regulations became effective on March 28th of this year and ***require filing by June 30, 2011 for accounts existing in 2010***.

The Regulations occupy 13 closely printed pages of the Federal Register (Volume 76 Number 37, February 24, 2011/Rules and Regulations), so in this very brief report, we cannot to any degree encompass their substance. We seek here only to alert you to the existence of these new rules.

Trusts & Estates

Stuyvesant K. Bearns

James T. Betts

Coleman H. Casey

Danielle P. Ferrucci

Stephen K. Gellman

Bryon W. Harmon

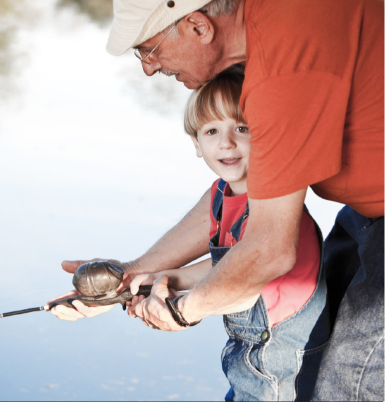
Charles B. Kaufmann, III

Lori E. Romano

Lesley I. B. Schless

Lyn Gammill Walker

www.shipmangoodwin.com



Here are some key points:

1. Filing of a Report of Foreign Bank [or] Financial Account ("FBAR") is required for accounts which ***at any time during the calendar year had a value of $10,000 or greater***.
2. The definition of a foreign account is broad and includes, in addition to bank and brokerage accounts, such things as an insurance policy or annuity policy with a cash value.
3. U.S. citizens and resident aliens are required to file, as are entities such as corporations, partnerships, LLCs "created or organized under the laws of the United States" and trusts or estates "formed under the laws of the United States" if there is a "financial interest in" or "signature authority over" the foreign account.
4. One has a "financial interest" if one is, (a) the owner of record or holder of legal title or, (b) an agent, nominee, attorney or some other person acting with respect to the account or, (c) a corporation or partnership meeting certain percentage requirements as to ownership, voting power or an interest in partnership capital or, (d) a trust or other entity meeting similar percentage requirements.
5. Reporting is done by the filing of a form called "TD F 90-22.1". This is filed directly with the Treasury, not with your tax return. The form must be ***received*** by June 30th. It is not enough to prove that it was mailed or otherwise sent.
6. Failure to file results in a civil penalty up to $10,000. However, if the failure is deemed to be willful, the penalty is the greater of $100,000 or ***half the value of the account***. It appears that, at least in the first instance, it is the Treasury which determines willfulness.

These reporting requirements have an extraordinarily broad reach and much remains to be clarified about them. However, given the draconian penalties which can be imposed, their broad reach and the short period of time which remains for filing, we believe it is imperative that anyone who ***might*** fall within the reporting rules seek advice promptly.

Trusts & Estates

Stuyvesant K. Bearns
(860) 435-2330
sbearns@goodwin.com

James T. Betts
(860) 251-5150
jbetts@goodwin.com

Coleman H. Casey
(860) 251-5112
ccasey@goodwin.com

Danielle P. Ferrucci
(860) 251-5105
dferrucci@goodwin.com

Stephen K. Gellman
(860) 251-5109
sgellman@goodwin.com

Bryon W. Harmon
(860) 251-5106
bharmon@goodwin.com

Charles B. Kaufmann, III
(203) 869-5600
ckaufmann@goodwin.com

Lori E. Romano
(203) 869-5600
lromano@goodwin.com

Lesley I. B. Schless
(203) 863-6431
lschless@goodwin.com

Lyn Gammill Walker
(860) 251-5146
lwalker@goodwin.com

www.shipmangoodwin.com/trustsandestates/

SHIPMAN & GOODWIN LLP®
COUNSELORS AT LAW

One Constitution Plaza
Hartford, CT 06103-1919
860-251-5000

300 Atlantic Street
Stamford, CT 06901-3522
203-324-8100

1133 Connecticut Avenue NW
Washington, DC 20036-4305
202-469-7750

289 Greenwich Avenue
Greenwich, CT 06830-6595
203-869-5600

12 Porter Street
Lakeville, CT 06039-1809
860-435-2539

www.shipmangoodwin.com