



The primary purpose of this newsletter is to advise you of recently issued IRS regulations which will affect the manner in which we provide written advice to our clients. We also update you on two recent developments relating to Florida's intangible personal property tax and documentary stamp tax, offer some comments on the Federal estate tax and exemptions, and summarize some of the provisions of the recently enacted Bankruptcy Bill.

505 South Flagler Drive
Suite 1100
West Palm Beach, FL
33401

(561) 659-3000

www.jones-foster.com

CIRCULAR 230

Earlier this year, the United States Department of Treasury issued final regulations to Circular 230 (the "Circular Regulations"), which became effective June 20, 2005. The Circular Regulations set forth rules that tax practitioners, including lawyers and certified public accountants and other professionals, are required to follow when providing written communications on federal tax issues. Federal tax issues are those concerning the federal tax treatment of an item of income, gain, loss, deduction or credit, the existence or absence of a taxable transfer of property, or the value of property for federal tax purposes. The Circular Regulations cover much more than formal legal opinions. They apply to any written communication relating to any federal tax matter, including e-mail messages, memoranda and correspondence sent to clients. Practitioners who fail to comply with the Circular Regulations may be suspended or disbarred from practice before the Internal Revenue Service, publicly censured or fined.

Although the Circular Regulations may increase the cost of delivering certain written materials, such as formal written tax opinions to our clients, they will not cause us

to raise our normal fees. You will see new statements in some of our communications referring to the Circular Regulations. All responsible tax practitioners will follow the requirements of the Circular Regulations and will include similar clauses. We will continue to strive to deliver the highest quality services to you in a cost-efficient manner and will advise you when the Circular Regulations will require us to expend more time in rendering advice to you. If you have any questions or comments regarding the Circular Regulations, please do not hesitate to contact us.

FLORIDA INTANGIBLES TAX

Florida's intangible personal property tax (the "Tax") is imposed on intangible personal property (stocks, bonds, notes, etc.) managed, owned or controlled by Florida residents, including corporations or partnerships located in Florida. A Florida resident may also have a taxable "beneficial interest" in a trust. The first \$250,000 of property owned or controlled by every individual (\$500,000 of property owned by a married couple) is exempt from the Tax. Beginning on January 1, 2006, the rate for the Tax will be reduced from \$1.00 to \$.50 per \$1,000 of value of intangible assets as of January 1st.

Advertisement

SINCE 1924

The hiring of an attorney is an important decision that should not be based solely upon advertisements. Before you decide, ask us to send you free written information about our qualifications and experience.

Intangibles tax "avoidance" irrevocable trusts may still be used to avoid or lessen the Tax. If you do not have such a trust and want to discuss whether such a trust may apply to you, please do not hesitate to contact us.

DOCUMENTARY STAMP TAX

In Florida, when property is conveyed to an entity such as a corporation, limited liability company or limited partnership, documentary stamp tax must normally be paid at the rate of \$.70 for each \$100 of consideration. There is authority that reasonably supports the position that no documentary stamp tax should be paid when owners of real property convey it to an existing entity that has assets in which the transferrors have the same ownership percentages. See Kuro, Inc. v. State Department of Revenue, 713 So.2d 1021 (Fla. 2nd DCA 1998).

The Third District Court of Appeal decision in Crescent Miami Center, LLC v. Department of Revenue, No. SC03-2063 (Fla. May 1st, 2005), was reviewed by the Supreme Court on May 19, 2005, which determined that the documentary stamp tax did not apply to a transfer of unencumbered real property from a grantor to its wholly-owned entity because nothing was exchanged by the grantee limited liability company for the property received by the grantor limited partnership. Because

the transaction was merely a change in the form of ownership by the entities involved, no documentary stamp tax was due. Taxpayers have three (3) years from the date of payment of the tax within which to request any available refund.

FEDERAL ESTATE TAX

The federal estate tax exempt amount is currently \$1.5 million. It is scheduled to increase to \$2 million in 2006, and to \$3.5 million in 2009. The federal estate tax is scheduled to be repealed in 2010, and reinstated in 2011. Florida has no estate tax.

The House of Representatives has voted to repeal the federal estate tax. The Senate has not followed suit and apparently there is not enough support for a full repeal (60 votes). Most commentators believe there will be a compromise in the form of higher federal estate tax exemptions and in lower rates. In the meantime we can only undertake estate planning based on the known exemptions.

NEW BANKRUPTCY ACT

The President signed the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 on April 20, 2005. Those provisions are effective October 17,

2005. The main thrust of the Bankruptcy Act is to reduce the attractiveness of bankruptcy and make it an option of last resort.

There is a new "means" test which, if the test is not met, precludes a straight liquidation of debts under Chapter 7. If the combined gross income of the debtor's family exceeds the median family income of the state, then the debtor will be placed on a thirty-six to sixty month repayment plan under Chapter 13 and be precluded from pursuing relief under Chapter 7.

We had feared that the homestead protection might have been limited under the new Act; however, personal residences owned for at least forty months are totally protected. The new Act also completely protects qualified plans, SEPs and SIMPLE IRAs, but places a limit of \$1 million on the exemption for traditional and Roth IRAs which have not been funded as rollovers from other qualified plans.

COMING ATTRACTIONS

We will publish our annual year-end tax letter this fall. In that publication we will expand on the Bankruptcy Act, provide an outline of new provisions applicable to Charitable Remainder Trusts, update our annual discussion on the utilization of Family Limited Partnerships and similar entities, and discuss the new Roth 401(k) plans (among others).