



2021 Delaware Tax Institute There's No Masking Impending Tax Updates

*Co-sponsored by Widener University Delaware Law School,
Estate Planning Council of Delaware, Society of Financial
Service Professionals - Delaware Chapter, and the Delaware
State Bar Association*

Presentations on 2021 Income Tax Developments; Estate
Planning and Gift Tax Update; Ethics

VIRTUAL Presentations Via ZOOM

Thursday, November 18, 2021

8:00 a.m. – 12:30 p.m.

Delaware Law School

delawarelaw.widener.edu

Delaware Tax Institute

2021: There's No Masking Impending Tax Updates

Co-sponsored by Widener University Delaware Law School, Estate Planning Council of Delaware, Society of Financial Service Professionals – Delaware Chapter, and the Delaware State Bar Association

Agenda for Thursday, November 18, 2021

- 8:00-8:15 a.m. Welcome**
Rodney A. Smolla
Dean and Professor of Law
Widener University Delaware Law School
- 8:15-9:15 a.m. Income Tax Planning**
Moderator:
Kathy S. Schultz, CPA, AEP
Belfint Lyons & Shuman, P.A.
- Panelist:
Michael D. Kelly, CPA
Belfint Lyons & Shuman, P.A.
- 9:15-10:15 a.m. Estate Planning**
Moderator:
Daniel F. Hayward, Esquire
Gordon Fournaris & Mammarella, P.A.
- Panelists:
Janice M. Matier, Esquire
Richards Layton & Finger, P.A.
- Jennifer E. Smith, Esquire
McCullom D'Emilio Smith Uebler LLC
- 10:15-10:30 a.m. BREAK**

10:30-11:30 a.m. Distinguished Speaker
Jared Bernstein
A Member of the Council of Economic Advisers to
President Joseph R. Biden

11:30-12:30 p.m. Confidentiality, Conflicts and Candor: Three Hot Issues in
Tax-related Counseling and Litigation

Moderator:

Matthew F. Boyer, Esquire
Partner, Connolly Gallagher LLP

Panelist:

Scott E. Swenson, Esquire
Connolly Gallagher LLP

12:30 p.m. ADJOURN

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2021 Delaware Tax Institute Planning Committee

Jocelyn Margolin Borowsky, Duane Morris; John “Jack” P. Garniewski Jr., Family Office Solutions, LLC; Bruce Grohsgal, Widener University Delaware Law School; Daniel F. Hayward, Gordon Fournaris & Mammarella, P.A.; Carol A. F. Perrupato, Widener University Delaware Law School; Kathryn S. Schultz, Belfint Lyons & Shuman, P.A.; W. Donald Sparks II, Richards Layton & Finger, P.A.; Leo E. Strine, The Financial House; and Vincent C. Thomas, Young Conaway Stargatt & Taylor, LLP.

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Course materials will be available for download as a pdf at
delawarelaw.widener.edu/delawaretax

BIOGRAPHIES

Jared Bernstein, Distinguished Speaker



Jared Bernstein is a member of President Biden's White House Council of Economic Advisers. He was a Senior Fellow at the Center on Budget and Policy Priorities from 2011 to 2020. From 2009 – 2011, he was Chief Economist and Economic Advisor to then-Vice President Biden.

JOCELYN MARGOLIN BOROWSKY

Partner, Duane Morris, LLP, Wilmington, DE 19801



Jocelyn Margolin Borowsky, a fellow of the American College of Trust and Estate Counsel ("ACTEC"), practices in the areas of estate planning, estate and trust administration and fiduciary litigation in Delaware, New Jersey, and Pennsylvania. *Sophisticated Estate Planning.* A large part of her practice involves the review of clients' overall estate plans, preparation of wills and revocable trusts, and where appropriate, implementation of sophisticated trusts, such as lifetime spousal trusts, asset protection trusts, life insurance trusts, dynasty trusts, BOLI trusts, DINGs, BDITs, GRATs and IDITs. Ms. Borowsky also works with closely-held family businesses and professionals on issues involving strategic tax and business planning, the use of captive insurance and the creation of private family foundations and represents executives of publicly traded companies and shareholders of privately held companies going public. *Modification and Other Advice on Delaware Trusts.* Ms. Borowsky routinely advises clients with respect to resolving trust administration matters, modifying trusts, structuring new Delaware trusts and transferring existing trusts to Delaware through decanting or other means. As an active participant in state bar statutory drafting committees, she is well versed in the preparation of Delaware directed trusts and in the creation of confidential trusts. Ms. Borowsky also has served as an expert witness in matters involving a Delaware directed trust and an executor's breach of fiduciary duty. *Litigation and Audits.* Ms. Borowsky represents fiduciaries and beneficiaries in trust and estate litigation. She also handles tax controversy matters, including estate and gift tax audits by the Internal Revenue Service and state taxing authorities. She is AV® Preeminent™ Peer Review Rated by Martindale-Hubbell and listed in *The Chambers Guide to the Leading High Net Worth Lawyers*.

Areas of Practice

- Wealth Planning
- Estate Planning
- Estate and Trust Administration
- Fiduciary Litigation



Matthew F. Boyer

302-884-6585

mboyer@connollygallagher.com

Education

- University of Virginia School of Law (J.D., 1986)
- Harvard College (B.A., 1980)
Major: English and American Literature and Language
Honors: cum laude
- Newark High School,
Newark, Delaware (1975)

Bar Admissions

- Delaware, 1987
- United States District Court
District of Delaware, 1987
- United States Supreme
Court, 1994
- United States Court of
Appeals Federal Circuit, 2002
- United States Court of
Appeals 3rd Circuit, 2003

Professional Experience

- Law Clerk to The Honorable
Chief Justice Andrew D.
Christie, Delaware Supreme
Court (1986 - 1987)

Honors

- Delaware Today Top Lawyers
- Employment-Labor Law,
Employee
- The Best Lawyers in
America® -Ethics and
Professional Responsibility
Law, Employment Law
-Management, Employment
Law - Individuals

As co-chair of the firm's labor and employment group, Matt provides legal counsel and litigation services on a broad range of employment law issues. His employment practice includes compliance counseling, employment discrimination litigation, drafting and enforcement of employment agreements and restrictive covenants, internal investigations, and employment-related mediations. Matt also works closely with the firm's Government Law Group in defending Delaware State agencies and municipalities in high-profile litigation. Most recently, he assisted in successfully defending the constitutionality of the Delaware's vote-by-mail statute in two separate expedited litigations prior to the 2020 general election. *Republican State Comm. v. Dep't of Elections*, 2020 WL 5758695 (Del. Ch. Sept. 28, 2020); *League of Women Voters of Delaware, Inc. v. Dep't of Elections*, 2020 WL 5998161 (Del. Ch. Oct. 9, 2020). Previously, Matt was part of the team that successfully defended the State of Delaware before the United States Supreme Court in an original jurisdiction action brought by New Jersey that challenged Delaware's sovereignty over the Delaware River within its historic Twelve-Mile Circle. *New Jersey v. Delaware*, 552 U.S. 597 (2008). Since 2008, Matt has served as a special master by appointment of the Delaware Superior Court including in cases pending in its Complex Commercial Litigation Division and he is a Superior Court mediator.

Drawing on his prior service with the Delaware Supreme Court's Office of Disciplinary Counsel and the Board of Bar Examiners, Matt also represents attorneys, physicians, social workers, and other professionals in regulatory and disciplinary proceedings. He provides advice on legal ethics issues and is a frequent speaker at continuing legal education programs on legal ethics. Matt has been selected for inclusion in *The Best Lawyers in America*® for employment law since 2011, and in 2018 he earned the "Lawyer of the Year" designation for ethics and professional responsibility law, Delaware. Matt has been identified in *Delaware Super Lawyers* and *Delaware Today's Top Lawyers* for employment law. In 2019, he was presented with the Delaware State Bar Association's Daniel L. Herrmann Professional Conduct Award.

Representative Experience

- League of Women Voters v. State of Delaware Department of Elections, 250 A.3d 922 (Del. Ch. 2020)
- Eaton Corp. v. Geisenberger, 2020 WL 5531589, at *1 (D. Del. Sept. 30, 2020)
- Republican State Committee v. State of Delaware Department of Elections, 250 A.3d 911 (Del. Ch. 2020)

Publications

- Practical Law State Q&A Employee Privacy Laws: Delaware Thomson Reuters, September 2019
- The Role of Historical Context in *New Jersey v. Delaware III* Delaware Law Review, 2008

John “Jack” P. Garniewski Jr., CPA/PFS, CFP, AEP



As the President of Family Office Solutions, LLC, Jack leads seasoned professionals who are responsible for delivering advice and service to a national client base of multi-generational families and business owners. Jack works directly with clients to help manage the multi-dimensional aspects of their family's financial affairs.

Jack and his teams work closely with clients and their advisors to develop and support financial strategies that assist clients in meeting their current needs while planning for long-term goals. For some of his clients, this also means serving as executive director, business manager, advisor, and confidant, as well as developing intergenerational strategies customized to best meet their needs.

Jack has more than three decades of experience in providing advice and overseeing the execution of financially related solutions for wealthy families. This includes the strategic leadership and business management responsibilities associated with oversight of multiple family offices and other entities.

Jack holds an MBA in Taxation from Drexel University and earned his bachelor's degree from Villanova University. Jack is a Certified Public Accountant in Delaware and Pennsylvania. He serves as President of the Board of NAEPC (National Association of Estate Planners and Councils) and as a director on numerous family foundations. He is President of the Board of Directors of the Delaware Art Museum and serves on the Board of Directors for various professional and community committees.

He frequently speaks at Family Office and other related professional conferences locally and nationwide, including The National Association of Estate Planners and Councils, the Society of Financial Service Professionals, the Wilmington Tax Group, the Delaware Tax Institute, the Family Firm Institute, Attorneys for Family Held Enterprise, and the Connex International Strategic Investment Sector Meeting. Born and raised in New Castle, Delaware, Jack currently resides in Chester County, Pennsylvania.

Professor Bruce Grohsgal



Bruce Grohsgal is the Helen S. Balick Professor in Business Bankruptcy Law. He joined the faculty in July 2014.

He previously practiced law for more than 30 years, most recently at the Wilmington, Delaware office of Pachulski Stang Ziehl & Jones, LLP. He has represented debtors, creditors' committees, and trustees in chapter 11 bankruptcy cases and litigation, including the debtors in Solyndra, Global Home Products/Anchor Hocking/Mirro/WearEver, Chi Chi's and Trans World Airlines, the creditors' committees in Freedom Communications (Orange County Register) and Jevic Transportation, the medical benefits retirees' committee in Allied Systems Holdings, Inc., and the chapter 11 trustee in Le-Nature's.

Professor Grohsgal is the Editor-in-Chief of the Norton Journal of Bankruptcy Law and Practice, and of the Norton Annual Survey of Bankruptcy Law, and is the Director of the Institute of Delaware Corporate and Business Law. He was a Senior Fellow at Americans for Financial Reform, Washington, D.C., from October 2012 to January 2013, while on sabbatical from his former firm, and was the Chair of the Bankruptcy Section of the Delaware State Bar Association in 2008-2009. He has spoken on numerous bankruptcy topics, including "first day" hearings, the sale of a business and other assets in bankruptcy, unsecured creditors' committees, executive compensation, derivatives, repos and financial instruments in bankruptcy, and the discharge of student loans by individuals in bankruptcy.

He received his B.A. from Brandeis University in 1977 and his J.D. from Columbia Law School in 1980, where he was a Stone Scholar.

Daniel F. Hayward



Director

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DANIEL F. HAYWARD is a Director at the Wilmington law firm of Gordon, Fournaris & Mammarella, P.A. Daniel graduated with a Bachelor of Science degree in Chemical Engineering from the University of Delaware. He received his law degree from Villanova University School of Law in 2006, and received his LL.M. in Taxation from the Villanova University School of Law in 2015. He is a member of the Delaware Bar Association, and also a member of the Estates and Trusts Section, of which he served as Chair during 2015-2016. He is a Fellow of the American College of Trust and Estate Counsel.

Daniel's practice focuses on the unique aspects of Delaware trust law including directed trusts, dynasty trusts, asset protection trusts and all aspects of the validity, construction and administration of Delaware trusts. Daniel routinely petitions the Delaware Court of Chancery to represent interested parties in the reformation of trusts and to transfer the situs of certain trusts to the State of Delaware. He also drafts, reviews and comments on Delaware trust agreements for local and out of state clients and provides legal opinions on the validity of trusts under Delaware law, including Delaware dynasty trusts and Delaware self-settled asset protection trusts.

Daniel also represents and advises Delaware corporate and individual trustees regarding trust administration and the legal aspects of their fiduciary roles. His practice also frequently includes representation of Delaware trustees in fiduciary litigation matters, in particular actions in the Delaware Court of Chancery seeking construction of trust provisions or instructions from the Court as to various matters of trust administration.

Daniel resides in Hockessin, Delaware with his wife Stephanie and their three children, Charlotte, Lila and Sebastian.

Areas of Practice:

[Trusts and Estate Planning](#) [2]

[Fiduciary Litigation](#) [3]

[Taxation](#) [4]

We are listening



Michael D. Kelly, CPA Principal – Tax & Small Business



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Michael has over ten years of experience focusing on taxes while working with various types of industries including medical practices, optometrists, law firms, franchises, family-owned businesses, and construction companies.

Michael specializes in individual and business taxation, trust and estate taxation, state and local taxation, and nonprofit advisory. He frequently assists clients with their accounting questions and has a strong understanding of QuickBooks and other bookkeeping software. Continuously thinking of creative solutions to minimize taxes for his clients and increase client efficiency are two of the many areas where Michael excels. He also enjoys the challenge of researching uncertain or unusual federal and state income tax issues, including being heavily involved with his clients on the PPP loan and forgiveness application process.

Michael has been published in the Delaware Bankers Association's magazine and has presented tax updates at the Society of Financial Service Professionals and at the Delaware Tax Institute.

Professional Affiliations

- American Institute of Certified Public Accountants
- Delaware Society of Certified Public Accountants
- Estate Planning Council of Delaware
- Wilmington Tax Group

Education

- University of Delaware – Bachelor of Arts Degree in Mathematics Education
- University of Delaware – Bachelor of Science Degree in Accounting
- Villanova School of Business – Masters in Taxation

Community Service

- Wilmington Flower Market – Volunteer

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JANICE M. MATIER practices in the areas of estate planning, estate administration, tax planning and wealth preservation. A member of the firm's Trusts and Estates Group, her practice focuses on representing high net worth individuals in implementing sophisticated estate plans. Janice also represents fiduciaries and beneficiaries in the administration of estates and trusts, and has handled cases in the Chancery Court in Delaware and the Orphans' Court in Pennsylvania.

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Kathy specializes in providing intricate tax planning and compliance services for individuals, businesses, guardianships, estates, and trusts and makes her clients feel comfortable by taking the time to explain each situation so they gain an understanding of their financial situation. She frequently works with a diverse network of professionals, including local attorneys, to ensure her client's estate and trust tax matters are properly handled. Kathy is instrumental in the firm's International Services team which assists with tax compliance and accounting services for international businesses and individuals. Kathy also assists clients with corporate service matters for Delaware investment holding companies.

Kathy is often asked to present at client, professional, and business groups about recent tax law changes, domestic and international tax matters, and estate and trust planning.

Professional Affiliations

- American Institute of Certified Public Accountants
- Delaware Society of Certified Public Accountants
- Delaware Tax Institute
 - Board Member (2010 – Present)
- Estate Planning Council of Delaware
- PrimeGlobal – International Tax Special Interest Group
- World Trade Center of Delaware
- Wilmington Tax Group
- Delaware State Board of Accountancy – Past Chair

Education

- University of Delaware – Graduated Cum Laude with a Bachelor of Science Degree in Accounting

Community Service

- Philadelphia Chapter and Board Member of the Delaware Chapter of the National Speleological Society
 - Treasurer of Philadelphia Chapter (2009 – 2015)
- Volunteer for the Delaware Division of Fish and Wildlife for the Department of Natural Resources and Environmental Control

Awards & Recognition

- Recipient of the AICPA and DSCPA's 2011 Women to Watch for Established Leaders award.
- Recognized in "Delaware Today" as a 2012 and 2013 FIVE STAR Wealth Manager

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Jennifer E. Smith

Jenny is a founding partner of MDSU and practices in the areas of estate planning, estate and trust administration, tax planning, wealth preservation, and fiduciary litigation. She advises clients on all aspects of estates and trusts, including wills, powers of attorney, probate and estate administration, and guardianships. In addition, Jennifer advises individual trustees, banks, and trust companies regarding trust modifications, terminations, mergers, decantings, nonjudicial settlements, and trust situs changes.



Jenny is a published author and frequent speaker on issues and developments related to trusts and estates. She has presented nationally on various topics, including directed trusts, nonjudicial methods of modification, and recent developments to state and federal trust law.

Jenny has been recognized by Chambers – High Net Worth since 2018, she is certified as an Accredited Estate Planner® by the National Association of Estate Planners & Councils, and is the recipient of a Powerwomen Award for business growth.

W. Donald Sparks II, Esquire



W. Donald Sparks II, Director of Richards, Layton & Finger, P.A., practices primarily in the areas of estate planning, estate administration, tax-exempt organizations and fiduciary litigation. He received his B.A. degree, *summa cum laude*, from Dartmouth College and his J.D. from Yale Law School where he served as a Senior Editor of the Yale Law Journal. He clerked for Judge Caleb Wright of the U. S. District Court for the District of Delaware. He is a fellow of the American College of Trust and Estate Counsel ("ACTEC"). He is a member of the Real Property and Trusts Section of the Pennsylvania Bar Association and the Tax and Estates and Trusts Sections of the American Bar and Delaware Bar Associations. He is a past chairman of the Delaware Bar Association Section of Taxation, a past Chairman of the Delaware Bar Association Estates and Trusts Section, and a past Chairman of the Estate Planning Council of Delaware, Inc. He is a frequent speaker and author on estates, trusts, and other tax-related topics having appeared for ACTEC, The University of Miami Estate Planning Institute, the Delaware Tax Institute and the Delaware Bankers Association Trust Conference. He has also served as a Board member and officer of numerous charitable organizations, including the Brandywine Conservancy & Museum of Art.

Leo E. Strine, CLU, ChFC, MSFS, MSM



Leo Strine started his career in the financial services industry back in 1975. Until that time, he was a buyer for a major department store in Philadelphia but, with a growing family, decided that he wanted a different career that would give him more independence while working with people. At that time, there were no real financial planners per se. There were stock brokers, insurance agents, accountants and lawyers who did work in helping people with their finances. Leo came into the industry as an insurance agent. After several years, it became evident that in order to help his clients, he had to be more knowledgeable about their finances, their lives, and their

financial goals.

Always being a person who believed in education, Leo realized that he needed to acquire knowledge in all of those fields of expertise. So over the years, he acquired his Chartered Life Underwriter (CLU) and Chartered Financial Consultant (ChFC) designations and became a licensed Registered Representative in the security industry. But, he didn't stop there. Leo also earned the formal degrees of Master of Science in Financial Services (MSFS) and a Master of Science in Management (MSM). And with updating his knowledge with continuing education courses, felt confident in being able to help his clients and work with their other advisors in order to fulfill their financial needs and goals.

Leo also believed that he had to give back to his industry. So over the years, he held leadership roles as president in the Delaware Association of Insurance and Financial Advisors, the Society of Financial Services Professionals, Delaware Chapter and the Estate Planning Council of Delaware. And, he still holds memberships in each of those organizations as well as the Wilmington Tax Group.

Leo is an Emeritus member of the Professional Achievement in Continuing Education (PACE) program and served on the national Board of Directors of the Society of Financial Service Professionals.

When not in his office, he enjoys time traveling with his wife, Peggy, of 56 years to their favorite places in Ireland, France, England, Scotland and Amsterdam. And, currently with two grandsons in college, both enjoy making sure they get to see each of their soccer games. As long time soccer fans, the Strines have gone to games in Dublin, Manchester, London, Paris and Glasgow.

Together Leo and Peggy have resided in Hockessin since 1973 and raised two sons who have made us proud with their own accomplishments as Chief Justice of the Delaware Supreme Court and First Vice President of the Federal Reserve Bank of New York.



Scott E. Swenson

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Scott Swenson focuses his practice on estate planning and settlement, estate and trust litigation, and advising trustees and other fiduciaries on matters including trust administration, trust modification, and risk management. In doing so, he helps clients achieve their strategic planning objectives and finds cost-effective solutions to the problems and controversies faced by fiduciaries and beneficiaries.

Scott has represented a variety of institutional and individual clients, as fiduciaries and as beneficiaries, in trust and estate matters before the Court of Chancery and the Supreme Court of Delaware. His practice also includes taxation, alternative entities, non-profit organizations, tax controversies, and guardianship. *Chambers High Net Worth* has ranked Scott among Delaware's top practitioners in the area of Private Wealth Law and Private Wealth Disputes, calling him "highly communicative - an exceptional attorney." A *Chambers* market observer praised Scott's "calm, sensible approach" and continues: "He's an excellent addition to any team. He's responsive, approachable, and highly creative in his approach." Another market insider described Scott as "a consummate professional" and "truly the epitome of the Delaware way," noting that "no matter how the other side is behaving, or how emotional the matter becomes, Scott remains laser-focused on gracefully, cordially arriving at an agreeably solution for all the parties." Scott was also recognized by *The Best Lawyers in America* as the 2021 "Lawyer of the Year" for Trusts and Estates in Delaware, and as the 2019 "Lawyer of the Year" for Trust and Estate Litigation in Delaware. Scott is rated AV Preeminent®, *Martindale-Hubbell's* highest rating for lawyers.

Scott is also dedicated to *pro bono* service, serving on the board of directors of Delaware Careplan, Inc., a non-profit organization dedicated to managing special needs trusts, and acting as an attorney guardian *ad litem* for the Office of the Child Advocate. In addition, Scott is former Chair of the Delaware State Bar Association's Estates & Trusts Section, and presently chairs the Section's Continuing Legal Education Committee.

Education

- University of Pennsylvania Law School (J.D.; 2005); University of Pennsylvania Journal of International Economic Law (Senior Editor); Wharton Certificate in Business
- University of Maryland (B.A. Government & Politics, Economics; 2001)

Bar Admissions

- Delaware (2005)
- Maryland (2013)
- United States District Court - District of Delaware (2006)

Honors

- AV Preeminent®, *Martindale-Hubbell*
- *Chambers USA: High Net Worth*
- *The Best Lawyers in America*®, Trusts & Estates (2016-2020)
- SuperLawyers®, Rising Star, Estate & Trust Litigation (2012-2015)
- Delaware Today Top Lawyers - Trusts & Estates

**AV Preeminent and BV Distinguished are certification marks of Reed Elsevier Properties Inc., used in accordance with the Martindale-Hubbell certification procedures, standards and policies. Ratings reflect the confidential opinions of members of the Bar and the Judiciary. Martindale-Hubbell ratings fall into two categories: legal ability and general ethical standards.*

Representative Experience

- In re the Trust f/b/o Samuel Francis duPont under Trust Agreement dated August 4, 1936, 2018 WL 4610766, 2018 Del. Ch. LEXIS 315 (Del. Ch. Sept. 25, 2018)
- In the Matter of Trust Created under Will of Harold S. Schutt, 2017 WL 3527623, 2017 Del. Ch. LEXIS 200 (Del. Ch. July 17, 2017)
- In the Matter of the Anthony C. Perkins Descendants' Trust Under the Will of Jane Howard Perkins, Deceased, Del. Ch., C.A. No. 7103-VCL (2014)
- Parrott v. Sasaki, Del. Ch., C.A. No. 7227-VCL (2012)
- Otto v. Gore, 45 A.3d 120 (Del. 2012)
- In the Matter of Trust for Grandchildren of Wilbert L. and Genevieve W. Gore, 2011 WL 3444569, 2011 Del. Ch. LEXIS 112 (Del. Ch., July 29, 2011)
- Union Hospital v. Moor, Del. Ch., C.A. No. 3055-VCS (2010)
- In the Matter of Trust for Grandchildren of Wilbert L. and Genevieve W. Gore, 2010 WL 3565489, 2010 Del. Ch. LEXIS 188 (Del. Ch., Sept. 1, 2010)
- Humes v. Charles H. West Farms, Inc., 950 A.2d 661 (Del. Super. Ct. 2007)
- In the Matter of the Trusts Created for the Benefit of Charles Perry Griffith, Jr., et al, Del. Ch., C.A. Nos. 8397, 8398, 9441, 10000, 10001, 10002, 10003-ML (consolidated)
- Motors Liquidation Company (f/k/a General Motors Corporation), et al, v. Director of Revenue, Del. Super., C.A. Nos. N10C-10-287, -288, -289 (consolidated)
- In the Matter of the Estate and Trust of Francis Joseph Sarapulski, Del. Ch., C.A. No. 10113-VCG
- In the Matter of Trust Under Will Dated August 14, 1997 Created by Elizabeth Haskell Fleitas, Del. Ch., C.A. No. 6549-VCP
- In the Matter of the Will of Frances M. Cooke, Deceased, Del. Ch., C.A. No. 7071-ML
- In the Matter of the Trusts Under Agreement Dated December 30, 1996 and the Trusts Under Agreement Dated January 13, 2006 Created by Michael J. Farrell, 2008 WL 5459270 (Del. Ch. 2008)
- In the Matter of the Purported Trust Under the Will of Mary Nina Palmer, Del. Ch., C.A. No. 5616-MA
- Reliance Standard Life Ins. Co. v. Ross, 2009 WL 159184 (D. Del., Jan.

Speaking Engagements

- Delaware State Bar Association, Fundamentals of Will Drafting and Estate Administration Webinar, "*Overview of Estate Planning*", September 2020
- Delaware Tax Law Institute, Widener University Delaware Law School, "*Recent Developments in Estate Planning: Recent Transfer Tax Letter Rulings*", December 2018
- Delaware State Bar Association, Fundamentals of Will Drafting and Estate Administration Seminar, "*Overview of Estate Planning*", October 2018
- Maryland State Bar Association Estate and Trust Study Group, "*A Comparative Look at Maryland and Delaware Trusts*", April 2018
- Delaware State Bar Association, Fundamentals of Will Drafting and Estate Administration Seminar, "*Overview of Estate Planning*", April 2017
- Choosing the Right Entity for Your Business Client, Delaware Tax Institute, Delaware Law School, Wilmington, Delaware (December 2, 2016)
- Understanding Delaware's Fiduciary Access to Digital Assets and Digital Accounts Act, Delaware State Bar Association, Wilmington, Delaware (January 29, 2015)
- Fundamentals of Will Drafting 2014, Delaware State Bar Association, Wilmington, Delaware (May 13, 2014)
- Basic Trusts for Real People, Delaware State Bar Association, Wilmington, DE (January 9, 2013)
- Basic Trusts for Real People, Delaware State Bar Association, Wilmington, DE (March 3, 2011)
- Durable Personal Powers of Attorney Act: The New Statute, Delaware State Bar Association, Wilmington, DE (September 24, 2010)
- Trust Planning and Drafting Techniques, Sterling Education Services, Wilmington, DE (May 13, 2008)

Publications

- "[Know Your Limitations; The Importance of Statutes of Limitation For Trustees](#)" Delaware Banker, Fall 2017, Vol. 13, No. 4 (pp. 10-13)
- "[Possible Privilege Pitfalls; The Fiduciary Exception to the Attorney-Client Privilege](#)" Delaware Banker, Spring 2016, Vol. 12, No. 2 (pp. 14-16)
- "[When Does a Signed Trust Document Not Create a Trust?](#)" Trusts & Estates, November 2013 (pp. 40-50) (co-author with Charles J.



Vincent C. Thomas

PARTNER

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When closely-held or public companies seek help in structuring transactions around tax, liability, business succession, and other corporate issues, they call on Vince Thomas to combine sophisticated counsel with sound and practical business judgment. His transactional skills, often in collaboration with the firm's bankruptcy group, are a unique and valuable complement to his long established practice representing institutional trustees and individuals in issues of Delaware trust and alternative entity law.

Adept at explaining intricate legal concepts in laymen's terms, Vince involves clients fully in the transaction process. In deals where a single word can have enormous future consequences, he meticulously presents his clients with every viable option, arming them with the substantive knowledge they need to make solid business decisions.

From the precise drafting of transaction documents to the complex tax planning and re-domestication of out-of-state trusts into Delaware, Vince immerses himself in the details and nuances, protecting his clients from unwarranted exposures as he guides their matters to successful resolution.

FOCUS:

- Counseling companies in complex business transactions, including, mergers, acquisitions, corporate restructurings, and financing transactions
- Counseling distressed companies on tax issues, Delaware corporate governance, and transactional matters
- Representing large businesses with general tax and transactional advice, including stock and asset purchase agreements, LLC agreements, partnership agreements, corporate charter documents and shareholders agreements.
- Combining tax, trust and transactional experience to advise distressed companies with liquidation structures
- Representing institutional trustees in all aspects of the administration of Delaware statutory and common law trusts, including, transfer of trust situs, trust reviews, tax planning, decanting, merger, and petitions in the Delaware Court of Chancery. This includes extensive experience with DING Trusts, Delaware asset

protection trusts, Delaware dynasty trusts, Delaware statutory trusts, liquidating trusts, settlement trusts and other sophisticated tax planning structures.

Practices

- Asset Protection
- Entity Formation and Governance
- Family Office Advisory Services
- Tax, Trusts and Estates
- Business Transactions
- Legal Opinions

Education

- Villanova University Charles Widger School of Law (LL.M.)
 - Tax
- Widener University Delaware Law School (J.D., *magna cum laude*)
 - (2nd in Class)
- University of Delaware (B.S.)

Bar Admissions

- Delaware

Distinctions

- American College of Trust and Estate Counsel, Member
- Named leading Delaware practitioner by Chambers High Net Worth since 2016
- Voted a top Delaware business attorney in the Delaware Today Magazine from 2015 through 2018
- Rated AV Preeminent by Martindale Hubble
- Recognized by *The Best Lawyers in America*®, Trusts and Estates, 2019

Memberships and Affiliations

- Served as the prestigious Wolcott Fellow for the Delaware Court of Chancery
- Served as a full time law clerk to Myron T. Steele, Chief Justice of the Delaware Supreme Court.

Clerkships

- Honorable Myron T. Steele, Supreme Court of the State of Delaware
- Honorable Stephen P. Lamb, Vice-Chancellor, Court of Chancery of the State of Delaware, Josiah Oliver Wolcott Fellowship Law Clerk

Representative Matters

- Successfully argued a \$350 million NOL tax issue on behalf of a client in the Bankruptcy Court.
- Assisted clients with the negotiation of substantial DIP financing.
- Structured and negotiated numerous out of court asset sales and liquidations for distressed clients.
- Represented numerous closely held businesses with significant asset sales and purchases, recently including, by way of example:
 - Disposition of 44 grocery stores and 37 pharmacies in the Midwest for a distressed client.
 - Acquisition of a substantial rail transfer station.
 - Sales and acquisitions of automobile dealerships.
 - Acquisition and sales of restaurant franchises.
 - Sale of a \$50 million mobile home park.

Publications

August 1, 2018

The Potential Impact of the New Partnership Audit Rules

Trusts & Estates, Vol. 157, No. 8

April 2, 2018

Practical Tips When Filing Bankruptcy Cases Involving Delaware LLCs

CCH Journal of Passthrough Entities, March-April 2018

April 1, 2018

Trust-Owned Businesses and the Potential impact of the New Partnership Audit Rules on Trustees

Delaware Banker, Vol. 14, No. 2

April 1, 2018

Delaware's Modification by Consent Statute

Trusts & Estates, Vol. 157, No. 7

March 2, 2018

Popper and Thomas Co-Author, "How the Federal Tax Law Will Impact Delaware"

Delaware Lawyer

January 24, 2018

Drafting Intentionally Defective Grantor Trusts as Silent Trusts: A Delaware Perspective

CCH Journal of Passthrough Taxation, January-February 2018

May 27, 2016

Delaware Silent Trusts

Delaware Banker Magazine, Vol. 12, No. 2, Spring 2016

February 17, 2015

Modifying Loans for Distressed Debtors: Debt Relief or Tax Trap

Delaware Banker, Vol. 11, No. 1

May 30, 2014

A Trustee's Modification Toolbox: Does it Really Include Non-Judicial Settlement Agreements?

Delaware Bankers, Vol. 10, No. 2, Spring 2014

June 1, 2010

The Creditor and the Insolvent Delaware LLC - Can Fiduciary Duties to Creditors be Contractually Eliminated

Delaware Banker (Summer 2010)

September 1, 2009

Delaware Gross Receipts Tax

CCH Journal of State Taxation, Sept./Oct. 2009

Events

October 24, 2018

Grossman and Thomas Speaking at 2018 Delaware Trust Conference

May 10, 2018

Vince Thomas Speaking at the Big IDEas for Your Business Conference

February 22, 2018

Young Conaway Hosts Tax Seminar, "An Update and Analysis of the New Federal Tax Legislation: What Does It Mean for You and Your Clients?"

November 2, 2017

Partner Vincent C. Thomas and Young Conaway Hosting Senior Executive Symposium

May 5, 2016

Selected Topics in Tax, Trusts & Estates, and Employee Benefits Plus Data Protection Issues and Strategies and Valuation of Environmentally Contaminated Properties

September 30, 2014

"Decanting, Non-Judicial Settlement Agreements, Mergers, Administrative Amendment or Court Petition," Panelist, 2014 Delaware Trust Conference

May 21, 2014

2014 Tax, Trusts and Estates, and Non-Competition Agreements Update

News

November 1, 2018

Delaware Today Magazine Recognizes 17 Young Conaway "Top Lawyers"

November 1, 2018

Vince Thomas Elected Fellow of the American College of Trust and Estate Counsel

August 15, 2018

42 Young Conaway Lawyers Recognized by Best Lawyers in America, with 4 Attorneys Further Recognized as Lawyers of the Year (Wilmington, DE)

July 19, 2018

Partners Richard J.A. Popper and Vincent C. Thomas Recognized By Chambers High Net Worth 2018

January 24, 2018

Vincent Thomas Appointed Chair of the Notice Act Committee of the DSBA Estates and Trusts Section

November 1, 2016

Fifteen Young Conaway Lawyers Named "Top Lawyers" by Delaware Today Magazine; Six Attorneys Received Top Votes in Practice Area

June 23, 2016

Partners Richard J.A. Popper and Vincent C. Thomas Recognized By Chambers High Net Worth 2016

November 2, 2015

Delaware Today Announces 2015 Top Lawyers

COURSE
MATERIALS

2021 Tax Update

November 18, 2021

Presented By:

Michael Kelly, CPA

Principal – Tax and Small Business

mkelly@belfint.com

The logo for Belfint, Lyons & Shuman, P.A. features the letters "BLS" in a stylized, handwritten-style font.

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Agenda

- Employee Retention Credit
- American Rescue Plan Act
- Infrastructure Investment and Jobs Act
- Build Back Better Bill
- Consolidated Appropriations Act (Select Items) | Other Year End Planning



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Employee Retention Credit

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ERC Claims Requested and Received

Type of Client	Claim Requested	Refund Received/status
Eye Doctor	\$85,891	\$85,891
Eye Doctor	\$82,832	\$82,832
Eye Doctor	\$57,851	\$57,851
Eye Doctor	\$27,040	Pending
Men's Clothing	\$67,421	\$24,043 & 2021 returns pending
Hair Cutting Franchise	\$93,811	\$93,811
Dentist	\$29,999	\$29,999
Med Spa	\$72,698	\$26,085 & 2021 returns pending
Energy Company	\$327,302	Pending
Retail	\$241,411	Pending
Total Claims	\$1,086,256	Total Claims



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How Much is the Employee Retention Credit?

- Wages paid between March 12, 2020 – December 31, 2020
 - Refundable payroll credits for 50% of wages paid by eligible employers to certain employees
 - The maximum amount of qualified wages taken into account with respect to each employee for all calendar quarters is 10,000, so that the maximum credit for an eligible employer for qualified wages paid to any employee is \$5,000
- Wages paid in Q1 – Q3 of 2021 (Pending bill to eliminate Q4)
 - Refundable payroll credits for 70% of wages paid by eligible employers to certain employees
 - The maximum amount of qualified wages taken into account with respect to each employee is \$10,000 per quarter, so that the maximum credit for an eligible employer for qualified wages paid to any employee is \$21,000

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Example for How to Calculate the Employee Retention Credit

Employee	2020 Eligible Wages	Eligible Credit
A	\$8,000	\$4,000
B	\$10,000	\$5,000
C	\$12,000	\$5,000

Employee	2021 Q1 Wages	2021 Q2 Wages	2021 Q3 Wages	Q1 Credit	Q2 Credit	Q3 Credit	Total Credit
A	\$5,000	\$5,000	\$5,000	\$3,500	\$3,500	\$3,500	\$10,500
B	\$10,000	\$10,000	\$10,000	\$7,000	\$7,000	\$7,000	\$21,000
C	\$20,000	\$20,000	\$20,000	\$7,000	\$7,000	\$7,000	\$21,000

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Who is an Eligible Employer?

- Eligible employers for the purposes of the Employee Retention Credit are employers that carry on a trade or business, including tax-exempt organizations, that either:
 - Fully or partially suspend operation during any calendar quarter in 2020 or first three quarters of 2021 due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19; or
 - Experience a significant decline in gross receipts during any calendar quarter in 2020 or any of the first three quarters of 2021
- Self-employed individuals are not eligible for this credit for their own self-employment tax, though they may be able to claim the credit for wages paid to their employees

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What are Gross Receipts?

- Under the section 448(c) regulations, “gross receipts” means gross receipts of the taxable year and generally includes total sales (net of returns and allowances) and all amounts received for services
- Gross receipts include any income from investments and from incidental or outside sources
- Gross receipts include interest, dividends, rents, royalties, and annuities, regardless of whether such amounts are derived in the ordinary course of the taxpayer’s trade or business
- Gross receipts are generally not reduced by cost of goods sold but are generally reduced by the taxpayer’s adjusted basis in capital assets sold
- Does not include PPP loans

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What is a “Significant Decline in Gross Receipts”?

- March 12, 2020 – December 31, 2020
 - Begins with the first calendar quarter in 2020 in which an employer’s gross receipts are less than **50 percent** of its gross receipts for the same calendar quarter in 2019
 - Ends with the first calendar quarter **that follows** the first calendar quarter in which the employer’s 2020 quarterly gross receipts are greater than 80 percent of its gross receipts for the same calendar quarter in 2019
- Q1, Q2, and Q3 of 2021
 - Begins with the first calendar quarter in 2021 in which an employer’s gross receipts are less than **80 percent** of its gross receipts for the same calendar quarter in 2019



Does a Significant Decline in Gross Receipts have to be COVID-19 Related?

- The CARES Act does not require that the significant decline in gross receipts be related to COVID-19
- However, employers should keep records for the relevant calendar quarters



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Employee Count (FTE based on 30 hr. Work Week)

- At the end of 2019

Average Monthly Employee Count	Providing Services?	Credit Available for those Employee's Wages?
< 100	Yes	Yes
< 100	No	Yes
> 100	Yes	No
> 100	No	Yes

- 500 employee test for 2021



When is the Operation of a Trade or Business Partially Suspended for the Purposes of the Employee Retention Credit?

- The operation of a trade or business is partially suspended if an appropriate governmental authority imposes restrictions on the employer's operations by limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19 such that the employer can still continue some, but not all, of its typical operations



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Remaining Opened for Limited Operations

- Restaurant Example
 - Before COVID-19 – restaurant provides dine in and dine out
 - After COVID-19
 - Scenario one – Restricted to take out only
 - Scenario two – Restricted to take out and outdoor dining
 - Scenario three – Restricted to take out, outdoor dining, and limited indoor
- More than a nominal impact on business operations
- May have a different result if restaurant was a dine out only style before COVID-19 (Domino's Pizza)



Related Party Payments Not Eligible for the Credit

- At least 50 percent in value of the outstanding stock of the corporation or percent of the capital and profits interests in a partnership;
- A child or a descendant of a child;
- A brother, sister, stepbrother, or stepsister;
- The father or mother, or an ancestor of either;
- A stepfather or stepmother;
- An aunt or uncle;
- A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law

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Claiming the Credit

- Claim on Form 941 payroll tax filings
- Claim against employer and employee withheld taxes
- It is taking the IRS six months to process these returns



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Employee Retention Credit (ERC) Coordination with the PPP Program

- Can now claim the employer retention credit and apply for a PPP loan
- Same wages cannot be used for both programs
- Wages are used up for ERC first unless taxpayer elects to count wages toward the PPP loan

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Recovery Startup Business

- For wages paid after June 30, 2021 and before January 1, 2022, a “recovery startup business” is any employer that meets all of the following requirements:
 - (1) It began carrying on a trade or business after February 15, 2020
 - (2) It’s average annual gross receipts for the three-tax-year period ending with the tax year that precedes the calendar quarter for which the ERTC is determined do not exceed \$1,000,000, as determined under rules similar to the rules under Code Sec. 448(c)(3)
- Recovery Startup Businesses can claim the ERC for up to \$50,000 total per quarter for the third and fourth quarters of 2021, without showing suspended operations or reduced revenue

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Taxability

- Do not include the credit in gross income for federal income tax purposes
- An employer's aggregate wages are reduced by the amount of the credit



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American Rescue Plan

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Extension of Limitation on Excess Losses of Noncorporate Taxpayers

- Extended from January 1, 2026 to January 1, 2027



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Suspension of Tax on Portion of Unemployment Compensation

- For 2020 taxpayers with adjusted gross income of less than \$150,000 shall not include unemployment compensation received by the taxpayer up to \$10,200
- \$150,000 AGI limits applies to all filing statuses
- However, for joint taxpayers with AGI less than \$150,000, the \$10,200 exclusion applies separately to each spouse
- For taxpayers who filed and paid tax on unemployment before this Act, the IRS is currently identifying affected taxpayers who will either receive refunds or have the overpayment applied to taxes due or other debts
- To date the IRS has issued over 11.7 million refunds totaling \$14.4 billion

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2021 Recovery Rebate to Individuals

- Provides for a 2021 tax credit in the amount of related stimulus payment paid in 2021 - \$1,400 for single taxpayers and \$2,800 for joint taxpayers
- Same phase outs apply as we have seen before for single taxpayers with AGI below \$75,000 and \$150,000 for joint taxpayers

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Child Tax Credit Improvements

- Credit amount has been increased from \$2,000 to \$3,600 for children under age 6 and \$3,000 for other children under age 18
- Increased credit amounts are phased out at modified AGI of over \$75,000 for singles, \$112,500 for head-of-household and \$150,000 for joint filers
- Remaining \$2,000 credit amount subject to prior rules and phaseouts. (Two sets of phaseout rules are applicable.)
- Credits scope has been expanded – children 17 years old and younger are now covered as opposed to the prior law which included only up to 16 years old
- Credit amounts will be made through temporary advance payments during 2021 – from July 1 to December 31, 2021
- The credit is now fully refundable
- The credit is now extended to Puerto Rico and the US Territories

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Earned Income Tax Credit (EITC) Improvements

- Expansion of the EITC for taxpayers with no qualifying children
- Increase in credit percentage and phaseout amounts
- EITC will be available even if identification requirements are not met
 - If an otherwise eligible individual has qualifying children, but cannot provide proper identification, then the individual will be eligible for the EITC for individuals that have no qualifying children
- EIC Rules, under which certain separated married people need not file jointly, are liberalized
 - A separated individual who meets the following requirements, can avoid the joint-filing requirement by either not living with the ex-spouse during the last six months of the year or by having a decree, instrument or agreement and not living with the ex-spouse by the end of the tax year
 - Is married
 - Does not file a joint return for the tax year
 - Lives with his/her qualifying child for more than half of the tax year
- Taxpayers may have up of \$10,000 of “Disqualified” (Investment) income and still claim EIC
 - Prior to enactment 2021 inflation adjusted amount of “disqualified income” was \$3,650, which now becomes \$10,000 for 2021 and will be adjusted for inflation in future years
- Application of earned income tax credit in possessions of the US
- Individuals may base their 2021 EIC on 2019 earned income
- Effective Date – generally after December 31, 2020

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Dependent Care Assistance Improvements

- Refundability and enhancement of child and dependent care tax credit
 - Credit if refundable for taxpayers who have a principal place of abode in the US
 - The dollar limit on the amount is increased to \$8,000 (from \$3,000) if one qualifying individual or \$16,000 (from \$6,000) for two or more qualifying individuals
 - The applicable percentage is increased to 50%, reduced by 1% for each \$2,000 by which the taxpayer's AGI for the year exceeds \$125,000
 - The applicable percentage, once reduced to 20% remains fixed at 20% until AGI reaches \$400,000
 - For AGI above \$400,000, the applicable percentage again decreases 1% for every \$2,000 until completely phased out at \$440,000
 - Effective for tax years beginning in 2021
- Increase in exclusion for employer-provided dependent care assistance
 - For 2021 only, the exclusion is increased from \$5,000 to \$10,500

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Premium Tax Credit

- New percentage tables will increase premium tax credit for 2021 and 2022
 - Under pre-act law a taxpayer might have to spend as much as 9.83% of household income on health insurance premiums, under the new tables that amount is capped at 8.5%
- Taxpayers with household income over 400% of the federal poverty line made eligible for the credit
- Taxpayers did not have to repay excess advance premium tax credit payment for 2020.
- Premium Tax Credit increased for taxpayers receiving unemployment compensation in 2021

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Modification of Treatment of Student Loans Forgiveness

- Special rule for certain discharges in 2021 through 2025 – will not be included in gross income
- Includes these types of loans:
 - Loans provided expressly for post-secondary educational expense if the loan was made, insured, or guaranteed by a federal, state or local governmental entity or an eligible educational institution
 - Private education loans
 - Certain loans made by educational institutions/organizations qualifying as a 50% charity
- Does not include loans discharged on account of services performed for either the organization or the private education lender
- The exclusion applies to a partial or full discharge

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Infrastructure Investment and Jobs Act

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Information Reporting for Brokers and Digital Assets

- Requires brokers to report to the IRS the cost basis of digital assets transferred by their clients to nonbrokers
- “Digital Assets” – any digital representation of value which is recorded on a cryptocurrency secured distributed ledger or any similar technology
- Will include things like Bitcoin, Ethereum and also certain nonfungible tokens (NFT’s)
- The term “broker” is also expanded to include those who operate trading platforms for digital assets such as cryptocurrency exchanges
- The act also modifies existing tax law to treat digital assets as cash
- As a result of this modification, individuals engaged in a trade or business must submit IRS Form 8300 – Report of Cash payments Over \$10,000 Received in a Trade of Business, when they receive such amounts in one transaction or related transactions
- These provisions take effect for returns required to be filed and statements required to be furnished after December 31, 2023
- The IRS is expected to provide additional guidance on these provisions

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Miscellaneous Provisions

- Extends several excise taxes used to fund highway spending
- Extends and modifies certain Superfund excise taxes
- Allows private activity bonds for qualified broadband projects and carbon dioxide capture facilities
- Extends pension funding relief
- Expands certain IRS administrative relief for taxpayers affected by federally declared disasters and “significant fires”



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Build Back Better Bill (As Proposed)

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Paid Leave

- Provides 4 weeks of paid leave for all eligible full-time, part-time, self-employed and gig workers for any qualifying reason under the Family and Medical Leave Act
- The proposal provides that any amount that a taxpayer receives as part of the newly created comprehensive paid leave provided under the Social Security Act is not included in the taxpayer's gross income



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State and Local Income Tax Deduction

- The proposal increases the SALT deduction cap to \$72,500 (\$36,250 in the case of an estate, trust, or married individual filing a separate return) from \$10,000 through 2031
- Effective for tax years beginning after December 31, 2020
- May need additional planning for potential estimated state tax payment before end of year

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Child Tax Credit Expanded Through the American Rescue Plan

- Credit is enhanced in 2021
- \$3,600 for children ages 5 and under at the end of 2021; and
- \$3,000 for children ages 6 through 17 at the end of 2021
- The Child Tax Credit begins to be reduced to \$2,000 per child if your modified AGI in 2021 exceeds:
 - \$150,000 if married and filing a joint return or if filing as a qualifying widow or widower;
 - \$112,500 if filing as head of household; or
 - \$75,000 if you are a single filer or are married and filing a separate return
- Completely phased out at \$400,000 for joint and \$200,000 for all other filing status

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Child Tax Credit

- For tax year 2022, the proposal extends many of the American Rescue Plan that otherwise expire after 2021 through tax year 2022
- These extensions include
 - (i) full refundability for taxpayers who have a principal place of abode in the U.S. for more than one half of the year or who are bona fide residents of Puerto Rico for the tax year,
 - (ii) the increase in the age limit of a qualifying child for purposes of the child tax credit to include children who have not attained age 18,
 - (iii) the increase in child tax credit amount to \$3,000, and \$3,600 for qualifying children who have not attained the age of 6,
 - (iv) the application of the initial phaseout to the increased child tax credit amount at the following applicable threshold amounts: \$150,000 for taxpayers filing jointly, surviving spouses, \$112,500 for head of household taxpayers, and \$75,000 for all other taxpayers
- Made fully refundable for taxpayers who have a principal place of abode in the U.S. for more than one-half of the tax year or are a bona fide resident of Puerto Rico
- No provision for advance payments after 2022

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Earned Income Tax Credit

- Effective through 2022
- Reduction in minimum age to claim the childless EITC from 25 to 19 (Except for certain full-time students)
- Eliminated the upper age limit of 65 for the childless EITC
- Allows a taxpayer to use their prior year earned income for purposes of computing the EITC, if a taxpayer's earned income in the current tax year has fallen

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Education

- Federal Pell Grants usually are awarded only to undergraduate students who display exceptional financial need and have not earned a bachelor's, graduate, or professional degree
- Federal Pell grants that are used for expenses that are not qualified tuition and related expenses, such as room and board, are excluded from gross income
- In addition, under the proposal, the amount of expenses eligible for the American Opportunity Tax Credit or the Lifetime Learning Credit isn't reduced by any amount paid for the benefit of an individual as a Federal Pell grant
- Repeals the disallowance of the American Opportunity Tax Credit for qualified tuition and related expenses for a student's enrollment or attendance for any academic period because the student has been convicted of a Federal or State felony drug possession or distribution offense before the end of the tax year with or within which the academic period ends

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Net Investment Income Tax

- Expands the net investment income tax to cover net investment income derived in the ordinary course of a trade or business for taxpayers with greater than \$400,000 in taxable income (single filer) or \$500,000 (joint filer), as well as for trusts and estates
- Clarifies that this tax is not assessed on wages on which FICA is already imposed
- Clarifies that the tax is not assessed on self-employment income

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Excess Business Losses

- Makes permanent 461(l) which disallows excess business losses (i.e., net business deductions that exceed business income) for noncorporate taxpayers
- The provision allows taxpayers whose losses are disallowed to carry those losses forward to the next tax year



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Surcharge for High Income Individuals and Trusts

- Imposes a tax equal to the sum of 5% of a taxpayer's modified adjusted gross income that exceeds \$10,000,000 (\$5,000,000 for a married individual filing separately) plus 3% of the taxpayer's modified adjusted gross income that exceeds \$25,000,000 (\$72,500,000 for a married individual filing separately)

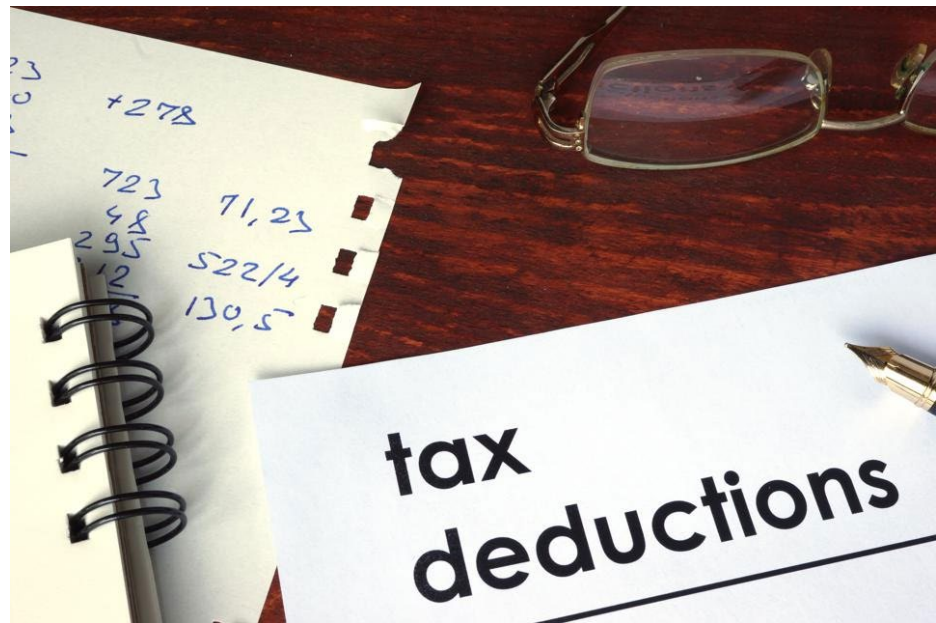


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New Above-the-Line Deductions

- Allows for up to \$250 in dues to a labor organization to be claimed as an above-the-line deduction
- Allows an above-the-line deduction, through 2024, of up to \$250 for the cost of employee uniforms. An employee uniform is clothing that must be worn by a taxpayer when performing services as an employee that is not suitable for everyday wear



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Corporate Alternative Minimum Tax

- The corporate alternative minimum tax proposal imposes a 15% minimum tax on corporations with adjusted financial statement income in excess of \$1 billion
- Effective for tax years beginning after December 31, 2022



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Recap on 1202 Stock

- Stock originally issued after August 10, 1993, by a C corporation with aggregate gross assets not exceeding \$50 million at any time from August 10, 1993, to immediately after the issuance of the stock
- The taxpayer must have acquired the stock at its original issue, or in a tax-free transaction such as a gift, inheritance, or partnership distribution
- Corporation must meet an active business requirement whereby 80% or more of its assets are used in one or more businesses
- Ineligible businesses include certain personal service activities (health, law, engineering, accounting, etc.), banking and other financial services, farming, mineral extraction businesses, and hotels and restaurants

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Change to 1202 Exclusion Rates

- This provision amends Code Sec. 1202(a) so that the special 75% and 100% exclusion rates for gains realized from certain qualified small business stock will not apply to taxpayers with adjusted gross income equal or exceeding \$400,000. The baseline 50% exclusion in Code Sec. 1202(a)(1) remains available for all taxpayers
- This section applies to sales and exchanges after September 23, 2021, subject to a binding contract exception

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Fees for Contingency Case

- This provision allows the deduction of costs paid or incurred by an attorney that are contingent on a recovery. The deduction amount is determined by disregarding the possibility that the cost will be repaid, and the income attributable to any related recovery is not reduced by such amount
- Applies to amounts paid, incurred, or received, in tax years beginning after the date of enactment



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Extension, Increase, and Modifications of Nonbusiness Energy Property Credit

- Extends the Code Sec. 25C credit for nonbusiness energy property for ten years, through December 31, 2031
- The proposal also increases from 10% to 30% the credit rate for qualified energy efficient improvements
- The proposal replaces the lifetime credit limitation with an annual limitation of \$1,200 (previous limit \$500)
- The limit for windows is changed to a maximum of \$600 per tax year. (previous limit of \$200 lifetime)
- The limit for an exterior door is changed to \$250 for any tax year, \$500 with respect to all exterior doors

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Residential Energy Efficient Property

- Qualified solar electric property, qualified solar water heating property, qualified fuel cell property, qualified small wind energy property, qualified geothermal heat pump property, and qualified biomass fuel property
- The proposal extends the Code Sec. 25D residential energy efficient property credit for ten years, through December 31, 2033



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New Qualified Plug-In Electric Drive Motor Vehicle Credit

- The proposal creates a new Code Sec. 36C credit that effectively extends and modifies the Code Sec. 30D credit for new qualified plug-in electric drive motor vehicles (the "EV credit")
- Eliminates the limitation on the number of credit eligible EVs each manufacturer can sell
- Beginning January 1, 2022, the proposal makes the EV credit a refundable personal income tax credit for vehicles acquired on or after that date
- Current law allows \$7,500. Proposal is \$12,500
- The proposal creates a new credit for each previously owned qualified plug-in electric drive motor vehicle placed in service by a qualified buyer. The base amount of the credit is \$2,000
- Income limitations will apply

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Foreign Tax Credit

- The provision limits the carryforward of excess foreign tax credit limitation to five succeeding tax years (compared with 10 years under current law).
- The carryback of such foreign tax credit limitation is repealed
- Effective after December 31, 2022



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Premium Tax Credit

- The proposal, among other things, extends through 2025 the expansion in ARPA of eligibility for the premium assistance credit to individuals and families with household incomes above 400% of Federal Poverty Level (FPL) for a family of the size involved provided the other eligibility criteria are met
- Excludes from the definition of modified AGI any portion of a lump-sum payment of Social Security benefits received during the tax year that is attributable to months ending before the beginning of the tax year
- Temporarily expands eligibility for the premium assistance credit to individuals and families with household incomes below 100% of FPL for a family of the size involved
- Temporarily expands eligibility for the premium assistance credit to certain low-income employees who are offered an affordable employer-sponsored health plan
- Excludes certain dependent income from the calculation of household income for purposes of determining Code Sec. 36B premium tax credit amounts

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Consolidated Appropriations Act & Other Year End Planning

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Medical Expenses

- For tax years beginning after December 31, 2017 and ending before January 1, 2019, the floor on medical expense deductions was 7.5% of AGI
- Before December 20, 2019, the floor for deductible medical expenses was scheduled to increase from 7.5% to 10% for tax years beginning after December 31, 2018. But application of the 7.5% floor was retroactively extended to apply to tax years ending after December 31, 2018, and beginning before January 1, 2021
- Before December 27, 2020, the 7.5%-of-AGI floor was scheduled to increase to 10% of AGI for tax years beginning after December 31, 2020, but the 7.5%-of-AGI floor was made permanent by the 2020 Taxpayer Certainty and Disaster Tax Relief Act, effective for tax years beginning after December 31, 2020

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Charitable Contributions

- For tax years beginning in 2021 only, an individual who doesn't itemize deductions for the tax year is entitled to a charitable deduction, not in excess of \$300 (not in excess of \$600 for a joint return)
- To qualify for this non-itemizers' charitable deduction, contributions must be in cash, and be made to a public charity, and not be made to a Code Sec. 509(a)(3) supporting organization, or to establish or maintain a donor advised fund
- Unlike the non-itemizers' charitable deduction that applied for 2020 tax years, which was an above-the-line deduction, the Code Sec. 170(p) deduction (above) is deducted from adjusted gross income in arriving at taxable income
- The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) temporarily suspends the charitable contribution deduction AGI percentage limitations for certain qualified contributions made in 2020 (Sec. 2205 of the CARES Act).
- This provision was extended to 2021 by the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (TCDFTRA), a part of the Consolidated Appropriations Act, 2021 (CAA, 2021). See “Temporary Suspension of AGI Limitations” later in this key issue for further details

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Educator Expense Deduction

- Old rules - Qualified expenses are amounts paid or incurred for participation in professional development courses, books, supplies, computer equipment (including related software and services), other equipment, and supplementary materials that you use in the classroom
- The Act provides that eligible educators (i.e., kindergarten-through-grade-12 teachers, instructors, etc.) can claim the existing \$250 above-the-line educator expense deduction for personal protective equipment (PPE), disinfectant, and other supplies used for the prevention of the spread of COVID-19 that were bought after March 12, 2020

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Tuition and Fees Deduction

- Secs. 104(b) and 104(c) of the Taxpayer Certainty and Disaster Tax Relief Act of 2020, a part of the Consolidated Appropriations Act, 2021 has repealed IRC Sec. 222 for tax years beginning after December 31, 2020



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American Opportunity Credit and Lifetime Learning Credit

- Lifetime learning credit limits were increased to match the American Opportunity Credit
- The AOTC or the LLC that may otherwise be claimed is phased out ratably for taxpayers with modified AGI between \$80,000 and \$90,000 (\$160,000 and \$180,000 for joint filers).
- A taxpayer whose modified AGI is greater than \$90,000 (\$180,000 for joint filers) can't claim either credit

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Mortgage Insurance Premium

- The deduction for qualified mortgage insurance premiums has been extended through December 31, 2021 [IRC Sec. 163(h)(3), as amended by the Taxpayer Certainty and Disaster Tax Relief of 2019 (2019 Disaster Act) and the Taxpayer Certainty and Disaster Tax Relief Act of 2020, a part of the Consolidated Appropriations Act, 2021]
- If effect, these amounts paid for *qualified mortgage insurance premiums* are treated as a separate category of qualified residence interest

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163(j) Interest Limitation

- The 2020 CARES Act, has amended the Code to provide that, for tax years beginning in 2019 and 2020, the 30% adjusted taxable income limitation for the deduction of business interest is increased to 50%
- Limitation reverts back to 30% in 2021

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Opportunity Zones Final Year for 10% Break

- Gross income for the tax year does *not* include so much of the gain as does not exceed the aggregate amount invested by the taxpayer in a Qualified Opportunity Fund (i.e., an investment vehicle that invests in Qualified Opportunity Zone property) during the 180-day period beginning on the date of the sale or exchange
- Gain excluded under the temporary deferral election for amounts invested in Qualified Opportunity Fund, is included in income in the tax year which includes the *earlier* of:
 - (a) the date on which the investment is sold or exchanged,(the date of an inclusion event under regs, or
 - (b) December 31, 2026. For amount of deferred gain recognized on Dec. 31, 2026
- In the case of any investment held for at least *five* years, the basis of the investment is increased by an amount equal to 10% of the amount of gain temporarily deferred under Code Sec. 1400Z-2(a)(1)(A)
- In the case of any investment held by the taxpayer for at least *seven* years, in addition to any basis adjustment made under Code Sec. 1400Z-2(b)(2)(B)(iii) for an investment held more than five years, the basis of the property is increased by an amount equal to 5% of the amount of gain deferred by reason of Code Sec. 1400Z-2(a)(1)
- No time left for the 7-year deferral

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Annual Gift Exclusion & Lifetime Exemption

- The annual exclusion for gifts increases to \$16,000 for calendar year 2022, up from \$15,000 for calendar year 2021
- Estates of decedents who die during 2022 have a basic exclusion amount of \$12,060,000, up from a total of \$11,700,000 for estates of decedents who died in 2021.



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The Changing State Tax Landscape

- Does the employer's state still want withholdings even if the employee works from home in another state
 - Convenience of Employer or Employee
- Is the employer doing business in the state where the employees works from home resulting in a requirement to withhold?
- The Wayfair Decision and the continuing impact on income and sales tax



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Inflation Adjustments for 2022

- See Revenue Procedure 2021-45 for inflation adjusted numbers
 - Standard Deduction
 - Personal Exemption
 - Marginal Tax Rates
 - AMT Exemption
 - And others...

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Delaware Relief Grants

- Reminder: Due date of 12.31.2021 to submit documentation to Delaware
- Need 2019 and 2020 tax returns that show drop in revenue
- Need receipt/invoice or other documentation for each dollar spent

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Thank You!

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The logo consists of the letters 'BLS' in a stylized, cursive, maroon font.

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Jared Bernstein
Distinguished Speaker – 11-18-2021

Fiscal policy and Tax Fairness: the view from the White House

The talk will explore the new fiscal environment that has emerged in recent years from a deeper understanding of the relationship between interest rates, debt, and growth. We will explore how these dynamics have evolved and how the Biden investment agenda reflects this new understanding.

Outline:

- 1) Setting the stage: the long-term decline in interest rates**
- 2) Debt dynamics in a low rate environment**
- 3) The Biden vision: Injecting fairness into the tax code**
- 4) Reflections on the current state of the US tax debate**

**Confidentiality, Conflicts and Candor: Three Hot Issues in
Tax-Related Counseling and Litigation (Ethics)**

Delaware Tax Institute – 11-18-2021

Presenters: Matthew F. Boyer, Esquire
Scott E. Swenson, Esquire
Connolly Gallagher LLP

Panelists will address issues that Delaware lawyers, accountants, and other advisors face in addressing tax issues in the area of trusts and estates, including:

- honoring client confidentiality and the obligation to avoid appearing to assist or condone conduct by clients that may be unethical or fraudulent
- addressing conflicts between current clients and current and former clients;
- upholding the duty of candor to the tribunal as it relates to proceedings in courts and administrative tribunals, including the IRS

DELAWARE TAX INSTITUTE
November 18, 2021

Client Confidentiality
in Tax-related Counseling and Litigation

Matthew F. Boyer, Esquire
Scott E. Swenson, Esquire
Connolly Gallagher LLP

Attorneys who represent clients in tax-related counseling and litigation may face issues that require them to reconcile the duty to honor client confidentiality with the obligation to avoid appearing to assist in conduct that may be fraudulent or even criminal. These can be treacherous waters. This outline addresses an attorney's duty of confidentiality in situations of possible client misconduct under the Delaware Lawyers' Rules of Professional Conduct ("DLRPC"), including the duty to withdraw from the representation under certain circumstances. It is hoped that the principles set forth in the DLRPC will be of interest to other professionals, such as accountants and financial advisors, who may face similar issues.

A. The Identity of the Client

Numerous commentaries discuss the difficulty of balancing an attorney's legal and ethical responsibilities in the representation of a fiduciary who may need to address tax issues, such as an executor.¹ Difficulties often arise when the

¹ See, e.g., Geoffrey C. Hazard, Jr., *Triangular Lawyer Relationships: An Exploratory Analysis*, 1 Geo. J. Legal Ethics 15 (1987); Robert W. Tuttle, *The*

interests of beneficiaries are implicated. Attorneys who undertake representation of a fiduciary-client should ensure that the nature and scope of the representation is clear.

To the extent that no formal agreement modifying the extent of the attorney's responsibilities has been reached, Delaware authority suggests that a Delaware attorney represents the executor only and not the beneficiaries.² Similarly, the ABA Standing Committee on Ethics and Professional Responsibility has opined that "the fact that the fiduciary client has obligations toward the beneficiaries does not impose parallel obligations on the lawyer, or otherwise expand or supersede the lawyer's responsibilities under the Model Rule of Professional Conduct."³ As such, a Delaware attorney represents only the client

Fiduciary's Fiduciary: Legal Ethics in Fiduciary Representation, 1994 U. Ill. L. Rev. 889; Kennedy Lee, *Representing the Fiduciary: To Whom Does the Attorney Owe Duties*, 37 ACTEC L.J. 469 (2011); Daniel R. Nappier, *Blurred Lines: Analyzing an Attorney's Duties to a Fiduciary-Client's Beneficiaries*, 71 Wash. & Lee L. Rev. 2609 (2014); see also American College of Trust and Estate Counsel Commentaries on the Model Rules of Professional Conduct, Fifth Edition (2016), available at http://www.actec.org/assets/1/6/ACTEC_Commentaries_5th.pdf ("ACTEC Commentaries").

² The Delaware State Bar Association's Professional Ethics Committee, in Opinion 1989-4, states that "while in common usage an attorney is said to represent 'the estate,' in fact he or she represents the executor in the management of that estate" Opinion 1989-4 further states, "an attorney does not serve as an attorney for the estate; rather he serves as attorney for the executor or other personal representative in that person's dealings concerning the estate of the decedent."

³ ABA Formal Op. 94-380.

and does not represent other beneficiaries or otherwise owe duties to them under the DLRPC other than the duties that lawyers owe to all third parties.⁴

That said, the question remains: what must, should, or can an attorney do when a client appears to be engaged in tax-related conduct (or any conduct) that may be dishonest and threaten to defraud others? And what must, should, or can the attorney do when such conduct is discovered after the fact?

B. The Confidentiality Rule and Exceptions Thereto

Rule 1.6(a) of the DLRPC states that a “lawyer shall not reveal information relating to the representation of a client unless [1] the client gives informed consent, [2] the disclosure is impliedly authorized in order to carry out the representation, or [3] the disclosure is permitted by paragraph (b).” This Rule reflects the fundamental principle that, in the absence of the client’s informed consent, the lawyer must not reveal information relating to the representation.⁵ The rationale behind the Rule is that confidentiality contributes to the trust that is the hallmark of the client-lawyer relationship, and encourages clients to

⁴ Even though the fiduciary duties of an executor may not impose parallel obligations on the attorney for an executor, such an attorney may wish to advise the executor-client that an executor’s fiduciary duties may include a duty to inform the beneficiaries of certain information. *See, e.g., McNeil v. McNeil*, 798 A.2d 503, 510 (Del. 2002) (“A trustee has a duty to furnish information to a beneficiary upon reasonable request. Furthermore, even in the absence of a request for information, a trustee must communicate essential facts, such as the existence of the basic terms of the trust.”).

⁵ Rule 1.6 cmt. [2].

communicate fully and freely even as to embarrassing or legally damaging subject matter, so that the lawyer can represent the client effectively.⁶

Where a client has not given informed consent to disclose information, and such disclosure is not impliedly authorized, the attorney is prohibited from disclosing client information except where one of several exceptions set forth in Rule 1.6(b) applies. Under subpart (b), an attorney “may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary”:

- (1) to prevent reasonably certain death or substantial bodily harm;
 - (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer’s services;
 - (3) to prevent, mitigate, or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client’s commission of a crime or fraud in furtherance of which the client has used the lawyer’s services.
 - (4) to secure legal advice about the lawyer’s compliance with these Rules;
 - (5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer’s representation of the client;
- or

⁶ *Id.*

(6) to comply with other law or a court order; or

(7) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney client privilege or otherwise prejudice the client.

Rule 1.6(b). Of these seven exceptions, Rule 1.6(b)(2) and Rule 1.6(b)(3) address situations in which the attorney learns of a client's future or past fraudulent or criminal conduct.

1. Disclosure under Rule 1.6(b)(2) (future crime or fraud)

Rule 1.6(b)(2) permits a lawyer to reveal information to the extent necessary to enable affected persons or appropriate authorities *to prevent* the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial or property interests of another and in furtherance of which the client has used or is using the lawyer's services.⁷ In order for Rule 1.6(b)(2) to apply, the attorney must (i) reasonably believe disclosure is necessary to prevent the client from committing a crime or fraud that (ii) is reasonably certain to cause substantial injury to the financial interests of the beneficiaries and (iii) in furtherance of which the client has used or is using the lawyer's services.

As to the first requirement, the question is whether the attorney "reasonably believes" disclosure is necessary to prevent the client's commission of a crime or

⁷ Rule 1.6 cmt. [7].

fraud. The phrase “reasonably believes” when used in reference to a lawyer “denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.”⁸ Therefore, even if the attorney subjectively believes that disclosure is necessary to prevent a crime or fraud, no disclosure is permitted if it does not appear under the circumstances given that such a belief would be objectively reasonable.

As to the second requirement, the conduct would need to be of such a serious nature that it would be reasonably certain to cause substantial injury to the financial interests of third parties.⁹ As to the third requirement, the attorney would need to show that the client has used or is using the attorney’s services in furtherance of the future crime or fraud.

This is a high standard. In many situations, the attorney may suspect that a crime or fraud may occur but lack certainty. In addition, the attorney’s services are not necessarily used in connection with every fraud, such as, for example, the client’s potential mishandling of a tax refund.

⁸ Rule 1.0(i).

⁹ The ACTEC Commentaries suggest that, when evaluating whether a financial loss constitutes substantial injury, “lawyers should consider the amount of the loss involved, the situation of the beneficiary, and the non-economic impact the fiduciary’s misconduct had or could have on the beneficiary.” ACTEC Commentaries, p. 82.

2. Disclosure under Rule 1.6(b)(3) (past crime or fraud)

Rule 1.6(b)(3) addresses circumstances in which a lawyer learns of the client's commission of a crime or fraud *after* it has been consummated.¹⁰ In such situations, the lawyer may disclose information relating to the representation to the extent necessary to enable the affected persons to prevent or mitigate reasonably certain losses or to attempt to recoup their losses.¹¹

In order for Rule 1.6(b)(3) to apply, the client must have committed a crime or fraud.¹² Only if the client has committed a crime or fraud does the analysis proceed to consider whether the crime or fraud was one in furtherance of which “the client has used the attorney’s services,” and whether attorney “reasonably believes” that disclosure of the information is “necessary . . . to prevent, mitigate, or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client’s commission of the crime or fraud.”¹³

¹⁰ Rule 1.6 cmt. [8].

¹¹ *Id.*

¹² As with respect to Rule 1.6(b)(2) as well, the term “[f]raud’ or ‘fraudulent’ denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.” *See* Rule 1.0(d).

¹³ The term “reasonably believes” includes both subjective and objective considerations. *See* Rule 1.0(i). In Rule 1.6(b)(3), “reasonably believes” relates to the lawyer’s assessment of whether disclosure is necessary to prevent, mitigate, or rectify substantial injury that has resulted from the client’s crime or fraud, not to the question of whether the client engaged in the “commission of a crime or fraud.”

An attorney's duties toward third persons, including beneficiaries, is circumscribed by Rule 1.6. For example, Rule 4.1, addressing the duty of truthfulness in statements to others, states that, in the course of representing a client, a lawyer shall not knowingly "fail to disclose a material fact when disclosure is necessary to avoid assisting in a criminal or fraudulent act by a client, *unless disclosure is prohibited by Rule 1.6.*" Rule 4.1(b). Therefore, even if past client conduct is criminal or fraudulent, a lawyer may not disclose it unless "the client has used the attorney's services" in furtherance of the conduct *and* the attorney "reasonably believes" that disclosure of the information is "necessary . . . to prevent, mitigate, or rectify substantial injury that is reasonably certain to result or has resulted from the conduct."¹⁴ If a client acts independently of the attorney, and does not use the attorneys' services in furtherance of the alleged crime or fraud, the attorney would not be permitted to disclose the conduct.¹⁵

With regard to the lawyer's requisite state of mind as to whether the client has committed a crime or fraud, the Rule is silent.

¹⁴ Rule 1.6(b)(3); *See also* Md. Ethics Op. 2001-18 (2002) (lawyer for personal representative of estate who discovers evidence that client misappropriated estate's funds may not disclose this unless lawyer's services used to further misappropriation).

¹⁵ It could be argued that an attorney's representation of a client as executor in connection with an estate warrants the conclusion that client used attorney's services to perpetrate a crime or fraud in connection with the estate. However, in an analogous context, the Court of Chancery has rejected such reasoning as a grounds for vitiating the attorney-client privilege under the crime-fraud exception. *See Princeton Ins. Co. v. Vergano*, 883 A.2d 44, 55 (Del. Ch. 2005). In so ruling,

C. Terminating Representation

If an attorney loses confidence that the client is behaving in an ethical way, the DLRPC gives the attorney broad discretion to withdraw from the representation. In fact, Rule 1.16 sets forth rules requires withdraw in some situations.

Mandatory withdrawal under Rule 1.16(a) is required where “the representation will result in violation of the rules of professional conduct or other law.” That would be the case if the lawyer concludes that the client is using the lawyer’s services to perpetuate a crime or fraud.

Rule 1.16(b) permits withdrawal as counsel under a variety of circumstances. Under Rule 1.16(b)(1), an attorney may withdraw if “withdrawal can be accomplished without material adverse effect on the interests of the client.” Attorney may also withdraw under Rule 1.16(b)(2) if “the client persists in a course of action involving the lawyer’s services that the lawyer reasonably believes is criminal or fraudulent,” or under 1.16(b)(3) if the fraud has occurred. Neither of these provisions require that the harm be significant or that it be reasonably certain to occur, as does Rule 1.6 governing confidentiality. Also, a lawyer may withdraw

the Court of Chancery reasoned that the crime-fraud exception “is based on the premise that when a client seeks out an attorney for the purpose of obtaining advice that will aid the client in carrying out a crime or a fraudulent scheme, the client has abused the attorney-client relationship and stripped that relationship of its confidential status.”

if the “client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.” Rule 1.6(b)(4).

Of course, if the attorney is representing the client in a matter pending in a court or other tribunal, the lawyer must comply with all requirements including obtaining permission from the tribunal. And in securing that permission, the attorney may not disclose client information unless the attorney does so in a manner that complies with Rule 1.6.