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2021 Connecticut Legislative Wrap-Up

The Connecticut State Legislature's regular session that began January 6, 2021, adjourned on June 9th. A special session was called shortly thereafter and ran from June 15th through the 17th. Several pieces of legislation that impact estate planning in Connecticut were passed and signed into law by Governor Lamont. In this update, we summarize and provide insights on legislation (some which passed and some which did not) that has an impact on estate planning for clients.

- **No Change to Estate and Gift Taxes:** There were no substantial changes to Connecticut's estate and gift tax regime in the 2021 legislative sessions, though there were some proposals to do so. Connecticut's exemption for 2021 remains \$7.1 million, which is up from the 2020 exemption of \$5.1 million, allowing individuals to make additional gift tax free transfers this year. The exemption is still scheduled to increase to \$9.1 million in 2022 and will match the federal exemption in 2023 and following years. Connecticut also remains the only state with a gift tax.
- **Tax Amnesty Program (Public Act 21-2):** While most of the attention surrounding the special session was devoted to the legalization of recreational cannabis, the legislature also passed an "Act Concerning Provisions Related to Revenue and Other Items to Implement the State Budget for the Biennium Ending June 30, 2023." Tucked away in Section 450 of the legislation is the creation of what is Connecticut's seventh tax amnesty program since 1990, the last one having concluded November 30, 2018. Under this amnesty program, a taxpayer may voluntarily file an application with the Department of Revenue Services from November 1, 2021 through January 31, 2022. For applications that are accepted, the taxpayer will not need to pay penalties, will face no criminal prosecution, and will only need to pay 25% of the interest on the outstanding tax liability (i.e. 3% per year instead of the usual 12% interest).

Payment must be made with the application. This tax amnesty program applies to almost all taxes imposed by Connecticut and encompasses income taxes (including fiduciary income taxes of trusts and estates), gift taxes, and estate taxes. Based on our experience with past Connecticut amnesty programs similar to this program with which we have assisted clients, this provides an excellent opportunity for clients who made unreported gifts or have outstanding estate tax liens on property to come into compliance with substantial savings.

- **Technical Corrections to the Connecticut Uniform Trust Code (CUTC) (Public Act 21-39)**: In 2019, Connecticut passed the CUTC which became effective January 1, 2020. The CUTC has provided many new planning and structuring opportunities for both new trusts and existing trusts in Connecticut. In the legislative session that just concluded, some technical corrections and clarifications were made to the CUTC, three of which we would like to bring to your attention:

- **Rule against perpetuities**: The CUTC as originally enacted generally extended Connecticut's rule against perpetuities period to 800 years. There was a typographical error in the original CUTC that did not include one of the key statutory provisions as being included in the provisions extended to 800 years. This year's legislation corrects this error.
- **Designated Representative**: The CUTC allows for a trust to have what is known as a "designated representative(s)," which is a person who may receive notices and provide consent on behalf of other beneficiaries. The use of this position allows the trust to operate without the trustee having to proactively provide information to those beneficiaries who are covered by the designated beneficiary. The ability to provide binding consents on behalf of other beneficiaries makes the position a powerful one. In the original CUTC, there was a perceived lack of clarity as to whom the designated representative owed a duty and what responsibilities it had. The technical correction adds an explicit provision that "[t]he designated representative shall act in good faith on behalf of any beneficiary so represented." This does not change the liability of designated representatives as they could be held liable if they did not act in good faith under the terms of the original CUTC.
- **Defining "Terms of Trust"**: The phrase "terms of a trust" or "terms of the trust" are used over 80 times in the original CUTC, but it was not defined. The term is actually not self-explanatory because under the CUTC, what constitutes the governing terms of a trust is not just the trust document

but could include agreements amongst the parties or a court order. The definition added in the 2021 legislation defines the phrase broadly to include the variety of ways a trust's terms can be set out.

- **Expiration of Remote Notarization and Document Execution:** The Covid-19 pandemic highlighted how antiquated it is for the formalities of executing legal documents to require in person witnesses and/or notaries. Through executive orders (Executive Order 7K that was superseded by Executive Order 7Q), Governor Lamont temporarily allowed for the waiver of witnessing on certain documents, the use of remote notarization, and the remote witnessing and notarizations for testamentary instruments. Governor Lamont extended the use of these procedures up until June 30, 2021 (See Executive Order 7ZZ and Executive Order 12B). There were multiple legislative proposals that would have extended modified versions of these temporary remote document execution procedures; unfortunately, none of them ultimately made it through the legislature so the ability to remotely execute testamentary instruments as well as certain other estate planning documents expires on June 30th absent another executive order.
- **Probate Court Operations Bill (Public Act 21-100):** It is customary that legislation is passed each year related to the operation of the probate courts in Connecticut. Probate court legislation was not passed in 2020 due to the session being curtailed by the Covid-19 pandemic. This year legislation was passed, which made various technical changes that will not have a noticeable impact to practitioners.
- **The Connecticut Parentage Act (Public Act 21-15):** This legislation implements a modified version of the Uniform Parentage Act. This act modernizes Connecticut law relating to the parentage rights to children for same-sex couples, unmarried couples, and non-biological parents when surrogacies are used. While this legislation is not primarily directed at trust and estate planning, it does have an impact on who has legal rights regarding inheritances and legal rights to be part of proceedings related to trusts and estates.

Looking Ahead

Absent a special session of the legislature being called, the legislature is next scheduled to convene in February 2022. At the moment, a special session is expected this fall for the limited purposes of determining how over \$300 million from the American Rescue Plan will be spent, but this should have no bearing on trust and estate law. The same group of legislators will be returning for the next session, with the exception of seats filled by special elections for mid-term vacancies of which there is one for the senate currently being scheduled, as the next general election is in November 2022.

Please do not hesitate to contact us if you have any questions regarding these legislative updates. We hope you find these insights helpful as you consider estate planning and tax issues as we pursue our mutual goal of providing high-end, high-touch advice.

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