



CLIENT FOCUS

RECENT CHANGES TO NEVADA'S DOMESTIC ASSET PROTECTION TRUST STATUTE (*NEVADA ON-SHORE TRUST*)

Many of you are probably aware that Nevada was among the first few states to pass legislation which allows individuals to establish a trust for his or her own benefit that protects him or her against potential creditors' claims. This is known as a "self-settled" spendthrift trust, and most states will not recognize this type of trust. Prior to the passing of this legislation in Nevada and other forerunner states like Alaska and Delaware, an individual was forced to go "offshore" to create this type of trust, often in tropical and exotic locations like the Bahamas or Cook Islands.

Ever since the statute became effective on October 1, 1999, JEFFREY BURR, LTD. has confidently established this type of trust for hundreds of clients looking for legitimate techniques to protect themselves and their families from frivolous litigation and unplanned creditors. We refer to this type of trust with our clients as the Nevada On-Shore Trust®.

The Nevada statute that blesses this type of trust mandates that there is effectively a two-year waiting period before the creditor protection vests. Prior to the recent change in the statute, there was also the possibility that a creditor could have an additional six months to bring an action against the person or trust regarding any transfer made to the trust. This six-month period began when a creditor "discovers or reasonably should have discovered the transfer."¹ Our firm has always made efforts to limit the applicability of this surprise waiting period by publishing notice of the transfer in a publication of wide circulation.

There has been a recent change to the statute, which JEFFREY BURR, LTD. feels is a positive improvement to the statutes that permit the Nevada On-Shore Trust. Effective October 1, 2007, SB 420 added language to Nevada Revised Statutes 166.170 that clarifies the applicability of the six-month waiting period.

Referring to the discovery of the transfer, the revised version of the statute reads: "A person shall be deemed to have discovered a transfer at the time a public record is made of the transfer, including, without limitation, the conveyance of real property that is recorded in the office of the county recorder of the county in which the property is located or the filing of a financing statement..."² This addition clarifies that by filing a notice of transfer and recording this notice in the county property records, any current or future creditor is put on notice that a transfer has occurred and that a debtor has established and is protected by a Nevada On-Shore Trust.

If you have a Nevada On-Shore Trust and have not given adequate public record of the trust's existence and/or any transfers made to the trust, we encourage you to do so. It is a simple step to take to eliminate the argument that a creditor was not aware of the transfer to an asset protection trust. We would be happy to help you or your family with this new requirement. Please call one of our attorneys today to find out more. JB

¹NRS 166.170(1)(a)(2).

²NRS 166.170(1)(b)(2).

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OBAMA'S IMPACT ON YOUR TAXES

On November 4, 2008, Barack Obama was elected the next President of the United States. Throughout his presidential campaign, Mr. Obama espoused changes to the Federal Tax Code as a major part of his administrative agenda. Although he has not offered a fully developed tax plan, he has hinted at several proposals that, while lacking in specifics, do indicate the direction he may be heading with his tax agenda. It does appear that a significant part of his plan centers on reducing direct taxes for 90% of all taxpayers. Since the typical reader of this newsletter is in the other 10%, for whom taxes may very well increase, this article focuses on the possible tax effects of the new administration on that group.

ESTATE TAX

While some argue that the estate tax is equitable and good for society, most of our clients argue that assets having already been subject to tax once, in the form of income tax, should not be taxed a second time. President-elect Obama proposes to freeze the estate tax levels such as they are in 2009, thus preventing the one-year scheduled repeal of the tax in 2010. The estate tax exemption would be \$3.5 million and the top estate tax rate would be set at 45%. In addition, the Obama plan may seek legislative repeal of decades-worth of estate tax-friendly court decisions to eliminate valuation discounts for lack of marketability and minority interest in the family estate planning arena. These changes may be effective as soon as January 1, 2009. Today, through the use of well-respected planning techniques and valuation methods that have been around for years, many of our clients with taxable estates engage in planning to transfer assets to future generations at discounts of up to 50% where family investments can appreciate outside of their estates.

There have also been suggestions that Mr. Obama may agree to make the estate tax exemption "portable" between spouses such that if the entire exemption is not used at the first spouse's death, it would carry over to be used at the death of the second spouse. This would be a very welcome change and would dramatically simplify many of our clients' estate plans. In the event this does become law, many clients who currently have "AB" and "ABC" Trusts will be able to amend their trust agreements to make them much more straightforward and user-friendly.

INCOME TAX

As far as we can gather, Obama plans to only partially extend the tax

cuts of 2001 and 2003, benefiting only the middle class as he defines it. To pay for the many talked about "entitlement" increases, including those to Social Security, Medicaid and Medicare, resulting from the added strain of the retiring Baby Boom generation, the top income tax rate of 39.6% would return for high-income taxpayers. These high-income taxpayers would also be subject to a capital gains and dividend rate of 20%, that while higher than the current 15% rate, is actually low from a historical standpoint. Time will tell whether our future President will be able to hold the line where he has drawn it, in light of strong Congressional pressure to move these rates even higher. Mr. Obama also would have the itemized deduction phase-out revert to its previous level of 3% of adjusted gross income in excess of an inflation adjusted base amount. Currently, the phase-out is only 1% for 2008 and 2009. This plan follows the general Democratic conviction that the tax system should be progressive and weigh more heavily on the wealthy.

OTHER TAXES

Alternative Minimum Tax "AMT." The highly unpopular AMT does not appear to be going away anytime soon. It simply raises too much revenue in a time of rising budget imperatives. We believe that Obama will attempt to retain the current exemption levels, indexing them for inflation.

Social Security Taxes. The President-elect has indicated that he thinks social security taxes should be increased for those earning more than \$250,000 a year. We would assume that he will also continue to apply the current 2.9% Medicare tax to all earned income.

Taxes on Businesses. At this time Mr. Obama's plans for business taxes are not too clear. We do think that he might increase and create tax credits for research, experimentation, renewable energy projects, and creation of jobs in the United States. On the flip side, he will probably attempt to increase taxes on publicly traded partnerships, oil companies, and taxpayers operating in foreign tax havens.

CONCLUSION

Predicting changes in the Federal Tax Law is very difficult. In almost every instance, however, doing your planning now is highly preferable to waiting. A window of opportunity exists to employ powerful valuation principles and lock in gains at the current tax rates. This window may likely close after 2009. If passed, some proposals will create costly tax and non-tax problems for some families and their businesses, while other changes would provide new and exciting estate planning opportunities. If you have any questions about these potential changes and how our planning techniques might benefit you and your family, please contact our office. **B**



JB Tibbits

in view of recent financial upheavals, many people are finding their debts exceed their assets. If you know someone in this situation, it is best that they name their spouse (or children, if any) as the direct beneficiary of their life insurance policies, rather than naming their trust or estate. This is because the life insurance proceeds are available to a creditor at death of the insured if the proceeds are payable to the trust or estate, whereas, if paid directly to the spouse, for example, the creditor of the deceased may not be able to claim an interest in the life insurance benefit. **B**



Jeremy K. Cooper

Jeremy is an associate attorney at Jeffrey Burr, Ltd. Jeremy graduated with a Bachelor of Science in Accounting from Brigham Young University (BYU) (Cum Laude and Phi Kappa Phi) in 2001. Following the completion of his undergraduate studies, Jeremy continued his education at BYU and earned a Master's Degree in Accounting with an emphasis in Taxation in 2002.

After graduating from BYU, Jeremy worked as a senior associate with PricewaterhouseCoopers, LLP's (PwC) corporate tax group in Silicon Valley. During his time at PwC, Jeremy took and passed the Certified Public Accountant (CPA) exam. After spending several years in public accounting and becoming a licensed CPA, Jeremy returned home to Las Vegas, Nevada, to pursue his longtime goal of attending law school.

In 2008, Jeremy earned a Juris Doctorate (JD) Degree from the William S. Boyd School of Law at the University of Nevada, Las Vegas. While a JD candidate, Jeremy was selected to serve as a staff and senior staff member of the Nevada Law Journal. Jeremy began working as a law clerk for Jeffrey Burr after completing his first year of law school and has been employed by the firm ever since, during which time he has been able to assist in providing clients with a variety of valuable services in estate planning and related areas.

Jeremy is currently a member of the American Institute of Certified Public Accountants (AICPA) and the Southern Nevada Estate Planning Council. Jeremy speaks Spanish fluently as the result of having lived in Argentina for two years and his continued involvement with members of the Latin community through his church service during ensuing years.

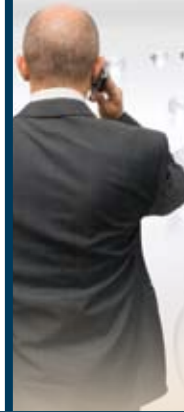
Jeremy is also very proud of his longtime southern Nevadan ancestry and local ties to the community as a graduate of Ed W. Clark High School and a second generation Las Vegan. *J*

RECESSION EMERGENCY PLANNING

With the tremendous decline in asset values of the past year, with both stocks and real estate declining by 40% or more, it may be necessary to rethink the distribution provisions of your estate.

Possible problem areas are where you may have made a large specific bequest to a person or charity. It is important to remember that most specific bequests come "off the top" of the estate, meaning these bequests are paid first, then whatever is left goes to the remainderman.

One alternative your attorney may suggest is to make provision for a specific dollar amount bequest, but also provide that bequest will be limited to a percentage of the estate, so that if the estate declines in value, the dollar amount bequest will be automatically reduced as well.



If you are concerned about problems like this and need to rethink your distribution provisions, please call to schedule an appointment. Please understand that the attorney you meet with will need to charge his hourly fee for any such consultation and then normal fees will be charged if amendments are required. *J*

FDIC Coverage Summary: *making sure your money is insured*

Given the current state of the nation's economy, many individuals are beginning to wonder whether the money held at their banks is insured and to what extent in the event of bank failure. The Federal government has created a corporation called the Federal Deposit Insurance Corporation ("FDIC") that generally provides deposit insurance to member banks by guaranteeing up to \$100,000 per depositor. Congress has temporarily increased FDIC deposit insurance from \$100,000 to \$250,000 per depositor through December 31, 2009. Detailed information regarding specific account coverage can be found at <http://www.fdic.gov/edie>. The following is a brief summary of several types of current coverage available to account holders of FDIC insured banks.

Individual Accounts: An individual account is insured up to \$250,000 per depositor per bank. If a parent has formed a custodial account for a child, the account is also insured up to \$250,000.

Retirement Accounts: Some retirement accounts, like Individual Retirement Accounts ("IRAs"), are insured up to \$250,000 per depositor per insured bank.



Joint Accounts: Qualifying joint accounts are insured up to \$250,000 per each person owning the account. A qualifying joint account must be owned by more than one person having equal withdrawal rights as tenants by the entirety, joint tenants with rights of survivorship, tenants in common, etc.

Formal Revocable Trusts: These are trusts that are created for estate planning purposes, such as revocable Living Trusts or Family Trust Accounts. The beneficiaries must be the owner's spouse, child, grandchild, parent, or sibling (this includes step



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step and adopted kin). Revocable trusts are insured up to \$250,000 per qualifying beneficiary per grantor.

Informal Revocable Trusts: These types of accounts include Totten Trust accounts, Pay on Death Accounts ("POD"), and In Trust For accounts ("ITF"). The beneficiaries must be the owner's spouse, child, grandchild, parent, or sibling (this includes step and adopted kin). Revocable trusts are insured up to \$250,000 per qualifying beneficiary per grantor.

Irrevocable Trusts: Irrevocable trusts often contain conditions that affect the interests of the beneficiaries or provide a trustee or a beneficiary the power to invade the principal. An irrevocable trust account is therefore usually limited to a total of \$250,000 of insurance coverage. The FDIC also provides up to \$250,000 of insurance coverage to an irrevocable trust as an entity. This entity type of coverage is not available to revocable trusts.

Thus, as noted above, the FDIC provides several forms of insurance protection for FDIC insured bank account holders. It is important to understand not only the extent of your personal coverage, but how that coverage can be maximized to best protect you and your assets. On January 1, 2010, the standard coverage limit will return to \$100,000 for all deposit categories except IRAs and certain retirement accounts that will continue with \$250,000 coverage. We here at Jeffrey Burr, LTD. are able to assist you in analyzing how your accounts are held and how to best protect them. Should you have any questions or concerns regarding your FDIC coverage, please schedule an appointment to meet with one of our attorneys. **J**

JB HAPPENINGS

Jeffrey L. Burr has been named Outstanding Volunteer Fundraiser by the Las Vegas Chapter of the Association of Fundraising Professionals. He was honored at their annual luncheon in November.

We are pleased to announce our Law Clerk Jeremy Cooper, who is also a certified public accountant, passed the Nevada Bar Exam and has accepted a position as Associate Attorney with our law firm.

Attorney Robert Morris was recently published in the Communiqué-Official Journal of the Clark County Bar Association. His article titled "The Family Friendly Provisions of the Nevada Probate Code" was published in the November 2008 edition. A copy of the article may be found on our website at www.jeffreyburr.com in the Resources Section.

Attorneys David Grant and Robert Morris presented to a room of their peers at the Lorman Education Services seminar on "Accounting for Estates and Trusts in Nevada" on October 22, 2008.

Attorney David Grant recently passed the Utah Bar Exam.

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