

Q&A With Day Pitney's Darren Wallace

Law360, New York (December 09, 2013, 5:41 PM ET) -- Darren M. Wallace, resident in the firm's Stamford, Conn., office, is a partner in the individual clients department. Wallace's experience includes advising clients regarding all aspects of estate planning, estate and trust administration, estate and gift taxation, and probate and trust litigation.

Wallace received a B.A. from Colgate University and a J.D. from the University of Connecticut School of Law. He is a member of both the tax and the estates and probate sections of the Connecticut Bar Association, and a member of the executive committee of the estates and probate section. Wallace is a former co-chair of the Estates, Probate, and Tax Committee and a former member of the executive committee for the Young Lawyers Section of the Connecticut Bar Association. He is also a member of the Fairfield County Bar Association and the Estate Planning Council of Lower Fairfield County. His community activities have included service on the board of directors for PLAN of Connecticut Inc., a nonprofit organization that assists in planning for the future of family members with disabilities and provides continuity of services for such individuals.

Q: What is the most interesting or challenging tax problem you've worked on to date?

A: The pending sunset of the federal estate and gift tax exemption at the end of 2012 provided some of the most challenging tax planning issues I have worked on in my career. The \$5,120,000 gift tax exemption was scheduled to be reduced to \$1,000,000 after Dec. 31, providing a hard deadline for clients who wished to make significant gifts and utilize the higher exemption amount.

This created a "use it or lose it" atmosphere that influenced all planning decisions last year, and accelerated the gifting process for many clients. For example, many wealthy clients with young children were forced to consider significant downstream transfers of wealth — up to \$10,240,000 for a married couple — sooner than they would have otherwise preferred under normal circumstances. In addition, given the hard deadline, the planning process was greatly condensed for those who started late in 2012 — forcing decision making on things like trust structure and trustees to be made sooner than many clients are accustomed when dealing with irrevocable transfers.

Adding to the challenge was the uncertainty of the legislative landscape and, of course, in the end the federal estate and gift tax exemptions remained in place permanently. While presenting many challenges, the flux in the law also provided many interesting planning opportunities for our clients — gifts of homes and vacation properties, artwork, business interests and of course marketable assets. The time spent counseling our clients on whether they wished to make gifts, and if so what to gift and how to structure the transfer, was both challenging and gratifying.

Q: Currently, what is a pressing tax concern for your clients, and how are you addressing it?

A: Rising income tax rates are presenting increasingly complex planning issues for our individual clients. Now that the federal estate and gift tax exemptions have been permanently set at \$5,000,000 (indexed for inflation) with a 40 percent rate, for many individuals the focus has shifted from the flux in the transfer tax landscape to income tax planning issues and opportunities.

With increased income tax rates and lower estate tax rates, many taxpayers now face larger potential income tax consequences than estate tax consequences in structuring their estate plan. This has not typically been the case for wealthy clients, but now a married couple with a combined assets of \$10,000,000 could have their entire estate pass to their children at no federal estate tax cost with proper planning. Depending on how those transfers are structured, however, there might be income tax consequences to their children. To address this, we are building additional flexibility into the estate plan to allow our clients and their families to be able to respond to changed circumstances, such as an unexpected income tax hurdle down the road.

Q: What do you anticipate being the biggest regulatory challenge in your practice in the coming year and why?

A: The increased volume of gift transfers in the two years preceding the scheduled sunset of the federal exemption amounts is certain to overwhelm the federal and state tax authorities. In our firm, we have seen about a fifty percent increase in the amount of gift tax returns prepared this year over last year — I would expect that this is representative of the increase other preparers have experienced across the country. As a result, it is reasonable to expect that the Internal Revenue Service will be flooded with gift tax returns this year, and that as a result of this demand on available resources delays in seeing matters through the standard audit process for estate and gift tax matters should be expected. In addition, Connecticut was the only state with a gift tax in place last year, and so a similar increase in the number of Connecticut returns that are filed and the resulting delays this may cause in getting matters through the state tax system are to be expected. I anticipate that these delays will present practical challenges as part of my everyday practice over the next year or two.

Q: Outside of your own firm, who is an attorney in your practice area whom you admire, and what is the story of how s/he impressed you?

A: Mark Neikrie of Andros, Floyd & Miller, P.C., in Hartford is a lawyer I greatly admire. I met Mark while in law school and started my career working primarily on tax and planning matters with him. Mark is an excellent tax lawyer with all of the technical skills, but what impressed me most as a young lawyer was the high level of integrity and professional care with which he handled every matter. Mark knows the tax code and the rules, but his devotion to the practice and his clients is what left an impression on me. I have an even greater appreciation for this now having practiced for fifteen years with many colleagues who have similar attributes, but Mark was among the first. I learned much about the practice of law from Mark at an early stage of my career, and he continues to be a peer who I respect.

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