

APRIL 2015 NEWSLETTER

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SHOULD YOU CHANGE YOUR DOMICILE TO REDUCE YOUR DEATH TAXES

FIRM ANNOUNCEMENTS:

A. MARTIN DALE-HUBBELL CLIENT DISTINCTION HONOR

Mr. Pozzuolo has been selected recently for a Martindale-Hubbell Client Distinction Honor. Out of more than 900,000 attorneys across the country, less than 1% received this prestigious designation. This award is made possible by Mr. Pozzuolo's clients who have taken the time to provide feedback to recognize Mr. Pozzuolo for his excellence skills, competence and expertise in the areas of communication ability, responsiveness, quality of service and overall value.

B. DIGITAL ASSETS; ESTATE PLANNING FOR THE TWENTY-FIRST CENTURY

Pozzuolo Rodden, P.C. is pleased to announce that Joseph R. Pozzuolo and Kelly A. Barse, Esquire have written an Estate Planning article titled: "Digital Assets: Estate Planning

for the Twenty-First Century” was published in the January 2015 publication of Practical Tax Strategies Journal of Thomson Reuters. A copy of this article can be obtained by clicking here: [Digital Assets Estate Planning For The Twenty-First Century.pdf](#) or emailing Christine Wainwright @ chrissy@pozzuolo.com

C. SEMINARS



1. Joseph R. Pozzuolo, Esquire, and Jeffrey S. Pozzuolo, Esquire of Pozzuolo Rodden, P.C., were the presenters of two webinar CPE/CLE seminars titled “*Closely-Held Business Law Symposium For The General Practitioner And CPA*” and “*The Nuts, Bolts And Ethics Of A Multi-Discipline Estate Practice For The General Practitioner And CPA*” for Lawline in New York City on March 20, 2015.



2. Joseph R. Pozzuolo, Esquire of Pozzuolo Rodden, P.C., presented a CPE/CLE webinar seminar titled “The Negotiation And Documentation Of Commercial Loan Documents Including The Use Of Convertible Loans With Put And Call Options” for Clear Law Institute on Thursday March 26, 2015.

D. UPCOMING SEMINAR

1. Joseph R. Pozzuolo, Esquire will be presenting a CPE/CLE webinar seminar for Lawline on Friday, April 24, 2015 at 12:00 pm.

The topic will be: **The Fundamentals of Estate Planning for the Traditional Middle Class Family.**

Please register on line at www.lawline.com

2. Joseph R. Pozzuolo, Esquire and Jeffrey S. Pozzuolo, Esquire will be presenting a CPE/CLE for Penn State Abington on Saturday, May 9, 2015 from 8:00 am to 12:00 pm.

The topic will be: **The Fundamentals of Representing a Privately Held Business Including Obtaining Commercial Financing for the Suburban General Practitioners, Attorneys and CPAs, Including Ethics.**

Please contact Theresa Bloom at: tmb17@psu.edu

Although all of these seminars are continuing education seminars courses for lawyers, accountants and life underwriters, the general public is invited to attend or view.

QUESTION OF THE MONTH:

**CAN I LEGALLY COMPEL THE MOTHER OF MY NEWBORN
CHILD TO GIVE OUR CHILD MY SURNAME?**

Answer-See Page 6 of this Newsletter

**SHOULD YOU CHANGE YOUR DOMICILE TO
REDUCE YOUR DEATH TAXES**

For most Americans, the Federal Estate Tax will not be a concern at the time of their passing. The current amount that can be given by a person at death free of federal estate taxes is \$5,430,000 and for a married couple, this totals \$10,860,000. Any amount that exceeds the exemption is taxed at a maximum federal rate of 40%. However, if you live in one of the nineteen states with an Estate or Inheritance tax, you may want to consider becoming domiciled in that state without either of these death taxes.

STATE DEATH TAXES

States that have no estate or inheritance tax at all include: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Indiana, Kansas, Louisiana, Michigan, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming.

Tennessee's estate tax will be phased out in 2016 and Maryland and New York will eventually have their estate tax exemptions mirror the federal exemption, which is scheduled to occur in 2019. Iowa, Nebraska, and Kentucky have only inheritance taxes which can range from 0% to 18% depending on who the bequest is made to.

New Jersey has arguably the harshest estate and inheritance tax regime in the entire country. For estates that exceed \$675,000, estate tax must be paid and the rate can range from 0.8% to 16% depending on the size of the estate. Additionally, an inheritance tax must be paid based on the class of beneficiaries you have bequeathed your estate to. For example, children, parents, and spouses are exempt from inheritance tax but transfers to almost everyone else are subject to inheritance tax ranging from 11% to 16%.

Pennsylvania no longer has an estate tax but imposes an Inheritance Tax on transfers to everyone except your spouse. Transfers to lineal descendants (children and grandchildren) are subject to 4.5% tax, siblings are taxed at 12% and everyone else is subject to a 15% inheritance tax rate.

Even if you have an estate that will not be subject to the Federal Estate Tax, you could still save a considerable amount of your estate for your beneficiaries by considering being domiciled in a state where there are no death taxes, such as Florida. If you have a \$5,000,000 net estate in Pennsylvania and you leave everything to your children, your death tax bill will be

approximately \$225,000 and that same estate in New Jersey would pay close to \$290,000 in death taxes. If you think your estate will have to pay significant state estate or inheritance taxes, you may want to consider being domiciled in a state with no death taxes, especially if you have a winter home in the southern United States.

ESTABLISHING NEW DOMICILE

Almost every state in the southern half of the United States has neither estate nor inheritance tax so establishing one of those states as your legal domicile may result in significant tax savings for your estate. A person can be a resident of several states if they have homes in several states but you can only have one legal domicile. The key is making sure that you meet all the requirements for legally changing your domicile. It is not as simple as buying a house in Florida and spending a few months there each winter.

INTENT TO ESTABLISH NEW DOMICILE

You must have an honest and bona-fide intent to establish a new domicile and give up the other state as your legal domicile. Generally, a domicile is characterized as the place where you intend to make your permanent home and the place where you intend to return to after you have been absent. However, your desire to change your domicile can be for any number of reasons and still qualify as legal intent to create a new domicile. Reasons such as health, business, pleasure, better climate, better laws, or for any other reason whatsoever are sufficient reasons to desire to establish a new domicile. Regardless of why you are choosing to change your domicile, the burden of proof will be upon you or your estate if your new domicile status is challenged.

EVIDENCE OF INTENT TO ESTABLISH NEW DOMICILE

There are several steps that you should take in order to legally establish a new domicile. You should first establish a permanent residence in your new home state, for instance, Florida. If you own the home you live in Pennsylvania or New Jersey it is also recommended that you should own your home in Florida. Renting an apartment may make it seem like you do not intend to permanently move to Florida. One change to consider is selling the family home in Pennsylvania or New Jersey and downsizing to a smaller home in that state. You do not want it to seem like your Florida home is actually your winter vacation home because it is so much smaller in size than the home you are maintaining in your old state.

If you plan to split your time between the new and old state, you will need to avoid the appearance of intent to continue having your old state as your permanent home. Part of establishing domicile in Florida will be acquiring a new permanent residence there but you also must spend the “majority” of the year there. When assessing whether a person is domiciled in one state or another, tax auditors will always look at the number of days spent in a state. Most states operate under the rule that you are domiciled in their state if you are there for more than 183 days in a year. If you think you will be spending close to half the year in each state, you should keep a detailed calendar of when you arrived in and departed from each state as many states will consider any time spent in their state as a full day toward the 183 days necessary to tax you as a domiciliary of that state. If you are traveling from one state to another frequently, you should also keep records of your travel such as airline reservations or toll receipts.

After securing a residence in Florida you should obtain a Florida declaration of domicile, a Florida homestead exemption and a Florida drivers license. You should also be sure to name Florida as your domicile in your Will, Trust, Durable Power of Attorney and Health Care Proxy. Other records that support your domicile status in Florida include:

1. Voter Registration Cards;
2. Vehicle and Boat Registrations;
3. Obtaining memberships in clubs, charitable organizations, and religious institutions in Florida and discontinuing affiliations in the old state;
4. Transferring all bank accounts and safe deposit boxes to Florida;
5. File income taxes and personal property taxes in Florida;
6. Change to non-resident status for tax returns filed in old state for income still earned there;
7. Transfer all professional licenses;
8. Find medical providers in Florida;
9. License pets in Florida;
10. Change credit cards to Florida address;
11. Affiliate with a church or temple in Florida; and,
12. Change all document such as passports.

You may also want to consider having family and social gatherings in Florida and transferring all your valuable items of artwork and furniture to your home in Florida. Furthermore, if part of your decision to move to Florida permanently is for health reasons, you may want to have your physician document that he has given you that advice.

Making all these changes will work in your favor if you are ever challenged on your new domicile on your income tax return or if your Estate has to file an Estate or Inheritance Tax return for property retained in the state of your former domicile. It is more likely that your domicile status will be challenged on an income tax return filed during your lifetime as the old state will likely want to continue taxing all your income instead of just the income earned in that state. If you successfully overcome a challenge to your domicile during your lifetime, you will also likely prevail if there is a challenge on the taxability of your estate as your estate will be able to show that you have been filing income tax returns as a resident of Florida for several years.

If you are concerned about the estate or inheritance taxes in the state where you currently live, an experienced estate planning attorney can help you determine how a move to a new state could affect your estate and reduce death taxes and how to establish domicile in your new state.

QUESTION OF THE MONTH:

CAN I LEGALLY COMPEL THE MOTHER OF MY NEWBORN SON TO GIVE OUR CHILD MY SURNAME?

There are many complicated legal issues that can arise when a child is born to a couple who are no longer in a relationship. One of the most emotionally charged of these issues is which parent's surname will be given to the child. When you combine the parents' natural desire to feel close to their new child and to control important decisions in his life with the hostility that often accompanies a break up or divorce, it can result in an incredibly heated conflict. It is likely that both parents will feel strongly that the child should have their own surname, both as form of bonding with the child and as a way to continue passing the legacy of the name down through the generations. The question, aside from pleading his case directly to the mother of his newborn, is there anything a father can do to ensure that his child is given his surname? A recently decided Pennsylvania case has provided some insight into this issue.

The standard that the Court applies when considering a petition to change a child's name was set forth in 1992 in the case In Re: Grimes. In Grimes, the divorced mother of a five year old boy filed a petition to change the child's surname from Grimes to Grimes-Palaia, with Palaia being the surname of her new husband which she had taken as her own. The boy's father filed objections to the name change, testifying that his son had no desire to change his name and that he should keep the surname Grimes as a way to continue identifying with his paternal relatives.

The Court in Grimes declared that the appropriate focus when considering a name change was the best interest of the child. Although specific guidelines are difficult to establish, the Court stated that general considerations should include the natural bond between the parent and child, the social stigma or respect afforded a particular name within the community, and, where the child is of sufficient age, whether the child intellectually and rationally understands the significance of changing his or her name.

In the recently decided In Re: Change of Name of DLR, a Pennsylvania Commonwealth Court gave the matter further consideration. In DLR, the biological father of a six month old filed a petition to change his son's surname to match his own. When the biological mother opposed the petition, the Court considered the criteria set forth in Grimes and found no significant advantage either way. Both parents had a bond and involvement with the child, neither name carried particular stigma or respect, and the child was not of sufficient age to understand the effect of a name change. However, the Court ultimately granted the father's petition, due to reasoning sure to be found controversial by some.

The Court found that it is in a child's best interest for the child to bear the surname of at least one of his biological parents. Due to the possibility that the mother will at some point re-marry and assume the name of her new spouse, the Court determined that it was in the child's best interest to have the same surname as his father, which the two would continue to share throughout the child's life.

As with many legal issues, the answer to the question of whether you can have your child's surname changed to your own surname despite the mother's objections is: "It depends." When considering a petition to change your child's name, the Court will consider whether the change is in the best interest of the child. In making that determination the Court can consider numerous factors, including

the Grimes factors- the bond between parent and child, the stigma or respect given a particular name, and the capacity of the child to understand the significance of the change- or additional factors such as the importance of having the same surname as a parent, as discussed in DLR.

Although the determination regarding a child's legal name change is made on a case by case basis, it is important to know that the ultimate decision regarding a child's surname is not entirely controlled by the mother or merely a case of "who got there first," and that legal remedies exist to protect your connection to your child and the legacy of your name.

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- If there are any legal questions you would like this office to answer in the future, please email the question to us at info@pozzuolo.com. Each month, the question with the most relevance to our privately held business clients, advisors, and friends will be answered in our monthly newsletter. The questions can relate to any of the areas practiced by this office including business planning and transactions, corporate law, commercial litigation, employment law and litigation, commercial real estate and development, construction law and litigation, estate planning, estate administration, tax and pension law, family law litigation.
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PUBLICATIONS

All of the following professional publications and past newsletters written by attorneys of this office are available by clicking here: [http://pozzuolo.com/Pubs Articles.shtml](http://pozzuolo.com/Pubs%20Articles.shtml)

Corporate/Tax Articles

- Bankruptcy - How To Prevent It And How To Cope With It Should It Happen To Your Business
- Deferred Compensation Rewards And Retains Key Employees
- Design Buy-Sell Agreements For Maximum Utility
- How An S Corporation Avoids The Double Taxation Incurred When Excessive Compensation Is Treated As A Dividend
- How Mortgage Lenders Should Draft Broker Agreements To Avoid RESPA Violations
- How To Look, Act And Sound Like A Professional Corporation
- How to Structure a Suitable Buy-Sell Agreement
- How To Use Non-Qualified Deferred Compensation Arrangements As A Business, Retirement And Tax Planning Tool
- Money Purchase Pension Plan Falls Out Of Favor
- Protecting A Client's Business From Unfair Competition Using Restrictive Covenants
- Structuring Loans From Qualified Plans - How To Handle The Strict Tax Rules
- What Type of Qualified Corporate Retirement Plan Best Serves Your Business, Tax And Retirement Needs
- Why An Employment Contract Is Mandatory

Estate Planning Articles

- Adapt Estate Planning Strategies to Fit the Needs of Same-Sex Couples
- College Funding Tool Offers Estate Planning Advantage

- Diversify Strategies For An Effective Estate Plan
- Divorce and Estate Planning
- Divorce Raises The Need For Performing An Estate Planning Review
- Drafting The Durable Power Of Attorney For Wealth Protection Purposes
- Estate Planning For Pet Owners
- Remarriage Situations Can Raise Special Estate Planning Considerations
- Six Proven Estate Planning Techniques
- Special Needs Trust - An Estate Planning Tool For The Disabled
- The Limited Liability Company -A Sophisticated Tool For Estate Planning
- Using Trusts To Maximize Family Protection And Minimize Estate Tax
- Why Living Wills- Advance Directives Are An Essential Part Of Estate Planning

Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects. It is to provide insight into legal developments and issues. You should always consult with legal counsel before taking any action on matters covered in our updates.

This newsletter is courtesy of Pozzuolo Rodden, P.C.

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