



KAUFMAN & CANOLES
attorneys at law

PRIVATE CLIENT SERVICES UPDATE

February 24, 2017



Trump is President and Republicans Control Both Chambers of Congress... So Do We Still Have to Talk About Taxes?

Whether or not the federal estate tax will be eliminated by the current government is as yet uncertain. Even if the federal estate tax is eliminated in 2017 or 2018, the possibility that it could be reinstated four or eight years later may justify preserving and even creating many of the irrevocable trusts and other estate planning structures that have been implemented by high net worth clients.

Virginia residents are fortunate not to have Virginia estate tax imposed on their estates at death; however, Virginia does have an income tax. Virginia Code § 58.1-381 provides that all resident trusts and nonresident trusts having Virginia taxable income are required to file a tax return with the Department of Taxation. Under the Commerce Clause and the Due Process Clause of the U.S. Constitution, Virginia may only tax a trust if there is sufficient nexus between the trust and Virginia to provide a basis for the state's authority to tax. The Virginia Administrative Code provides that a resident trust is a trust created by or consisting of property of a person domiciled in the Commonwealth, or a trust which is being administered in the Commonwealth. A trust is being administered in the Commonwealth if its "assets are located in Virginia, its fiduciary is a resident of Virginia, or it is under the supervision of a Virginia court."

For non-grantor trusts with significant taxable activity, the impact of Virginia fiduciary income tax on an annual basis can be a significant drain. A trust with income that is derived from assets located outside of Virginia, such as dividend and interest income from securities, may avoid the imposition of income tax by Virginia by reducing its nexus with Virginia. In such a case, a significant fact in the nexus analysis is the domicile of the trustee. By appointing a trustee who is a resident of a state that does not impose any income tax, such as Alaska, Florida, Nevada, South Dakota, Texas, Washington and Wyoming, and by assuring the trust is administered in one of those states, a trust with a Virginia grantor and Virginia beneficiaries may avoid Virginia fiduciary income tax.

Kaufman & Canoles advises clients with assets across the United States and worldwide. We are currently working with clients residing in or with assets in Austria, Canada, Germany, Greece, India, Italy, Japan, and the U.S. with respect to tax planning, estate planning, estate administration and asset disclosure matters. Let us know if we can help you.

[Back to top](#)

Alison is of counsel with Kaufman & Canoles. Her practice includes estate planning and administration, tax planning and compliance, and counseling small businesses, associations and non-profits. Alison works regularly with clients to address international issues, including income from foreign sources and overseas assets.



Alison V. Lennarz
Of Counsel
T (757) 259.3830
F (888) 360.9092
avlennarz@kaufcan.com

For additional timely trusts and estates law updates, visit our [blog](#).

PRIVATE CLIENT SERVICES

Chesapeake

Vonda W. Chappell (757) 546.4150 vwchappell@kaufcan.com

Hampton

Lawrence G. Cumming (757) 224.2910 lgcumming@kaufcan.com

Sarah E. Messersmith (757) 224.2950 semessersmith@kaufcan.com

Newport News

Philip L. Hatchett (757) 873.6316 plhatchett@kaufcan.com

Winthrop A. Short Jr.* (757) 873.6301 washort@kaufcan.com

Norfolk

Jason R. Davis * *** (757) 624.3119 jrdavis@kaufcan.com

Robert C. Goodman Jr. (757) 624.3238 rcgoodman@kaufcan.com

David Kamer** (757) 624.3175 dkamer@kaufcan.com

Kirkland M. Kelley (757) 624.3283 kmkelley@kaufcan.com

Robert H. Powell III (757) 624.3245 rhpowell@kaufcan.com

Ellis H. Pretlow (757) 624.3249 ehpretlow@kaufcan.com

Mary Elizabeth Sherwin * (757) 624-3244 mesherwin@kaufcan.com

James G. Steiger (757) 624.3234 jgsteiger@kaufcan.com

Lewis W. Webb III (757) 624.3247 lwebb@kaufcan.com

Tysons Corner

Christopher L. McLean	(757) 624-3171	clmclean@kaufcan.com
Virginia Beach		
R. Braxton Hill III	(757) 624.3106	rbhill@kaufcan.com
Edward R. Stolle	(757) 491.4033	erstolle@kaufcan.com
Williamsburg		
Gregory R. Davis	(757) 259.3820	grdavis@kaufcan.com
William L. Holt	(757) 259.3885	wlholt@kaufcan.com
Alison V. Lennarz	(757) 259.3830	avlennarz@kaufcan.com
Alexander W. Powell Jr.	(757) 259.3877	awpowell@kaufcan.com
Paralegals		
Jane R. Beatty	(757) 259.3866	jrbeatty@kaufcan.com
Karen H. Burris	(757) 624.3147	khburris@kaufcan.com
Karen L. Davis	(757) 259.3812	kldavis@kaufcan.com
Robyn C. Day	(757) 624.3259	rcday@kaufcan.com
Amber L. Everett	(757) 624.3287	aleverett@kaufcan.com

* Attorneys whose Private Client Services practice is limited to litigation matters

** Also licensed to practice in Florida

*** Also licensed to practice in North Carolina

The contents of this publication are intended for general information only and should not be construed as legal advice or a legal opinion on specific facts and circumstances. To be removed from this mailing list, please click [here](#). Copyright © 2017. Kaufman & Canoles.