FREDERICK J. TANSILL & ASSOCIATES
Since 1997
Attorneys and Counselors at Law
A Professional Limited Liability Company
6723 Whittier Avenue
Suite 104
McLean, Virginia 22101
(703) 847-1359
email: fred@fredtansill.com **FAX: (703) 847-1357**

Visit our website at www.fredtansill.com

WINTER 2023 NEWSLETTER

TRANSFER TAX

Federal Estate, Gift, and Generation-Skipping Transfer Tax

The federal estate, gift, and generation-skipping transfer ("GST") tax exemption amount as of 2023 stands at $12.92 million per person. The exemption amount will be indexed for inflation in calendar years 2024 and 2025 but is scheduled to revert to its 2017 level (indexed for inflation) beginning on January 1, 2026. The 2017 exemption was $5.49 million per person. The tax rate for all three taxes remains at 40%, and the estate and gift tax remain unified - that is, taxable gifts made during life reduce, dollar for dollar, the exemption available to shelter transfers occurring at death.

The gift tax annual exclusion (the amount that each donor may give to any number of individual donees each calendar year without using up any of his or her gift and estate tax exemption amount) has risen to $17,000. The annual exclusion available for gifts to a non-citizen spouse has increased to $175,000 (from $164,000 in 2022).

Assets included in the estate of a deceased individual (except for those which constitute "income in respect of a decedent" - including, most importantly, tax-deferred retirement plans such as 401(k)s and IRAs) receive a new income tax basis, "stepped-up" (or possibly, although rarely, "stepped-down") to their date of death values. Assets transferred by lifetime gift do not receive any such basis adjustment; rather, the donee's basis remains the same as the donor's, adjusted for any gift tax paid with respect to the appreciation. (In those rare cases where the market value of the gifted assets is less than the donor's basis, the donee's basis is that lower market value.) Stepped-up basis at death has been a part of our tax system for many years, and there is little likelihood Congress will reconsider this before 2025.

"Portability" of the estate tax exemption - i.e., the ability of a surviving spouse to claim the deceased spouse's unused exemption by filing a federal estate tax return (with an extended

deadline of five years after date of death when the filing is made solely to elect portability and would not otherwise be required) - remains in effect, and most observers believe that it is likely to be a permanent feature of our transfer tax system. Portability is available only for the federal estate and gift tax exemption, not for the GST tax exemption.

State Estate Tax

Virginia currently has no state estate tax, having abolished it several years ago.

Maryland's estate tax exemption is $5 million for calendar year 2023. Maryland's exemption is not indexed for inflation. Maryland allows portability of its estate tax exemption for spouses dying after 2018 if a portability election is made on a timely filed Maryland estate tax return. In addition, Maryland allows portability of its estate tax exemption for spouses dying before 2019 when a portability election was made on a timely filed federal estate tax return.

The District of Columbia's estate tax exemption is $4,528,800 for calendar year 2023. DC's exemption is indexed for inflation, and DC's exemption is not portable to a surviving spouse.

A number of states, noticing and frustrated by the Federal government's reluctance to impose estate tax on the wealthy, are considering imposing significant death or wealth taxes. Legislators in seven states are seeking a coordinated approach: California, Connecticut, Hawaii, Maryland, Illinois, New York, and Washington state. Already many wealthy and high-earners are fleeing to Florida (no income or estate tax), so mobility of the wealthy imposes an obvious threat to this sort of approach. But state attempts to further tax their wealthiest residents bears watching.

INCOME TAX

In 2023, the new federal individual income tax brackets are as follows:

Tax Rate	For Single Filers	For Married Individuals Filing Joint Returns	For Heads of Household
10%	$0-$11,000	$0 to $22,000	$0 to $15,700
12%	$11,000 to $44,725	$22,000 to $89,450	$15,700 to $59,850
22%	$44,725 to $95,375	$89,450 to $190,750	$59,850 to $95,350
24%	$95,375 to $182,100	$190,750 to $364,200	$95,350 to $182,100
32%	$182,100 to $231,250	$364,200 to $462,500	$182,100 to $231,250
35%	$231,250 to $578,125	$462,500 to $693,750	$231,250 to $578,100
37%	$578,125 or more	$693,750 or more	$578,100 or more

2023 Standard Deduction

Filing Status	Deduction Amount
Single	$13,850
Married Filing Jointly	$27,700
Head of Household	$20,800

Alternative Minimum Tax (AMT)

The Alternative Minimum Tax (AMT) was created in the 1960s to prevent high-income taxpayers from avoiding the individual income tax. This parallel tax income system requires high-income taxpayers to calculate their tax bill twice: once under the ordinary income tax system and again under the AMT. The taxpayer then needs to pay the higher of the two.

The AMT uses an alternative definition of taxable income called Alternative Minimum Taxable Income (AMTI). To prevent low-and middle-income taxpayers from being subject to the AMT, taxpayers are allowed to exempt a significant amount of their income from AMTI. However, this exemption phases out for high-income taxpayers. The AMT is levied at two rates: 26% and 28%.

The AMT exemption amount for 2023 is $81,300 for singles and $126,500 for married couples filing jointly. In 2023, the 28% AMT rate applies to excess AMTI of $220,700 for all taxpayers ($110,350 for married couples filing separate returns). AMT exemptions phase out at 25 cents per dollar earned once AMTI reaches $578,150 for single filers and $1,156,300 for married taxpayers filing jointly.

2023 Capital Gains Tax Brackets

	For Unmarried Individuals, Taxable Income Over	For Married Individuals Filing Joint Returns, Taxable Income Over	For Heads of Households, Taxable Income Over
0%	$0	$0	$0
15%	$44,625	$89,250	$59,750
20%	$492,300	$553,850	$523,050

2023 Income Tax Brackets for Estates and Trusts

Income Range	Tax Rate
$0 to $2,900	10% of income over $0
$2,900 to $10,550	$290 + 24% of income over $2,750
$10,550 to $14,450	$2,126 + 35% of income over $9,850
$14,450 or more	$3,491 + 37% of income over $13,450

TRANSFER TAX PLANNING FOR THE CURRENT REGIME AND POSSIBLE FUTURE CHANGES

We strongly recommend that all of our clients whose current estate planning documents are more than three years old contact us for an estate planning review to determine if those documents are still appropriate in light of the large estate, gift, and GST tax exemptions currently in effect. Married couples who currently have simple "sweetheart" plans leaving their entire estates to each other at the first death and then to their children (outright or in trust) at the survivor's death may not need to make changes, but everyone whose documents include trusts created for tax planning purposes should revisit his or her plan.

Many married couples whose documents include "bypass trust" tax planning (referred to as a "Family Trust" in our firm's documents) designed to utilize both spouses' transfer tax exemptions no longer need such planning. Couples whose combined net worth is unlikely to exceed $11 million may now prefer to have simpler estate plans leaving all assets outright to the survivor at the first death and rely on the portability election, rather than bypass planning, to take advantage of the predeceased spouse's exemption. An outright disposition to the surviving spouse has the further advantage of a stepped-up basis for all assets at the surviving spouse's death (which is not available for assets held in a bypass trust created by a predeceased spouse). For the same reason, persons who are beneficiaries of bypass trusts created by a predeceased spouse may wish to explore the possibility (if permissible under the governing instrument) of terminating those trusts by distributing all assets outright to the surviving spouse.

All surviving spouses of persons who have died recently should contact us to at least explore the possibility of making a portability election to take advantage of the deceased spouse's unused estate tax exemption. The required filing is typically fairly simple and inexpensive and may be made as late as five years after the deceased spouse's death. Absent a portability election, only the surviving spouse's own exemption (which is quite likely to be

much smaller than it is today) will be available to shelter the assets passing at her death, and her beneficiaries may be forced to pay an estate tax that could have been avoided altogether.

At the other end of the spectrum, individuals and couples in a position to make large gifts should strongly consider doing so before the increased exemptions sunset in 2026. As was expected, the Internal Revenue Service issued "anti-clawback" regulations confirming that an individual who, for example, makes a taxable gift of $12.92 million in 2023 (which gift is fully sheltered by his available exemption) but then dies in a year when the available exemption has been reduced to $6 million will not be subject to estate tax on the $7 million difference, subject to a few narrow exceptions. This is a "use it or lose it" opportunity, however - once the transfer tax exemption is reduced (in 2026), one cannot benefit from the larger exemptions that were available in prior years. The anti-clawback regulations also confirm that a surviving spouse who elects "portability" of the $12.92 million exemption available to her deceased spouse who died in 2023 will not lose any of that $12.92 million ported amount even if the exemption is reduced in future years.

Persons making large gifts should consider the following strategies, many of which can be used in combination with one another: (1) gifts to "dynasty" trusts to benefit their descendants for generations to come, in theory forever, taking advantage of both the GST exemption and the estate and gift tax exemption: (2) gifts of fractional interests in closely-held businesses or real estate whose gift tax value is discounted due to lack of control and lack of marketability; and (3) gifts applied to premium payments (if possible, structured to require only a small number of payments or even a single payment) on a large life insurance policy owned by an irrevocable trust, sheltering the entire face value of the policy from estate tax (and GST tax if desired).

Perhaps the most common estate planning tool utilized by our high-net-worth clients in recent years is a gift to a spousal lifetime access trust (SLAT). A SLAT is an irrevocable trust in which one spouse makes an irrevocable gift to a trust for the benefit of the other spouse (and other family members if desired). This gift will remove the gifted assets, and all future appreciation on the gifted assets, from both spouse's estates for federal estate tax purposes. This technique is attractive to clients who have significant net-worths but who are uncomfortable with the idea of giving away a significant portion of their assets to their descendants for fear that they may need to access those assets in the future. In a SLAT, the transferee spouse may use the trust assets for the benefit of both the transferee spouse and the transferor spouse, i.e. the marital unit, during the transferee spouse's lifetime. For married couples, this technique allows them to take advantage of the high gift and estate tax exemption amounts, but allows them to retain access to the assets in the event that access is ever needed. Transferring assets to a SLAT also

provides asset protection benefits for both spouses. There are some important considerations though. The transferor spouse must consider the risks of divorce and of the premature death of the transferee spouse.

In sum, the large exemptions available under current tax law have a dramatic impact on existing estate plans containing formula clauses, and they also present planning opportunities for those in a position to make large gifts. Since nearly everyone is affected, we encourage everyone to contact us for an estate planning review.

ESTATE PLANNING TECHNIQUES IN AN ENVIRONMENT OF HIGHER INTEREST RATES AND DEPRESSED VALUES

The current economic climate of depressed stock and real estate values and rising interest rates, while challenging for all of us, also presents estate planning opportunities. At the simplest level, gifts of securities or real estate may be made to younger generation family members, outright or in trust, at a reduced gift tax cost. In addition, the current low asset value/high interest rate climate is a good time to employ the estate planning strategies discussed below.

Qualified Personal Residence Trust (QPRT). In a QPRT, a donor transfers a personal residence (which may be a primary residence or a vacation property) to a trust, retaining the right to use and occupy the property for a term of years, at the end of which ownership of the property passes to younger generation family members (typically the donor's children). The value of the gift made upon creation of the QPRT is not the full value of the property transferred, but rather the actuarial value of the remainder interest at the expiration of the donor's term interest. The higher the interest rate in effect at the date of transfer, the lower the value of the remainder interest and the lower the taxable gift. By way of illustration, the transfer of a $1 million property by a 55 year old donor to a 10-year QPRT in January 2022 resulted in a taxable gift of approximately $769,000, whereas at current (February 2023) interest rates the same transfer produces a taxable gift of just $575,000. Obviously, depressed real estate values would further reduce the value of the taxable gift. A QPRT is a simple and effective estate planning tool that is worth considering in today's higher interest rate/lower real estate value climate.

Grantor Retained Annuity Trust (GRAT). In a GRAT, a donor contributes property to an irrevocable trust, retaining the right to annuity payments (typically made annually on the anniversary date of the initial contribution) equal to the value of the assets contributed, so that no gift (or only a nominal gift) is made upon the creation of the GRAT. At the end of the term, if the growth in value of the GRAT assets has exceeded the interest rate in effect for the month

the GRAT was created (often referred to as the "hurdle rate"), any appreciation in the value of the donated asset passes to younger generation family members (typically the donor's children), free of gift tax. A low-interest rate climate is of course favorable to GRATs, and as a result they have been widely (and successfully) employed for the past several years. Although interest rates are now increasing, GRATs are still worth considering, both because interest rates are still relatively low by historical standards and because assets transferred to a GRAT at depressed values, which are almost certain to rebound in the future, may well outperform the hurdle rate even if it is fairly high. Moreover, a GRAT is a low-risk technique since little or no transfer tax exemption is utilized, and if the donated assets do not appreciate faster than the hurdle rate, they are all simply returned to the donor, who may, if he or she wishes, re-contribute them to a new GRAT and try again.

Charitable Remainder Trust ("CRT"). In a CRT, a donor contributes property to an irrevocable trust, retaining for himself (and/or one or more other persons) the right to receive periodic payments for a term of years or for life, at the end of which the remaining trust assets pass to charity. Upon creation of the CRT, the donor is entitled to an income tax charitable deduction for the actuarial value of the remainder interest. CRTs come in two basic flavors: (1) a charitable remainder annuity trust ("CRAT"), in which the annual payment to the donor or others is a percentage of the value of the trust assets as of the date they were contributed to the trust (so that it remains the same each year); and (2) a charitable remainder unitrust ("CRUT"), in which the annual payment to the donor is a percentage of the value of the trust assets as recalculated each year (so that it varies throughout the trust term). CRUTs are not particularly sensitive to changes in interest rates, but in the case of CRATs, higher interest rates produce larger charitable deductions. By way of illustration, in January 2022 a 75-year old donor who created a CRAT reserving the right to a 5% annuity during his lifetime was entitled to a charitable deduction equal to 50.8% of the value of the assets contributed; in February 2023 the same gift produces a 60.9% charitable deduction. Like QPRTs, CRATs are simple and effective estate planning tools, and they are worth considering in today's higher interest rate climate for those who are charitably inclined.

THE SECURE ACT

In our last newsletter, we highlighted some of the most important provisions of The Setting Every Community Up for Retirement Enhancement Act (the Secure Act) which became effective on January 1, 2020. This law had drastic implications for both retirement account owners and beneficiaries. It increased the age at which individuals must begin taking the required minimum distribution (RMD) from 70½ to 72, it repealed the maximum age limit for contributing to a traditional IRA by allowing anyone who has U.S. earned income to make

contributions as long as she is working, and it eliminated the "lifetime stretch" IRA option, which previously allowed a beneficiary inheriting an IRA to withdraw the account slowly over the beneficiary's life expectancy. Consequently, for owners dying after 2019, most non-spouse beneficiaries are required to withdraw inherited IRA assets from the account (and pay the tax) within 10 years following the death of the account owner.

On December 29, 2022, the Secure 2.0 Act was signed into law. Some of the most significant changes are highlighted below.

• **Increase in age for RMD**: The law increase the age at which individuals must begin taking the RMD to age 73 in 2023 and to age 75 in 2033. Consequently, for clients born prior to 1951, there is no change. For clients born between 1951 and 1959, RMDs are delayed to age 73. For clients born after 1960, RMDs are delayed to age 75.

• **Penalty for missed RMD**: The penalty for not taking an RMD is reduced from 50% to 25%, with the potential for further reduction to 10% if the missed RMD is corrected in a timely fashion.

• **Higher catch-up contribution allowances**: The law increases the catch-up contributions for employer-sponsored retirement plans to $7,500 (up from $6,500) in 2023. Beginning in 2025, employees age 60-63 may contribute the greater of $10,000 (inflation adjusted) or 150% of the standard catch-up contribution limit. Beginning in 2024, the catch-up for IRAs, which is presently $1,000, will be indexed for inflation for those 50 and older.

• **Automatic enrollment**: Employer-sponsored retirement plans such as 401(k) and 403(b) plans established after 2024 must contain automatic enrollment and annual escalation provisions, with limited exceptions for small businesses and new employers. Employees must be automatically enrolled with a contribution between 3% and 10%, escalating 1% every plan year until reaching 10%. Employees may opt out.

• **Penalty-free rollovers from 529 plans**: Beginning in 2024, beneficiaries of 529 college savings plans may rollover unused balances up to $35,000 into a Roth IRA.

• **Qualified charitable distribution (QCD) option**: Beginning in 2024, the QCD limit of $100,000 will be indexed for inflation. Additionally, IRA owners who are older than 70½ may make a one-time distribution up to $50,000 to a charitable remainder trust and/or a charitable gift annuity.

• **Emergency withdrawal provisions**: Certain distributions are allowable for unforeseeable or immediate financial needs relating to personal or family emergency expenses, for individuals escaping domestic abuse situations, and for individuals affected by a federally declared disaster.

Some of our clients might want to reconsider the basic dispositive provisions of their estate planning documents in light of both Secure Acts. Perhaps clients may consider leaving non-retirement assets to children at different stages in life given that their children will receive a bunching of taxable distributions from retirement accounts within 10 years of the account owner's death. Some clients may wish to reconsider how their philanthropic goals play into their overall estate plan. It remains that the only way to eliminate the income tax entirely is to name a charity as the beneficiary of a retirement account. We suspect that some of our clients will consider naming a charitable organizations or a Charitable Remainder Trust as the beneficiary of their retirement accounts, and some clients may also consider converting their IRAs to Roth IRAs. We strongly encourage our clients to consult with us and their financial advisors and their accountants on any changes that may be appropriate in light of both Secure Acts.

THE INFLATION ADJUSTMENT ACT

President Biden signed the Inflation Reduction Act of 2022 ("IRA") into law on August 16, 2022. The IRA includes important provisions related to taxes, climate change, and health care, and it provides significant additional resources to the IRS. It also seeks to address the federal budget deficit. The Congressional Budget Office has projected that the IRA will reduce the deficit by approximately $90 billion over the next 10 years. Many refer to the IRA as a slimmed down version of President Biden's Build Back Better Act which failed to pass Congress at the end of 2021.

Focusing first on the significant tax provisions, the IRA imposes a 15% corporate alternative minimum tax for U.S. corporations (not S-corps) that have an adjusted financial statement income in excess of $1 billion in average over three years. This provision is designed to target companies that pay very little or no federal income tax through the use of deductions and credits. This alternative minimum tax is effective for tax years beginning after December 31, 2022. Importantly, private equity firms and hedge funds are exempt from the corporate alternative minimum tax, and the IRA also does not close the "carried interest" loophole which allows interests in private equity and hedge funds to be taxed as long-term capital gains instead of ordinary income. The IRA also imposes a 1% excise tax on corporate stock buybacks (when publically traded corporations repurchase stock from shareholders). The tax is imposed on the fair market value of the repurchased stock, and applies to repurchases after December 31, 2022.

The IRA allocates approximately $370 billion to efforts to combat climate change and increase domestic energy production, with the goal of reducing the country's carbon emissions by 40% by 2030. It offers tax credits to encourage both individuals and businesses to use

renewable energy. Businesses, including private companies and public utilities, will receive tax credits to produce renewable energy or manufacture parts used in renewable projects such as solar panels and wind turbines. Of particular interest to our clients are the clean vehicle credits and the home energy improvement incentives of the IRA. If certain vehicle requirements and income thresholds are met, taxpayers may receive up to a $7,500 tax credit for qualified plug-in electric vehicles. Notably, recently released guidance from Treasury details the strict requirements that must be met in order to receive the tax credit. There are both manufacturing requirements and income requirements. The vehicle must be manufactured in North America and must have a battery that does not contain any components manufactured by "foreign entities of concern," specifically including Russia and China. Furthermore, purchasers with a modified adjusted gross income of $150,000, or $225,000 if filing as a head of household, or $300,000 if filing jointly, are excluded from receiving the tax credit. The IRA also offers home energy tax improvement incentives. Taxpayers can receive tax benefits for installing solar panels and energy efficient water heaters, heat pumps, and HVAC systems. We encourage our clients to consult with their accountants regarding these vehicle and home energy tax incentives.

Looking next to the important health care provisions, the IRA not only allows Medicare to negotiate prescription drug prices but also prohibits future administrations from refusing to negotiate with Medicare. It creates a $2,000 cap for annual out-of-pocket prescription drug costs and a $35 cap for monthly insulin costs for Medicare enrollees, and provides Medicare enrollees with free vaccines. Additionally, the IRA requires that if pharmaceutical companies raise drug prices faster than the rate of inflation, they must rebate the difference in price back to the Medicare program.

Lastly, the IRA provides approximately $80 billion to the IRS over 10 years to fund the IRS with resources to improve enforcement and technology. As we know, the budget of the IRS has been dramatically reduced in recent years, decreasing by 20% in 2020 as compared to 2010. The IRA increases funding for taxpayer services such as pre-filing assistance and education, filing and account services, and advocacy services, for operations support, for business systems modernization, and it funds a task force to research the idea of creating a "direct file" e-file tax return system. The largest investment is the appropriation of $45.6 billion for enforcement efforts. These funds will allow the IRS to determine and collect taxes, provide legal and litigation support, conduct criminal investigations and enforce criminal statutes, provide digital-asset monitoring and compliance activities, and purchase and hire passenger motor vehicles. Finally, the IRA appropriates significant funding for the Tax Court. Importantly and of interest to many of our clients, the IRA specifically states that none of these appropriations are intended to increase taxes for any taxpayers or small businesses with taxable income below $400,000.

THE CORPORATE TRANSPARENCY ACT

The Corporate Transparency Act ("CTA") was enacted by Congress on January 1, 2021. It establishes new beneficial ownership disclosure and reporting requirements for both newly formed and existing companies. The legislation requires that certain U.S. companies, referred to as reporting companies, submit a report to the Financial Crimes Enforcement Network ("FinCEN") of the Treasury Department. The report must identify both the applicant forming the company and the beneficial owners of the company. The implications of the CTA are far-reaching and unprecedented. This is the first time that the federal government has inserted itself into the state entity formation process. Historically, business formation and reporting has occurred at the state level. As a result of the CTA, companies will now be required to make both federal and state filings, and the federal government will maintain information in a federal database. While supporters of the CTA have praised its enactment as an important and vital step by the U.S. in the battle against corruption, tax evasion, organized crime, money laundering, and terrorist financing, the CTA has also caused apprehension among lawyers, incorporators, and advisors who are understandably concerned about the legal, ethical, and administrative implications of its passage and implementation. The CTA affects many of our clients who own small businesses and limited liability companies (LLCs).

The CTA was the result of a years-long effort by a coalition of Democrats, Republicans, the Treasury, national security experts, law enforcement officials, anti-corruption groups, human rights advocates, financial institutions, the banking industry, business groups, and NGOs that all supported efforts to make it harder for criminals to use anonymous shell companies to launder money, evade taxes, and engage in criminal conduct. Its passage was also the result of serious international pressure on the U.S. by foreign countries and international organizations to comply with global standards for anti-money laundering and counter-terrorism financing. The U.S. had become a notoriously financially secretive jurisdiction, and the international community had taken notice. Critics of the U.S. argued that the lack of transparency and the tolerance of anonymous shell companies attracted criminal behavior and allowed foreign bad actors to launder money through the U.S. financial system. The lack of transparency regarding beneficial ownership information exposed a vulnerability in the U.S. legal and financial systems that legislators were eager to address.

So what does the CTA do? The CTA requires that "reporting companies" file with FinCEN personal identification information on their "beneficial owners" at the time of a company's formation and requires that such information be updated upon any change in beneficial ownership. A reporting company is defined to include any corporation, limited liability company, or other entity that is created by the filing of a document with a secretary of

state or similar office or formed under the laws of a foreign country and registered to do business in the U.S. by the filing of a document with the secretary of state or similar office. The CTA exempts 23 specific types of entities from the definition of reporting company. Specifically excluded are banks, publicly traded companies, insurance companies, tax-exempt organizations, certain registered investment companies and investment advisors, any entity that employs more than 20 people and has at least $5 million in annual revenue and a physical presence in the U.S., and certain registered public accounting firms. Essentially the CTA targets smaller companies that might act as shell companies in illicit schemes.

The information that must be reported to FinCEN must identify each beneficial owner of the reporting company and each applicant with respect to that reporting company. A beneficial owner is defined as any individual who, directly or indirectly, either exercises substantial control over such reporting company or owns or controls at least 25 percent of the ownership interests of such reporting company. There are a few exclusions from the definition of beneficial owners, including minor children (provided that the information of the minor child's parent or guardian is reported), nominees, employees, future inheritors, and creditors. An applicant means the individual who directly files the document to create or register the reporting company and the individual who is primarily responsible for directing or controlling such filing if more than one individual is involved in the filing.

The reporting company must report for itself the full legal name, any trade name, current address, jurisdiction of formation, and taxpayer identification number of the reporting company. The reporting company must report for each beneficial owner and company applicant the individual's full legal name, date of birth, current address, and unique identifying number from an acceptable document (such as a passport number or driver's license) and an image of the document. Importantly, no financial information or details about business purposes or methods of operation are required. This reported information will be maintained in a federal, private, secure database that will not be available to the public, but can be disclosed to federal and state law enforcement agencies, the Treasury Department, and financial institutions under certain circumstances for national security, intelligence, or law enforcement purposes, for tax administrative purposes, and for customer due diligence/know-your-customer requirements imposed by state and federal laws.

The reporting requirement is effective on January 1, 2024. Reporting companies created or registered after January 1, 2024 must submit the beneficial ownership disclosure within 30 days of creation or registration. Reporting companies created or registered prior to January 1, 2024 will have one year (until January 1, 2025) to submit the disclosure. Both existing and new reporting companies will have to provide updated information within 30 days of a change in

beneficial ownership. The CTA imposes both civil and criminal penalties for compliance violations.

We encourage our clients who have LLCs or other companies that are subject to these new reporting requirements to consult with us or with their other advisors to ensure compliance with the CTA.

IS THE FEDERAL GOVERNMENT GOING TO DECLARE COVENANTS NOT TO COMPETE ILLEGAL?

In January 2023 the Federal Trade Commission proposed a sweeping new rule that would ban non-compete agreements. Thirty million Americans are subject to such agreements. The FTC estimates that such a ban would increase wages by about $2,000/year. California's ban on non-competes is thought to have contributed to the explosive growth of the Silicon Valley tech economy.

Republicans will certainly oppose this proposal, so it is far from certain to become law. It is possible that a partial ban will achieve compromise, permitting higher compensated employees to continue to be restricted. One in five workers without a college education is subject to a non-compete, disproportionately women and people of color. Many of our clients are subject to covenants not to compete, so this issue bears watching. In addition to California, two red states, Oklahoma and North Dakota, presently ban such covenants.

PREMARITAL AND MARITAL AGREEMENTS

Negotiating and drafting Premarital Agreements is a significant portion of our practice. Such agreements are an effective estate planning tool and it is our experience that their use and popularity have grown in recent years. There are several socio-economic factors which have likely contributed to this trend. Millennials are getting married later in life and are therefore more likely to have built and acquired significant separate assets which they want to protect. Additionally, the increase in the rate of divorce, coupled with the increase in the number of blended families, has created complexity in the context of estate planning. Second spouses and children from prior marriages have competing interests and there is heightened sensitivity to the division of assets in the event of divorce and the disposition of assets at death. And finally, as we approach what will be the largest wealth transfer in history, those transferring the wealth and those receiving the wealth will be increasingly focused on protecting gifted and inherited assets.

Additionally, if a married couple neglected to sign a Premarital Agreement but wishes to negotiate spousal rights after-the-fact, there is another option which we have found to be particularly useful: Marital Agreements. Consider the following scenario which occurs

frequently in our practice: a married couple, both of whom have been previously married and both of whom have a child or children from a prior marriage, want to execute estate planning documents. They do not have a Premarital Agreement. They want simplicity and do not want to employ the use of a Marital Trust for their surviving spouse. They want everything to pass outright to the surviving spouse, and then everything to pass to their collective children in equal or specific percentage shares at the surviving spouse's death. If the parties execute estate planning documents agreeing to this plan, the risk is that after the death of the first spouse, the survivor will change his or her estate planning documents or make lifetime gifts or retitle financial accounts or change beneficiary designations to favor his or her own children and disinherit the beneficiaries of the first spouse to die. When we explain this risk to clients and that this simple estate plan is essentially a "hand-shake" agreement between the parties that the survivor will not take any action that has the effect of disinheriting the beneficiaries of the deceased spouse, they are understandably alarmed. A solution for the parties is to sign a relatively simple Marital Agreement in which they contract to this estate plan and agree to not take any action which would disrupt the agreed-upon plan. The Marital Agreement recites the intentions of the parties and outlines what they have agreed to, i.e. that they both agree that whoever dies first will leave all of his or her assets to the surviving spouse, and that whoever survives will leave all of his or her assets to all their children in the agreed-upon shares. This approach allows the parties to have a simple estate plan at death, provides comfort to both parties that their wishes will be honored, and has the benefit of providing comfort to the children in knowing that their parents have thoughtfully considered relevant issues and that their interests are protected. It also creates a remedy for the children if either party breaches the contract.

If you or any of your loved ones are interested in discussing a Premarital or Marital Agreement, we encourage you to reach out to us.

PLANNING FOR INTERNATIONAL FAMILIES

Many of our clients are foreign-born. Some have become naturalized as US citizens, some have become green-card holders (permanent residents). Non-U.S. citizens may nevertheless be subject to either U.S. income tax or U.S. transfer tax (estate, gift, generation-skipping tax) or both, depending on a close analysis of the facts and circumstances. Often our clients have assets, including business entities and trusts, abroad, and often they have family members abroad. Non-citizens and non-permanent residents may want to make gifts or estate transfers to U.S.- resident family members, and they may want to invest in U.S. assets, real estate or securities or bank accounts. U.S. citizen clients often have spouses who are not U.S. citizens. Occasionally U.S. citizens will want to expatriate, move permanently outside of the U.S. and give up their U.S. citizenship to avoid U.S. taxation.

The U.S. income, gift, estate and generation-skipping taxation on these situations is highly complex, and minimization of these taxes requires very careful planning. The U.S. tax reporting and compliance is very elaborate, and generally only the most sophisticated accounting firms are capable of rendering reliable advice and services. Penalties for failure to comply are very severe.

We are available to provide tax counsel in these areas to our international families.

ASSET PROTECTION STRATEGIES

We routinely consider whether implementation of asset protection strategies is appropriate for new estate planning clients. And new and existing clients often come to us for asset protection advice with regard to their particular circumstances. Asset protection concerns may arise in our minds or cause anxiety for our clients in a variety of circumstances:

- Past circumstances which have caused a claim or may cause a future claim
- Reasonably anticipated future circumstances may trigger a claim
- Possible unanticipated future circumstances may make our clients targets for a claim.

In considering the level of risk we consider:

- The seriousness and size of the risk
- The client's risk tolerance
- The client's net worth
- The nature and title of various assets on the balance sheet of the client and any spouse
- The exposure of client's spouse to the claim
- The liability insurance and umbrella coverage the client has available
- The existing protection in the statutory and case law in the client's state of domicile
- The protective strategies available for the assets exposed to the possible claim.

Every client's situation is unique and must be addressed in customized fashion. Our general experience after practicing in this area for more than 30 years is that we can almost always provide helpful advice, whether there is a serious existing claim or the client merely suffers general anxiety about possible future risk. There are several exhaustive outlines on our website of presentations we have made to sophisticated attorneys on domestic and offshore asset protection strategies which clients may review preliminary to consulting with us.

ESTATE AND TRUST ADMINISTRATION AND FIDUCIARY COUNSEL

We routinely counsel and represent clients with respect to all aspects of probate and trust administration. Although it may seem ironic, we believe that the goal of a sophisticated,

modern, probate legal practice should minimize the legal complexity of the process, by avoiding probate to the extent possible by creative after death planning, by qualifying appropriate parties (including parties not named in the will) as personal representatives, by filing with the probate court waivers and consents to avoid, to the extent possible, the requirements of an inventory and accounts. In addition to economies in legal and accounting costs, avoiding probate may avoid disclosure on the public record of the nature and extent of the decedent's assets and who will inherit what, which the decedent's family will frequently deem desirable.

As surprising as it may seem, many defective estate plans may be rectified after death by timely tax elections and procedures under state and federal law. Where the lifetime tax planning or dispositive planning has been inadequate, because there is no will, or because assets are inappropriately titled, or because wills or trusts have been improperly drafted -- even if only in hindsight -- prompt and aggressive post mortem attention and planning can sometimes cure the faulty plan and result in ideal, or at least improved, tax consequences and an appropriate dispositive plan. Effective use of such post mortem strategies requires sophisticated familiarity with applicable state and federal tax law and thorough, diligent, and creative review of the facts and options, and close cooperation between the decedent's family, the personal representative(s), and the probate lawyer. Proper estate administration and post mortem tax planning will frequently save tens of thousands or even hundreds of thousands of dollars or more in taxes and probate legal and accounting fees, especially if savings in taxes and fees at the subsequent deaths of other family members is considered. An investment in our services may be one of the most cost effective investments you ever make.

Regrettably, disputes and conflicting claims among beneficiaries and between beneficiaries and fiduciaries are not uncommon, particularly if the decedent is survived by a spouse who is not the parent of all of the decedent's children. These disputes may revolve around such issues as the interpretation of the will or a trust, the authority of a fiduciary regarding investments or distributions, title to an asset, allocation of the income or of the estate tax burden or of the shares of the estate assets among the parties. Disputes of this type are frequently particularly difficult to resolve because of the conflicts of interest which arise from the fact that a beneficiary also serves in a fiduciary capacity. We are accustomed to counseling and representing fiduciaries in regard to their authority and responsibilities and to assisting beneficiaries to be certain that their rights and prerogatives are established and protected.

OTHER NEWS

Fred and Brooke were both named in the December 2022 issue of Washingtonian Magazine and in the December 2022 issue of Northern Virginia Magazine as a top lawyer in the D.C. area. In February 2023 issue of Washingtonian Magazine, Fred was named in the Top Financial Advisers Hall of Fame. This lifetime achievement award celebrates lawyers who have

been named at least 8 times out of the past 14 years. Additionally, in the fall of 2022, Fred was also named in the Top Lawyers Hall of Fame in Washingtonian Magazine, which celebrates lawyers who have been named a Washingtonian top lawyer at least 10 times out of the past 15 years. Fred and Brooke were both honored to be named as a top financial adviser in the region in the March 2022 issue of Washingtonian Magazine. Fred and Brooke were named in Best Lawyers in the 2022 and preceding editions of the Best Lawyers in America. Fred has been listed in Best Lawyers in America since 1995. Brooke was listed as a Super Lawyer in Virginia Super Lawyers in 2021, and she was listed as a Rising Star in both Virginia Super Lawyers and Washington, DC Super Lawyers in 2020 and 2019. Fred has been listed in Super Lawyer in Washington, D.C. and Virginia since 2007. The firm has been ranked since 2015 among the best law firms in Washington, D.C. and Virginia by U.S. News of World Report, and as Tier 1 in both jurisdictions in Trusts and Estates.

On December 8, 2020 Fred and his wife Joan welcomed their 3rd grandchild Logan Nelson Shearer-Collie, born to their daughter Charlotte and her husband Andrew in New York City. Fred and Joan also have two other grandsons, Hank and Freddie, born to their son Brendan and his wife Jackie, also in New York City. On July 10, 2021, Fred and Joan celebrated their 50th wedding anniversary with family on the north shore of Long Island and then they traveled to St. Lucia in the Caribbean.

Brooke has thrived since our last newsletter. In October 2020, she married Matt de Ferranti and they bought a home together in Arlington. Their wedding was an intimate affair attended by family and a few dear friends. Matt grew up in McLean, began his career as a teacher, became a lawyer and lobbyist, and then successfully ran for public office in November 2018 when he was elected to the Arlington County Board. Matt served as Chair of the County Board in 2021, and in November 2022, he successfully won his re-election campaign for another four-year term. Brooke and Matt's dog Arizona (an adorable and affectionate red fox labrador retriever) comes to our office nearly every day. We trust that many of you have enjoyed meeting Arizona; she loves to greet our clients and sit under the conference room table during meetings. Brooke was elected into ACTEC (The American College of Trusts and Estates Counsel) in November 2022. ACTEC is a national organization of approximately 2,400 lawyers and law professors who are peer-elected to membership by demonstrating the highest level of integrity, commitment to the profession, expertise, and experience as trusts and estates counselors. This was a career aspiration, and Brooke is so honored and excited to join so many esteemed lawyers in this organization, including of course Fred! Brooke is on the Board of Governors for the Trusts and Estates Section of the Virginia State Bar. She is currently serving as the Secretary of the Board, with the anticipated path of serving as Vice-Chair and Chair of the Board in 2024 and 2025, respectively. She has become a regular speaker and presenter at various legal conferences and professional events. In the past few years, she has lectured on the

topics of charitable giving and arrangements, asset protection and creditors' rights, international estate planning and administration, the Corporate Transparency Act, and estate planning with collectibles and other passion assets.

Cindy's daughter Kate married her longtime boyfriend Wes Fisher in a lovely outdoor ceremony overlooking the Potomac River on July 9, 2022. Kate, an attorney like both of her parents, is employed as the Director of Regulatory Affairs and Associate General Counsel at the National Propane Gas Association; she and Wes live in Arlington and Cindy and her husband Todd are happy to have them nearby. Cindy published an article on the generation-skipping transfer tax in the summer 2022 issue of the Virginia State Bar Trusts and Estates Section newsletter. She recently attended a reunion for the law clerks of Judge Jerry E. Smith of the United States Court of Appeals for the Fifth Circuit, for whom she clerked in 1989-90 after graduating from law school. Judge Smith recently celebrated his 35th anniversary on the bench and hosts a clerk reunion every five years.

Nivin's daughter Rhonda welcomed her second child, a son named Axel Wayne, in November 2021. Nivin now has two grandchildren, as her first grandchild, a girl named Mila, was born in May 2016. Both of Nivin's daughters, Rhonda and Reema, work at Carahsoft, a government IT company. Rhonda moved back to Richmond to a newly built home where Nivin's family celebrated the holidays. Reema lives in Arlington and just had her 10-year anniversary at Carahsoft, and was promoted to a team-lead manager. Nivin's husband Kevin is recently retired from the government.

REVIEW OF YOUR SITUATION

If you would like us to review the desirability of any changes or additions to your estate plan or to discuss anything in this newsletter, please contact us to set up an appointment. We also encourage you to check out the numerous new articles and speech outlines published on our firm's website, many of which discuss in further detail some of the matters highlighted in this newsletter.

Fred J. Tansill, Owner/Manager
(703) 847-1359
fred@fredtansill.com

Brooke Tansill, Of Counsel
(703) 288-0126
brooke@fredtansill.com

Cynthia L. Brown, Of Counsel
(703) 288-0121
cindy@fredtansill.com

Nivin Joudeh, Office Manager/Sr. Paralegal
(703) 288-0119
nivin@fredtansill.com