CUMMINGS & LOCKWOOD LLC

CONNECTICUT QUIETLY ENDS ESTATE TAX STRATEGY PREVIOUSLY AVAILABLE TO NON-RESIDENTS

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In the flurry of legislation passed in June at the end of the legislative session, Connecticut quietly closed a Connecticut estate tax loophole that was available to non-residents.

Connecticut is one of twelve states that has a state level estate tax. The Connecticut estate tax exemption is currently $3,600,000, reduced by any gift tax exemption used during a decedent's lifetime. It is scheduled to increase to $5,100,000 in 2020, $7,100,000 in 2021, $9,100,000 in 2022 and to the federal exemption in 2023 and beyond. The Connecticut estate tax rates range from 7.2% to 12%.

The estates of non-residents of Connecticut who owned real or tangible personal property in Connecticut are subject to Connecticut estate tax based on the proportional share of the value that such property bears to the entire estate. If the entire estate is in excess of the exemption amount, tax is owed even if the value of the Connecticut-based property is below the exemption amount.

In order to avoid the application of this estate tax, many non-residents who owned Connecticut real estate or tangible personal property contributed such property to business entities such as partnerships or limited liability companies to convert property that would be subject to Connecticut's estate tax into intangible personal property that was only subject to estate tax, if any, in the state of decedent's domicile.

The amendment to Connecticut's estate tax law disregards the use of such entities and treats such property as personally owned by the decedent if the entity is a "pass-through" entity and: (1) the entity does not carry on a business for the purpose of profit and gain, (2) the ownership of the property by the entity was not for a valid business purpose, or (iii) the property was acquired by other than a bona fide sale for full and adequate consideration and the decedent retained any power with respect to or interest in the property that would bring the real property situated in this state or the tangible personal property having actual situs in Connecticut within the decedent's federal gross estate. A pass through entity is defined as a partnership, an S corporation or a single member limited liability company.

As a result of the new law, a decedent's proportionate share of a pass through entity which owns real or tangible property in Connecticut and meets the criteria above will be subject to Connecticut estate tax. Oddly, the law does not address whether the same rule applies to Connecticut's gift tax.

If you have any questions, you should contact your Cummings & Lockwood LLC Private Client's Group Attorney.