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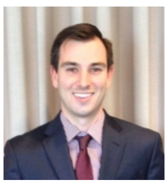

INTRODUCING NEW MMPPH ASSOCIATE: CHRISTOPHER R. WIECHERT, J.D.

Christopher R. Wiechert joined Miller, Monson, Peshel, Polacek & Hoshaw as an Attorney in January 2018. Chris is a 2017 graduate of the University of San Diego School of Law and was admitted to the California Bar in December 2017. Before joining MMPPH, Chris was a Law Clerk at Casey Gerry Schenk Francavilla Blatt & Penfield LLP, where he assisted in representing the family of Tony Gwynn in litigation against an international smokeless tobacco manufacturer. During law school, Chris was a Judicial Extern for the Honorable Margaret M. Mann of the U.S. Bankruptcy Court for the Southern District of California.

Chris is a graduate of Pitzer College in Claremont, California, where he competed on the Men's Tennis Team. He was selected as an Intercollegiate Tennis Association (ITA) All-American and as the Most Outstanding Student Athlete in his senior season, capping off a stellar athletic college career that he launched by winning ITA National Rookie of the Year.

Chris' focus at MMPPH will be in civil litigation, and probate/trust litigation.

ESTATE AND TAX PLANNING FOR YOUR CRYPTOCURRENCY

by DeEtte Loeffler, J.D., LL.M., Taxation

With the normalization of digital forms of currency, such as Bitcoin, Litecoin and Zcash, more people are adding it to their investment portfolios. This article provides an overview of when and how cryptocurrency is taxed and methods for safeguarding and managing this kind of asset in your estate.

What is Cryptocurrency?

For those not already familiar with crypto-currency and its history, a short explanation may be helpful. According to Investopedia, a "cryptocurrency is a digital or virtual currency that uses cryptography for security. A *defining* feature of a *cryptocurrency . . . [is that]* it is not issued by any central authority, rendering it theoretically immune to government interference or manipulation."

Initially, cryptocurrency was acquired by a process known as "mining." People would solve complex math and other problems, and be rewarded with "coins" that they could then use to acquire other things. Anyone could (and still can) set up a currency on the internet and run it. As its popularity grew, formal "exchanges" opened to allow people to buy and sell cryptocurrency. Since 2015, many countries have established their own versions of such digital currency, sometimes backed by natural resources or other national assets. So far, countries which have launched their own cryptocurrencies include Canada, China, Cyprus, Ecuador, Germany, Greece, Holland, Iceland, Ireland, Israel, Japan, Krygyzstan, Marshall Islands, Netherlands, Palestine, Portugal, Russia, Scotland, Senegal, Singapore, Spain, Sweden, Tunisia, and Venezuela.

Taxed as an Asset, Not Money

Despite its name, the IRS has stated that cryptocurrency is not taxed like money, but instead like property. IRS Notice 2014-21. Taxpayers who acquire cryptocurrency by "mining" are required to report the value of the coins they receive as ordinary income on their income tax returns. Likewise, people who accept cryptocurrency in exchange for goods and services must report the value of the coins received as income.

In addition, when spending coins to obtain other things, including US dollars or the currency of other countries, taxpayers must report capital gains (or losses) on these transactions. Gain on coins held less than one year are subject to ordinary income tax rates (as short term capital gains), while coins held longer than one year are subject to the lower long term capital gains rates. Most coins are reportedly held less than one year.

Gifts of cryptocurrency do not trigger an income tax for the donor. However, the recipient receives the coins with the same income tax basis as the donor had. For example, if you have a bitcoin which you purchased for $50 which is worth $75, and you give it to your child, the child's basis in the coin is $50. However, if the child were to buy the coin from you for $75, then the child would have a basis of $75 (his cost), and you would have capital gain of $25. Please note that gifting coins, like gifting other assets, may result in a reportable gift if the value of the coins given exceeds your annual gift tax exclusion amount (currently $15,000 per donee).

The IRS is aggressively looking for unreported income from cryptocurrency. In 2016, it issued a summons to Coinbase, a digital currency exchange located in San Francisco, and was able to obtain records on sellers and buyers who exchanged $20,000 or more in coins between 2013 and 2015.

The IRS also recently warned taxpayers that failure to report income from cryptocurrency may result in a tax deficiency, penalties and interest. In 2014, they also issued guidance for taxpayers and their advisors regarding how to properly report such income. See IRS Notice 2014-41 which answers common questions.

California currently conforms to federal law for taxing cryptocurrency. It does not, however, provide a preferred rate for long term capital gains. (i.e., all gains are taxed at ordinary income rates).

Estate Planning For Your Cryptocurrency

State law for digital assets is still being developed, and has not yet caught up with cryptocurrency. California treats digital coins as assets, so they may be managed, and transferred, in the same manner as other assets. You may manage them yourself, or can appoint an agent to manage them for you.

If you have a revocable living trust, we recommend you transfer your coins, and digital "wallets" (discussed below) to your trust. This can generally be done using a written assignment. Assignments to a revocable trust do not trigger taxes. While a general assignment for your digital assets may be sufficient to transfer your coins, you may also want to use a more specific assignment which clearly identifies the type and amount of cryptocurrency you have, as well as the specific storage devices you use for it. You should discuss this assignment with your estate planning attorney to ensure the transfer document you sign is sufficient to meet your needs.

Also, unlike other forms of assets, there is generally no physical evidence that crypto-currency is in the estate (such as brokerage statements, or stock certificates). Unless the executor of the estate knows of the existence of this asset, and how to access it, the cryptocurrency may be lost upon your death or incompetence. There are several heartbreaking stories of computers being disposed of before the family knows that the decedent had such coins.

It is therefore very important to include a mention of this asset in your estate plan. If you maintain your coins in a "wallet," you should provide specific instructions regarding the location of the wallet, and how to open it. The instructions should also include what types of coins you own, and what exchanges you use for trading them.

Your financial power of attorney should give your agent specific powers to manage your coins and other digital assets. You may also need to give your agent access to your home safe or safe deposit box at the bank by providing him or her with the combination (or keys) in a sealed envelope to be opened after your incapacity. You may be able to store this envelope with your estate attorney.

You should also carefully consider whom you name as your agent, executor or successor trustee. If the agent is not familiar with cryptocurrency, you should educate your agent on how to access, manage and transfer it. This is relatively new technology, so not many people are familiar with it yet.

Finally, because there are so many different types of coins now, and more are added all the time, you should provide written instructions for your agent and executor. Your instructions should include, at a minimum: (1) what type of coins you own, (2) what exchanges you use, (3) what type of storage you use for the coins, and (4) how to access it. You may want to handwrite these instructions, or at least you should not keep a copy of the instructions on a computer with internet access as it could be a security risk for you. Your estate planning attorney should be able to assist you with an updated power of attorney and by providing a form for you to use in preparing these instructions to the agent.

Safeguarding Your Cryptocurrency

It is not easy to safeguard cryptocurrency. Like cash, anyone who has access to it can transfer or spend it. Unlike cash, however, banks are not currently able to hold it for you. Owners must therefore choose among an assortment of less than ideal options.

Since cryptocurrency is digital, it can be stored on-line. However, many people are concerned about hackers, who may steal it if stored in the cloud, or even if left on a computer connected to the internet. Thefts from several exchanges early this year highlight the risks of storing coins online.

One common storage method is the use of a "wallet", generally a flash drive or other device that is kept separate from your computer. Keep in mind that anyone with access to the "wallet" will have access to the cryptocurrency, but may not know what they have or where to trade it. If the "wallet" is lost, you may not be able to recover the lost coins.

You can store your wallet in a secure location, such as a personal safe or a bank safe deposit box. If you own a large amount of cryptocurrency, you may want to have more than one wallet and to store them in different locations. Also, if you live in a location prone to fire or earthquakes, you might want to store a duplicate of the wallet in another location outside the area, keeping in mind that the more copies you have, the greater the risk that another person could access this asset.

There are also some backup methods available. One method is to create a complex password phrase that will allow you (or anyone else with the information) to recover your coins if the wallet is lost. This convenience comes at a cost, the risk that someone else may obtain or determine the password and access your coins without needing access to the wallet.

The laws regarding cryptocurrency are still developing, and may eventually result in such coins being treated as currency. But for now, your estate plan should address them as assets and provide adequate descriptions and instructions to permit your agent, or executor, to take control and manage them for you/your estate.

FEDERAL TAX NEWS

by DeEtte L. Loeffler, J.D., LL.M., Taxation

Adjust Tax Withholding Now. The IRS and FTB are encouraging taxpayers to update their withholding for 2018. Due to recent tax changes (including the loss of many deductions and changed personal exemptions), taxpayers in states like California may not be withholding enough from their paychecks this year. While some employers have made adjustments for their employees, these may not be accurate for your particular situation. Taxpayers are urged to speak with their CPA (after April 15th), or at a minimum to make use of the IRS's "Withholding Calculator" at https://www.irs.gov/individuals/irs-withholding-calculator to help determine their new potential taxes. Failure to withhold enough now could put a heavy burden on taxpayers later in the year, and could result in a big tax bill and potential penalties in 2019 if insufficient taxes are withheld.

On-Line Retailers Will Likely Have to Collect Sales Tax. This month, the Supreme Court is expected to make its decision in the case of Overstock, etc. vs. South Dakota. The Court is being asked to allow states to collect sales tax from internet sales by companies which do not have a physical presence in the state. The Trump Administration filed a brief supporting the tax on the grounds that it removes an unfair competitive advantage such companies have over in-state companies which must collect sales taxes. The Supreme Court will have to overturn its 1992 ruling which denied states the right to tax companies that did not have a physical presence in the taxing state. California residents are currently required to self-report and pay sales taxes on purchases from out of state retailers, but such reporting is not effective. The General Accountability Office estimates states could have collected $13 billion in sales taxes nationwide if the taxes could have been collected directly from companies.

IRS Offshore Disclosure Program Ending. Since 2009, the IRS has had a program to encourage taxpayers to voluntarily report existing offshore accounts at a reduced penalty. According to the IRS, the program has resulted in the collection of $11.1 billion in back taxes from more than 56,000 taxpayers. The IRS recently announced this program is ending, but it will continue to enforce the law using education, whistleblower leads, civil examination and criminal prosecutions. The related Streamlined Filing Compliance Program, which has helped some 65,000 taxpayers become compliant on reporting, will remain in place for the time being.

STATE TAX NEWS

by DeEtte L. Loeffler, J.D., LL.M., Taxation

Bill Proposes Reducing Tax on Recreational Marijuana. Concerned that black market recreational pot is undercutting legal California producers, Tom Lacey (R-Palmdale) has introduced a bill to temporarily reduce the tax on legal recreational marijuana. AB 3157 would reduce the new excise tax on recreational marijuana from 15% to 11%, and would suspend the $148 per pound cultivation tax until 2021. Apparently legal growers have been complaining that they are unable to compete. Any such tax reduction could have a significant impact on Governor Brown's proposed state budget which is anticipating having revenue of $643 million from these taxes in the next budget year beginning July 1, 2018.

Proposed New Tax On Firearms For School Safety. Recent concern over gun violence in schools has prompted Assembly Member Jim Cooper (D-Elk Grove) to introduce AB 2497. The bill would impose a gross receipts tax on sales of firearms and ammunition. The rate of the proposed tax has not yet been determined. Funds from the tax would be used to provide police officers at high schools, and to provide middle school counselors and high school resource officers. New mandated reporters, including school counselors, would be required to report any threats or perceived threats of mass violence by students against a school. The bill would amend current law which provides confidentiality for most student counseling. The bill includes criminal penalties for noncompliance by gun sellers and mandated reporters.

Del Mar Seeking Way to Tax Events at Fairgrounds. This month, Mayor Dwight Worden and Councilwoman Ellie Haviland of Del Mar plan to propose an amendment to the city charter that would allow it to again impose taxes on certain events at the Del Mar Fairgrounds. The city lost its ability to impose such taxes following a lawsuit in 2001. The Mayor hopes that restoration of the city's charter status would allow it more control over the property which is managed by the Coastal Commission and the State Department of Agriculture. The plan will still need to be reviewed by the city attorney and approved by the planning commission.

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