

COHEN & BURNETT, PC AND LEGACY ANALYTICS, LLC

Meet Our Staffs

Founding Partner

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JD, LL.M., & CFP™**

*Noted Expert in Estate and
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Masters in Tax Law, and
Certified Financial Planner*

Managing Partner

**Weston D. Burnett,
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*Expert in Estate, Business and
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Paralegal

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CERTIFIED FINANCIAL PLANNER™

Mark Cohen is a Certified Financial Planner™. Weston D. Burnett is preparing for the CFP examination in July, which is roughly equivalent in terms of challenge and complexity to studying for the bar exam. Some of our clients ask what is the Certified Financial Planner trademark. It is often described as the premier financial planning credential.

Colorado's Senator Allard recently commented on the Congressional Record: "At a time when many Americans have witnessed the loss of their life savings and millions of others face difficult decisions regarding their personal finances, the need for competent, ethical financial planning is greater than ever. It is with great pride that I rise today to recognize Certified Financial Planner Boards of Standards. ...CFP Board's continued efforts to protect and educate our nation's citizens should not go unnoticed."

Current and former government regulators have spoken favorably about the CFP certification. In a recent Sun Sentinel article for example, former SEC Chairman Arthur Levitt, suggested that investors should consult "an independent advisor, preferably a Certified Financial Planner, who considers your overall picture." In Worth Magazine in August 2002, the Article entitled "The 250 Best Financial Planners" included the comment "Most advisors on our list carry the CERTIFIED FINANCIAL PLANNER™."

Our aspiration as CERTIFIED FINANCIAL PLANNER™ is to provide our clients with the best possible advice and service.

ENERGY INVESTMENTS

Many of our clients have found it very attractive to purchase oil and gas investments for the tax and income advantages offered. By way of example, roughly 90% of the investment in the first year is an above-the-line income tax deduction. In following years, some of the income received will be tax-free or tax-deferred as the investors may be able to depreciate the investment and take a percentage depletion allowance. These are developmental oil and gas drilling partnerships in established fields with long, established records of performance. Please call if you want to learn more about energy investments.

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Single Member L.L.C.s

A Bankruptcy Court in Colorado recently refused to limit remedies against a single-member limited liability company (SMLLC) to a charging order. This allowed the Bankruptcy Trustee to take control of the LLC and sell its assets to satisfy creditors. The Court's holding essentially eliminates the use of SMLLC's as asset protection devices.

How do you avoid this situation? The short simplistic answer is have more than one member in the LLC. In footnote 9 of its Opinion, the Bankruptcy Court noted that if the case had involved "a passive member with a minimal interest" the outcome would have been different, and the Trustee would have been limited to a charging order even if the non-debtor member held "only an infinitesimal interest." However, the concept of adding nominal members should be approached with caution. In the same footnote, the Bankruptcy Court went on to say that charging order protection does not "create an asset shelter for clever debtors. To the extent a debtor intends to hinder, delay or defraud creditors through a multi-member LLC with 'peppercorn' co-members, bankruptcy avoidance provisions and fraudulent transfer law would provide creditors or a bankruptcy trustee with recourse." If you have a single member LLC and desire to understand how effective it is at asset protection, please schedule an appointment to review your LLC with Weston Burnett or Mark Cohen.

INCOME TAXATION OF TRUSTS

For those of you with revocable living trusts, you know that you do not file a separate trust return while you are alive. You simply continue to file your 1040 as you have always done using your social security number as your tax identification number. On your death, your revocable living trust becomes irrevocable. Moreover, your social security number is not supposed to be used after that date and your Trustee must obtain a new tax identification number from the IRS for your Trust. Your Trustee must then file an annual return so long as your Trust has assets that are producing income. If the Trustee is the surviving spouse, the Trust typically provides that the Trust income, after expenses/deductions, will be distributed to the surviving spouse. When the Trust distributes all of the income, the Trust then pays no taxes on the income, but issues a K-1 reporting income distributed to the surviving spouse, and the surviving spouse lists the income on this or her 1040 and pays taxes on it. That lowers the overall tax rate since the tax table for Trusts and estates is compressed so that the maximum tax rate of 38.6% applies to income in excess of \$9,350 for a Trust as opposed to \$311,950 for individuals.

On more than one occasion, we have discovered that the surviving spouse dispensed with the 1041 tax return, figuring, or having been told, that it was unnecessary or a waste of time. The 1041 proves that the first-to-die spouse's trust is separate from the surviving spouse's for estate tax purposes. If the surviving spouse treats the first spouse's assets as solely owned by the survivor, the estate or trust of the first spouse will be subject to the federal estate tax upon the second spouse's death. The cost of having a 1041 tax return prepared annually is minimal compared to the 50% estate tax. Our advice is treat the first spouse's trust and estate as a separate taxable entity and file the 1041 each year.

Finally, new regulations issued in December 2002 allow a decedent's estate and trust to be treated as a single taxable entity, something that was less than clear under prior law. A new form will be issued in May 2003 that allows the election of this single taxation of the estate and trust of a single decedent. This allows for simplified reporting if a decedent had substantial assets that were divided between his/her trust and non-trust probate assets.

Great Quotes

"Do you claim that this man hit you with malice aforethought?" asked the lawyer.

"Look, smartass, you can't mix me up that easy," replied the elderly man. "I said he hit me with a Ford, and I'm sticking to it."

D.C. ESTATE TAX

While Virginia is seriously debating total repeal of the Virginia estate tax, the District of Columbia has elected to keep the estate tax and they have decoupled it from the federal estate tax. For example, under the federal estate tax the exemption amount increased from \$675,000 in 2001 to \$1,000,000 in 2002. Further, it continues to increase in the coming years to \$1,500,000 per person in 2004-05, to \$2,000,000 in 2006-08, to \$3,500,000 in 2009 and repeal in 2010 followed by reinstatement of the \$1,000,000 in 2011. The District of Columbia Council has decided to retain the \$675,000 exemption as the amount that is untaxed for residents of the District of Columbia who die after 2001.

In the past, our trusts have always assumed (as the law then provided) that the exemption amount was the same for both the federal and state estate tax. That is no longer the case for the District of Columbia. That means that an estate of a D.C. resident that is over \$675,000, but less than \$1,000,000, will be subject to the D.C. estate tax, but not the federal estate tax. Anyone who is a District of Columbia resident with, especially, a bypass or family credit shelter trust (typically most married couples), should make an appointment to review their trusts under the changed estate tax exemptions. Your documents will no longer work as originally designed and there is the potential for unintended results. Before coming in for an appointment, you should carefully compile a list of all of your assets together, with their fair market value, so that we can properly evaluate the potential estate tax liability.



MARYLAND ESTATE TAX

In response to the changes in the federal estate tax, Maryland passed the Budget Reconciliation and Financing Act of 2002, effective for estates of decedents dying on or after January 1, 2002. Maryland law now provides that the Maryland estate tax will be equal to the federal allowable credit for state death taxes **without reduction** by any Act of Congress enacted on or after January 1, 2001. The Maryland estate tax will now be determined in the same manner as if the federal credit had not been repealed or reduced. The "de-coupling" aspect does not extend to other provisions of the federal estate tax law, including the unified credit. Therefore, the filing requirement remains the same: a Maryland estate tax return is required to be filed only when a federal return is required for a Maryland decedent or an estate that includes Maryland property.

Virginia Governor Vetoes Repeal of Estate Tax

On March 24, 2003, Governor Warner vetoed a proposed estate tax repeal that the General Assembly had passed. The veto rationale was linked to Virginia's fiscal crisis and the fact that repeal of the estate tax cut off a \$130,000,000 annual revenue stream. A final push was made in the final legislative session to override the Governor's veto, but the votes fell short. For the time being, then, there continues to be a Virginia estate tax.

Great Courtroom Moments

The courtroom was pregnant with anxious silence as the judge solemnly considered his verdict in the paternity suit before him. Suddenly, he reached into the folds of his robes, drew out a cigar, and ceremoniously handed it to the defendant. "Congratulations. You have just become a father."

IRS UPDATE ON TAX SCAMS

Since the federal income tax filing deadline has recently passed, we thought it appropriate to share a few of the Tax Scams on which the IRS is focusing. Stay tuned for descriptions of other tax scams in future newsletters.

1. Abusive Offshore Transactions: Individuals who have used offshore transactions such as offshore credit cards, trusts, or other arrangements to hide or underreport income or to claim false deductions on a federal tax return to avoid paying United States income tax have engaged in illegal transactions.

2. Identity Theft: Identity thieves use someone's personal data to steal his/her financial accounts, run up charges on the victim's existing credit cards, apply for new loans, credit cards, services or benefits in the victim's name and even file fraudulent tax returns.

3. Phony Tax Payment Checks: Con artists sell fictitious financial instruments that look like checks to pay a tax liability, mortgage, or other debts or counsel their clients to use a phony check to overpay their taxes so they can receive a refund from the IRS for the overpayment. The false checks, called sight drafts, are worthless and have no financial value. It is illegal to use these sight drafts to pay a tax liability or other debts.

Great Quotes

A judge is a man who ends a sentence with a sentence.

DURABLE GENERAL POWERS OF ATTORNEY

Most of our clients have durable general powers of attorney. Their basic purpose is to designate someone, most often the spouse, with "Powers of Attorney" to act as the attorney-in-fact for the principal. The term "Attorney" in this context refers to representation of the principal, not a lawyer. The term "Durable" means that the document works even if the principal become mentally incapacitated, but no power of attorney can continue to work after the principal's death. The term "General" means that it is broad in scope as opposed to a "special power of attorney" designed for a specific purpose such as sale of a house or car.

No two states are identical in their approach to powers of attorney. Moreover, there is no compulsion in the law for any commercial institution to accept a Durable General Power of Attorney. They can refuse. If they do, you can always try to take your business elsewhere or sign the bank or brokerage house's institutional powers of attorney.

If you foresee a need for your attorney-in-fact to use your Durable General Power of Attorney at a bank, insurance company, mutual fund company, brokerage house or other financial institution, you should consult with the institution to ensure that they will accept your current Powers. If they decline because the documents are too old or for other reasons, you may wish to have us update them to reflect the major rewrite of the Virginia statute on powers of attorney that took effect January 1, 2001. We have discovered that most brokerage firms will not accept a power of attorney that is over five years old. We don't see this problem with trusts. It is therefore a good reason to make sure your trusts are fully funded.

ESTATE PLANNING SEMINARS

We also continue to offer to do Estate Planning Seminars for any group that invites us to come and make a presentation. Please call Weston D. Burnett if you desire to discuss such a presentation.

OUR NEWSLETTER

We have expanded our mailing of this newsletter at no charge to over 1800 of our clients in an attempt to keep them informed of changes in estate, tax and financial planning. Generally, the topics we write about are changes in the law and issues or problems experienced recently by clients. We appreciate any feedback you may have on this newsletter. You may also consult our website at www.cohenandburnett.com.

In an effort to ensure that our estate-, tax- and financial-planning service to you is high quality and focused, we no longer mass market for new clients. We hope that you will keep us in mind should any one ever ask you for a referral for estate, tax or financial planning.