Re: Thursday (night…sorry we are late) Report

In This Issue:

We at the Thursday Report are thrilled to announce that Miss Ava Faye Gassman was born on September 11, 2018, and weighed 8 lbs., 6oz.

Click HERE to see Alan explain 529 plans and trusts to a newborn.

Quote of the week

We contend that for a nation to try to tax itself into prosperity is like a man standing in a bucket and trying to lift himself up by the handle.

– Winston S. Churchill

Charitable Clients Have Many Options

By: Alan Gassman and Brandon Ketron

Charitable planning presents unique tax savings opportunities for clients that wish to have all or some portion of the proceeds from the sale of their business benefit charity. Capital gains taxes can often be avoided or deferred by having some portion of the sales proceeds and future investment gains from the proceeds benefit one or more charities or charitable causes.

We recently wrote a letter to a charitable client explaining some of the main alternatives available in this area. The alternatives are outlined below:

1. Private Charitable Operating Foundation. This would be a trust that you could be the trustees of. You would donate a portion of your ownership in the business and receive a charitable deduction for the fair market value thereof.

The charitable trust would then sell the 25% interest to the third-party sellers in exchange for a note.

The charitable trust would be required to spend approximately 5% or more of its value each year for active charitable purposes, which can include interviewing people who need financial assistance with animal situations, assisting the homeless, and providing scholarships to individuals with financial and other needs.

One example is providing a scholarship fund for students who cannot otherwise afford music lessons or work with a local hospital to provide scholarships for non-RN nurses who are working full-time and also going to school to become RN's.

This enables the client to review the many candidates, interview the candidates, and their parents where applicable, and then to assist in monitoring progress to help assure that the monies are being well spent.

Please note that there is another kind of private foundation called a Private Non-Operating Foundation that allows for a charitable deduction upon funding, but appreciated assets transferred to a Private Non-Operating Foundation will only be tax deductible to the extent of their tax basis.

2. Community Foundations. Something very similar but simpler could be handled through a Community Foundation that would allow for the transfer of charitable funds to recognized charities.

Every county has its own Community Foundation that exists for the purpose of receiving donations that are to be used primarily for local recognized charities.

A client who sets up an account with the Community Foundation has the assurances of the foundation that it will do what the client wants it to do, as long as that involves reasonable investments and giving monies to recognized charities.

With a Community Foundation, there is no need to have an active operating arrangement.

There are variations of the Community Foundation which are similar thereto and can vary in cost.

A Community Foundation may charge 1% a year of amounts under management to help offset its overhead.

3. Donor Advised Funds. Charles Schwab, Vanguard, and other large financial institutions have their own Donor-Advised Funds that qualify as a charity for contributions made, but are not equipped to receive privately held investment interests or administer promissory notes that might be received when closely held business or real estate interests are sold.

There are hybrid organizations that will do this if you would prefer to have less responsibility than would apply under a Private Operating Foundation.

The above organizations will provide a 100% tax deduction, but typically do not want to be involved with receiving ownership of real estate or limited partnership or LLC interests that are sold shortly after donation. Community Foundations are typically more willing to work with these types of situations, but we find that Private Operating Foundations are the easiest and allow the client to keep control and avoid the payment of expenses that will typically be assessed by non-related charitable organizations that have overhead and executives to pay.

4. There are "hybrid alternatives" which can provide a partial tax deduction and income deferral.

a. A Conventional Charitable Remainder Trust will make payments over time to its creators, with the remainder interest going to charity.

The income tax payable on the sale that would occur shortly after the charitable trust receives the interests, and the interest income on the note, would be deferred, and the contributor to a Charitable Remainder Trust would only recognize income tax upon receipt of payments from the trust.

This enables the contributors to defer income tax, but it is normally not avoided.

The most popular type of Charitable Remainder Trust is a simple "CRAT" or "CRUT" which makes annual payments to the donor. With a CRAT (Charitable Remainder Annuity Trust) the annual payment is a fixed amount that never varies, and with a CRUT (Charitable Remainder Uni-Trust) the payment each year is based upon a percentage of the value of the trust.

The CRAT or CRUT donor receives an income tax deduction based upon the actuarial value of the remainder interest going to charity, and the only income tax incurred is based upon the income that comes out of the CRAT or CRUT with the payments to the Grantor, which come out on a "worse first" basis.

An example would be that someone puts $1,000,000 worth of stock into a CRAT that only cost them $100,000.

The CRAT will pay them $110,000 a year for 20 years, and anything left in the CRAT after the 20th year will go to charity.

Based upon present actuarial assumptions, the remainder interest to charity is expected to be worth approximately $100,000, which is the tax deduction that the person gets, even if they will eventually receive all of the CRAT assets. This saves them $37,000 of income taxes if they are in the highest bracket.

The CRAT may sell the stock for $1,000,000 and have a $900,000 capital gain, and earn $10,000 a year in dividends; however the tax would be deferred until the CRAT distributes the money to the creator.

In the first year, the Grantor receives $110,000 which is taxed $10,000 as dividends and $100,000 as capital gains.

The same thing occurs until all $900,000 of capital gain monies have come out, and thereafter the payments carry out $10,000 of dividend income and are otherwise tax free, assuming that the CRAT does not sell any of its investments after the first year and trigger recognition of additional capital or ordinary gain income.

b. Charitable Remainder Unit Trust. An alternative structure is for the Charitable Remainder Trust to pay the creators a certain percentage of the value of the trust assets each year until they have both passed away. This is referred to as a CRUT.

For a married couple, both age 65, this would be approximately 11.4% per year of the trust value until the death of the survivor of you. If assets worth $1,000,000 were contributed to the CRUT, then you would receive a charitable deduction equal to approximately $110,000.

c. The NIMCRUT. A fancier and more tax-effective version of the CRAT or a CRUT is the NIMCRUT – which stands for "Net Income Makeup Charitable Remainder Uni-Trust."

With a NIMCRUT, the payments each year are limited to the actual income of the trust, and the trust's income can be calculated based upon distributions that it receives from an LLC that it can own.

In our example, the CRUT could receive $1,000,000 of appreciated assets and place them in an LLC.

The LLC can sell the assets and invest them in stocks that pay a $10,000 a year dividend.

The CRUT will not be considered to have capital gains income from the sale or dividend or interest income from the invested proceeds until the LLC makes a distribution, so each year there is no tax paid. If the stock value stays at $1,000,000, an additional $110,000 of distribution rights will accrue each year until the LLC makes a distribution to the CRUT, which is considered to be income, and will allow the CRUT to distribute the deferred payments.

If this distribution from the LLC happens in the 15th year then there has been no capital gains, interest, or dividends tax paid for 15 years, and most, if not all, of the CRUT assets can be distributed to you if there has not been growth in value, and you would pay the tax only upon receipt of whatever amounts are due to you or the survivor of the two of you.

The actual name of the above mechanism is a FLIP NIMCRUT.

More details on the intricacies of the NIMCRUT and the FLIP NIMCRUT are explained in a separate letter we have written, which can be obtained by emailing agassman@gassmanpa.com or brandon@gassmanpa.com.

Oftentimes, charities will recommend that a person set up a Charitable Remainder Uni-Trust that will pay a much smaller percentage than 11% so that the charity gets a much larger gift at the end of the CRUT term, and the charitable deduction is more.

We find these to be less advantageous for clients who typically either want tax deferral that can be maximized with a NIMCRUT, or a complete tax deduction, from contributing directly to a charity or to a Private Operating Foundation or Community Foundation arrangement to facilitate giving the money to charity over time.

Charitable planning cannot only avoid or defer the payment of taxes, but provide the contributor with a charitable income tax deduction to boot assuming that the contributor is itemizing deductions. The above charitable planning techniques can provide a great benefit to your clients that have charitable aspirations.

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Section 1202 Corporations: An Excerpt from *The Advisor's Guide to Saving Taxes on Business and Investment Income, Structuring Entities, and Estate Planning Under the 2017 Tax Cuts and Jobs Act*

We have been working with Marty Shenkman and Jonathan Blattmachr on a new book entitled Section 199A (and 1202) Handbook - Advisor's Guide to Saving Taxes on Business and Investment Income, Structuring Entities, and Estate Planning Under the 2017 Tax Cuts and Jobs Act.

This 200(+) page handbook includes a good many charts, examples and planning strategies, and is being offered by LISI (Leimberg Information Services) and **can be purchased by clicking HERE.**

The following is Chapter 7 from the book, entitled "Section 1202 Corporations":

> Section 1202 of the Code permits the shareholder of a qualifying C corporation that meets certain requirements[89] to sell stock held for more than five years without paying capital gains tax on the sale. Also, a shareholder who has held Section 1202 qualifying stock for less than five years can reinvest the monies received from the sale of such stock to buy other Section 1202 qualifying stock on a tax-deferred basis. The holding period will be tacked to the holding period of the previously held Section 1202 stock, so that the sale of the subsequently acquired Section 1202 stock can be tax-free after a five year combined holding period if the requirements discussed below are met.[90]
>
> There are many requirements that must be satisfied to qualify for Section 1202 status. These include having the company engaged in an active trade or business that is not one of the "Specified Service Trades or Businesses" enumerated in the Statute, and having at least 80% of the corporate assets being used or needed in the business or businesses of the company.
>
> A Section 1202 company may perform management, marketing, billing, or associated services for a related entity, and may invest its profits in one or more other businesses. Another aspect of Section 1202 planning is that the liquidation of the company or distribution of assets to the shareholders after five years will still be subject to tax. The only way to avoid the tax is to sell the ownership of the company.
>
> As above indicated, Section 1202 companies are not permitted to engage in any of

the following enumerated trades or businesses, with the first eleven being the same as the list of Specified Service Trades or Businesses under Section 199A.

(1) health,*

(2) law,*

(3) accounting,*

(4) actuarial science,*

(5) performing arts,*

(6) consulting,*

(7) athletics,*

(8) financial services,*

(9) brokerage services,*

(10) investing, trading, or dealing in securities, partnership interest, or commodities,* and

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89 Named after IRC § 1202. *See* Gassman & Ketron: *1202 Things to Consider When Setting Up a Related Business Servicing Company* LISI Business Entities Newsletter #152, (July 13, 2016).

90 *See generally* IRC § 1202.

(11) any business where the principal asset is the reputation or skill of one or more of its employees.*

(12) engineering;

(13) architecture;

(14) oil and gas;

(15) hotels and motels;

(16) restaurants;

(17) businesses similar to hotels, motels or restaurants.

*These 11 items are the same as the Specified Service Trades or Businesses defined below under Section 199A.

Section 1202 companies can be very tax effective when there is management or royalty income that might be earned and reinvested in the company to enable it to have sufficient working capital to operate a business or businesses, which are not listed above. An example would be to have management and advertising income used to purchase convenience stores or a horse- breeding business so that the company could accumulate income by paying the 21% federal income tax, with no additional tax to be paid when the company is sold.

What rules have to be followed in order to achieve this result or similar results that can apply any time that a client or family's business and investment arrangement can entail arm's- length payments for management services, or other similar arrangements? If a Specified Service Trade or Business ("SSTB"), such as a law practice, signs a long-term management, marketing and intellectual agreement at arm's-length with a related company and is later sold, the purchaser may pay significant monies for ownership of the management and advertising company, which would be received tax-free by the selling lawyer/lawyers.

Advisors should be careful to warn clients of risks associated with these arrangements, as discussed in the Downsides/Risks section below, and as evidenced by the *Owen* case which is also discussed in the Active Business Requirement section at footnote 1365.

Section 1202 company owners who sell their stock after holding it for more than six months, but not the five year holding requirement required by Section 1202, can use what is known as a Section 1045 exchange, to roll over and thus defer the gain by purchasing replacement Section 1202 stock within sixty days following the sale of qualified small business stock.[91] Gain from these sales will be recognized only to the amount they exceed the cost of the new stock purchased by the taxpayer. Additionally, it appears that a Section 1202 company that holds only intellectual property and receives significant royalty income would

meet the requirements for Section 1202, but there is a risk that the company would be classified as a Personal Holding Company and thus subject to a 20% tax on undistributed income in addition to the 21% flat tax. There is an exception in Section 1202 and the Personal Holding Company rules under Section 543(d)(1) to treat royalty rights from copyrights and computer software as being used in the active conduct of a trade or business and thus eligible for Section 1202 treatment and exempt from the Personal Holding Company tax, but strict requirements must be met as discussed in more detail below.

[91] IRC § 1045.

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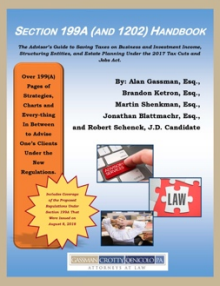
ATTORNEYS AT LAW

New Tax Laws



Alan Gassman

Don't Miss These Other Great Titles

199A and 1202 Handbook

The Section 199A (and 1202) Handbook, With In-Depth Technical Analysis: an advisor's guide to saving taxes on business and investment income under the 2017 Tax Cuts and Jobs Act.

Also included is Alan's 3 hour webinar detailing the book. Here, we will explain the book page-by-page so that readers can refer to the webinar and scroll thorugh the video for the page number one is looking for.

Key topics covered during this webinar include:

1. C-CORP vs. Flow Through Entities.
2. Players and Moved for the Chessboard of Pass Through Entity Planning.
3. Flow Through Entity Taxation Opportunities.
4. Having Employees vs. Independent Contractors.

Purchase the 199A and 1202 Handbook at https://leimbergservices.com/wdev/agbooks.cfm

Please Contact us at 727-442-1200 with any questions

To purchase, please click HERE.

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Applicable Federal Rates Are Increasing - Lock in While You Can!

The applicable federal rates are expected to increase again for the month of November. The current applicable federal rate for mid-term loans is 2.83% compared to just 1.85% in October of last year. This is a 53% increase year over year and the rates are expected to keep climbing. Therefore, if you or your clients are considereing an installment sale or GRAT (Grantor Retained Annuity Trust), now is the time to complete the transaction. Below is a chart that lists the most recent applicable federal rates for the last three months, because for a sale you can use the lowest rate of any of the last three months:

Applicable Federal Rates (Annual Compounding)			
	October	**September**	**August**
Short Term (3 Years or Less)	2.55%	2.51%	2.42%
Mid-Term (4 -9 Years)	2.83%	2.86%	2.80%
Long Term (10+ Years)	2.99%	3.02%	2.95%

For a copy of our article Interesting Interest Questions: Interest Rates for Intra-Family Transactions with Jerry Hesch email agassman@gassmanpa.com.

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Client Relationships: Don't Forget the Five Commandments

Part 5 of 5 by Alan Gassman and Kateline Tobergte

The following is part five from an article being published in the ALI ABA Tax Lawyer Magazine, which was co-written with Stetson University law student Kateline Tobergte. Any and all brilliance that might be found in this article came from Kateline.

COVER YOUR BEHIND

At the end of the day, as long as you have put in good work and maintained a good relationship with your client they will be happy with you even if they are not happy with the outcome of the case. However, there will be a small number that will blame you. And if you were unfortunate enough to end up with clients from the bad 40 percent your risks will be much higher. In every case it is important to take all possible steps to cover your behind.

One of the most important and effective ways to protect yourself is to put everything in writing. People will lie, and those that are not lying may be mistaken. In either case you could get burned. Those that lie about anything are likely to lie about everything when the time comes. After the first meeting send a Written Fee Agreement explaining what was discussed, any advice given, whether or not you are representing them, the scope of the representation, the fee structure/cost of representation, and any other limits on representation. If you are not representing them clearly state that you have not advised them about statute of limitation issues and they should consult other counsel regarding their issue. Although law does not require these, it reiterates to the client everything you said to give them ample notice and protects you in case of future disputes. It is much easier to prove what was said when it is in writing than to prove what was not said. Also, make sure nothing in any writing can be used to show or appear in any way to be conspiring in fraud or illicit/illegal conduct.

Miami lawyer and law professor Denis Kleinfeld coined the term "evidence mail" for emails. His term emphasizes the fact that emails can and will often reveal problematic messages and communications in litigation. While they can be very beneficial record keeping devices to prove competent representation and informed consent, they can lead to trouble. If the client discloses them to non-privileged parties, they become discoverable. Emails are often seen as a less formal form of contact as opposed to a traditional letter. This leads to less careful drafting increasing the chance of typos, poor grammar, and a tone that can appear curt or snappy. This can paint the sender in a

negative light. Clients have the right to request their file, and if you put something flippant about the client in a note then that can be held against you. If you send a negative email about a client to another team member this might have to be included in that file and later used against you.

As stated earlier, make it clear who you are representing. It is important to be clear when dealing with multiple people or couples about who is and is not your client. What is and is not confidential. Inform everyone of their right to seek independent legal counsel. Make sure everyone signs disclosures regarding joint representation disclosures that explain their ability to seek legal counsel and why that is often beneficial for the parties, and states that they have been educated on the risks and their respective rights and give informed consent to the joint representation. Keep in mind conflict of interest rules regarding joint representation. It may not be possible to represent both and this should be explained to the clients and sent in writing in the follow up letter. The rule of thumb is that you can almost never represent someone whose interests are adverse to someone you have represented before or are representing. For example, if clients have a prenuptial agreement or postnuptial agreement and things could get contentious during a divorce, you may need to represent only one spouse because the parties' interests are adverse. In the case of representing only one party, make sure the other party not being represented signs a document saying they recognize they are not your client and that you recommend that they get a separate lawyer. This way they cannot claim they are your client and prevent you from representing the other party based on conflict of interests, or blame you for future acts or omissions that a lawyer representing them should have informed them of. This is also important when dealing with entities such as corporations or LLCs. Make it clear who you represent to avoid future confusion.

Make sure you maintain confidentiality. While this seems obvious, in the days of email and IM it is easy to accidently send correspondence to the wrong person (e.g. hit reply all instead of reply). Correspondence may not remain confidential under Attorney/Client privilege if it goes to someone other than the intended party.

Take copious notes during meetings. Afterwards dictate or type them in a memo for future reference. This will ensure preservation of all the information received from the client and, besides allowing you to reference them in case of a question regarding advice or decisions, it can help protect you from the client saying they told you something material when they never did. It will also help better your representation of the client because it allows you to think of things you forgot to mention during the meeting or call, questions you forgot to ask or did not think of, and better understand the work that will be involved in case you need to reconsider the fee agreement.

Include a mediation and arbitration agreement. Most issues arising under the attorney/client relationship can be resolved through mediation and arbitration. It can be quicker, cheaper, and more beneficial to all parties because they have control of the process and can agree to resolutions that could not be awarded in court.

CONCLUSION

As a lawyer we encounter all kinds of people. Many will be great clients and make everything we do worthwhile, but about 40 percent out there will cause nothing but trouble. It is important to separate the good from the bad to allow you to continue a strong and successful practice. Once a client is chosen it is important to cultivate that relationship, communicate with the client, and know what kind of person your client is to give them the most effective representation possible, but always remember to cover your behind. Remember these 5 client relationship commandments and your practice will thrive.

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Physicians Guide to the Medical Use of Marijuana in Florida – part 2 of 2

by Alan Gassman and Seaver Brown

Dispensary and Treatment Center Limitations

Treatment centers will be the only licensed entities permitted to grow, process, transport, sell and dispense medical marijuana and medical marijuana delivery devices in Florida. The initial number of these treatment centers is limited to ten, which appears low given that according to a 2017 State Revenue Impact Study it was suggested that once the market reaches a mature state, Florida will have 106,000 medical marijuana patients with sales totaling $140 million.[1]

Operating under the license, direction, and control of treatment centers will be dispensary facilities. The Medical Use of Marijuana Act states that these entities may deliver medical marijuana products to patients through a courier service, but does not provide any other information concerning their purpose. In all likelihood, dispensary facilities will be additional storefronts owned by the larger "treatment center" that will offer medical marijuana to patients.

The maximum number of dispensary facilities each treatment center can have statewide is set at 25, until the number of total active qualified patients in the Medical Marijuana Use Registry rises above 100,000. Once reaching that threshold, and upon every subsequent increase of 100,000 in the Registry, each center may add an additional five dispensaries. Additional treatment centers will be authorized by the Department of Health at the rate of four for every 100,000 patients registered.

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[1] These figures assume that the current list of qualifying medical conditions will not be expanded to include conditions such as chronic pain. However, higher estimates suggest Florida could have as many as 350,000 users of medical marijuana and see more than $410 million in sales. See Florida Impact Revenue Estimating Conference on marijuana at: http://edr.state.fl.us/Content/conferences/generalrevenue/Marijuana_A2_SB1030_HB307_Special-Impact_2017Pre-Session_final.pdf

Nonetheless, the limitation on the quantity of treatment centers has sparked contention within the legislature. In a press release accompanying a previous version of the Medical Use of Marijuana Act, Senator Jeff Brandes, R-St. Petersburg, stated that this cap on the number of retail dispensaries and treatment centers will effectively "promote a state-sanctioned cartel system that limits competition, inhibits access, and results in higher prices for patients. Florida should focus on what is best for patients."

Brandes submitted a bill to the Senate that would have limited the number of treatment centers to not exceed one per 25,000 residents in a county. This would have shifted the limits from statewide to an individual county basis.

In addition to his belief that Florida businesses and investors should be able to become part of a budding industry and experience similar profitability as do those in states such as Colorado, Washington, and California, Brandes asserts that companies should be able select the areas of the medical marijuana business they want to take part in.

Currently, businesses have to engage in Florida's vertical integration system, or seed-to-sale, for medical marijuana. Each medical marijuana treatment center must grow its own product to sell, and track it at every stage. Brandes' amendment, which did not pass, removed the requirement that those who grow and sell share ownership. This stipulation on the sale of medical marijuana drew the ire of both lawmakers and voters in Florida, who say it limits access, makes the industry less competitive, and raises prices.

Treatment Center Background Checks and Inspections

Those who wish to own or manage a treatment center are required to pass a Level 2 background check. In addition, they also have to submit their fingerprints to either the Department of Health or to a vendor, entity, or agency authorized to collect fingerprints by the State of Florida. Those fingerprints will be forwarded to the Department of Law Enforcement for state processing, who will disseminate it to the Federal Bureau of Investigation for national processing. The Department of Health will, of course, be notified of any arrest records.

The Medical Use of Marijuana Act also states that treatment centers are subject to inspections, both announced and unannounced. The Department of Health must conduct inspections on "at least a biennial" basis in order to "evaluate the medical marijuana treatment center's records, personnel, equipment, processes, security measures, sanitation practices, and quality assurance practices." The Department is also tasked with inspecting any treatment center flagged by a complaint or notice of mold, bacteria or other contaminants having adverse effects to human health or the environment.

Pursuant to the Medical Use of Marijuana Act, the Department of Health must publish a list of the approved medical marijuana treatment centers, medical directors, and physicians on its website. It will also be granted the power to levy fines on any treatment centers for enumerated violations, with a maximum amount not to exceed

$10,000 for acts such as violating the Statute or a Department rule, or endangering the health, safety, or security of a qualified patient.

Ban on Smoking

Currently, the popular belief is that vaporizing cannabis is healthier and less irritating to the lungs than smoking it, but also that the vaporization method provides more potent forms of marijuana than the traditional method of smoking.

The use of vaporizers for both marijuana and nicotine is relatively new and any research concerning the long-term effects of vaporizing is limited. In effect, this rule forces treatment centers to only provide marijuana products that are prepackaged, preapproved, and tamper proof. Individuals cannot purchase the seeds or actual flowers ("buds") of marijuana plants to use in the traditional manner.

Orlando attorney, John Morgan, one of the principal supporters and funders of Amendment 2, is preparing a lawsuit against the state for its prohibition on smoking marijuana as a method of treatment, as it is the most common method of consumption.

Confusion Regarding Regulation and Sale of Hemp Oil vs. CBD Oil: *by Kateline Tobergte*

For years hemp products, such as hemp oil, have been sold commercially, but with the passage of the Compassionate Medical Act, Florida Statute Section 381.986, there has been increased attention regarding marijuana for medical purposes and other products derived from cannabis plants, such as CBD oil. The line between legal hemp oil and illegal (if not sold or possessed in compliance with Florida Statute Section 381.986) CBD oil has become blurry, and how the laws governing these products work with pre-existing Florida marijuana control laws can be confusing.

To understand how the statutory definitions apply, it is important to first understand what hemp oils and CBD oils are and how they are different. Hemp oil is extracted from the seeds of the industrial hemp plant. This oil can be extracted from seeds from any cannabis plant, but industrial hemp is specially grown to have only trace amounts of any psychoactive compounds, so it is the only plant used for hemp oil. On the other hand, CBD oil is extracted from the flowers, leaves, and stalks of cannabis plants. Hemp plants can also be used, but industrial hemp plants are not used for CBD oil because they do not contain high enough levels of cannabidiol.

The main difference between hemp oil and CBD oil is that CBD oil is not taken from the seeds like hemp oil, is not taken from industrial hemp plants, and the main compound is cannabidiol. Levels of cannabidiol in hemp oil is less than 25 parts per million, which means there is practically no cannabidiol in hemp oil, while levels in CBD oil can be up to about 15% according to the August 25, 2015 article in *Chronic Therapy* called *Hemp Oil vs CBD Oil: What's the Difference?*.

The Florida Comprehensive Drug Abuse Prevention and Control Act ("Drug

Control Act"), under Florida Statute Section 893.02, defines cannabis as "all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. The term does not include "marijuana," as defined in s. 381.986, if manufactured, possessed, sold, purchased, delivered, distributed, or dispensed, in conformance with s. 381.986." This specifically carves out an exception for medical use in compliance with the Compassionate Medical Act, but does not create an exception for hemp oil.

A different law addresses growing hemp in Florida Statute Section 1004.4473, the Industrial hemp pilot projects, but this does not address selling or possessing hemp oil. This Statute defines "hemp material" as "a substance containing hemp stems, leaves, fibers, seeds, extracts, oil, or any other substance derived or harvested from a species of the cannabis plant." This special species is "industrial hemp", as referenced above and defined in this Statute as "all parts and varieties of the cannabis sativa plant, cultivated or possessed by an approved grower under the pilot project, whether growing or not, which contain a tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis." This Statute allows growing and cultivating industrial hemp for research as approved by the Department of Agriculture and Consumer Services, but it does not authorize the sale of any products from it.

Cannabis and hemp are addressed on a federal level in 21 U.S.C.A. Section 802(16), which states:

> "The term "marihuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination."

This Statute specifically excludes oil extracted from the seeds of the plant, which is what hemp oil is. In *Hemp Industries Ass'n v. Drug Enf't Admin.*, 333 F.3d 1082, 1088 (9th Cir. 2003), the court explained that this definition made hemp explicitly excluded. The court also cited to the Senate Report to the 1937 Controlled Substances Act where the Senate explained they specifically excluded the mature stalk and fiber from the original definition because "neither the mature stalk of the hemp plant nor the fiber produced therefrom contains any drug, narcotic, or harmful property whatsoever."

Although the original definition of marijuana in the Controlled Substances Act did not exclude seeds, the intent was to exclude from the definition the parts of the plant, and products produced therefrom, that did not contain the narcotic or psychoactive

compounds. Seeds were later added as research showed that they too could lack the psychoactive compounds in conformity with Senate's original intention. This is why hemp oil is legal on a federal level. CBD oil is not made from the seeds of the plant, and is a compound or derivative of the plant that contains psychoactive compounds, so it is included in both the definition of the current Controlled Substances Act and Senate's original intention for items to be included in the definition.

Technically, the Florida definition of cannabis would make hemp oil illegal, but it is exempted and legal under federal law. Based on the Supremacy Clause, which says when there is a conflict between state and federal law, federal law wins, hemp oil is not illegal in Florida. CBD oil is not exempted under either law, except to the extent that it has been exempted in Florida for medical use. The fact that it is still illegal under federal law does create concern, as seen in cases in states that have legalized marijuana, where the federal government has prosecuted individuals for violating federal law even though they were following state law. This is a concern, but the growing trend of accepting marijuana, at least in medical contexts, lessens the chances that people will be prosecuted as long as they are acting in conformance with state law.

As previously mentioned, CBD oil is illegal under Florida law unless it is used according to the Compassionate Medical Act. To purchase CBD oil in accordance with Florida Statutes Annotated Section 381.986 a person must be a "Qualified Patient" which is defined as "a resident of this state who has been added to the Medical Marijuana Use Registry by a qualified physician to receive marijuana or a marijuana delivery device for a medical use and who has a qualified patient identification card."

Medical marijuana, which does include CBD oil, can only be purchased legally from a medical marijuana treatment center upon proof of a registry ID card and a physician certification.

Although CBD oil does not contain THC, it is still considered a controlled substance under federal law and Florida law. Florida law allows CBD oil to be used in accordance with the recently passed Compassionate Medical Act. Hemp oil does not contain cannabidiol like CBD oil and has been specifically exempted from the federal controlled substances definitions which is why, although it may be included in Florida law, it is legal to buy and sell at retail stores.

Conclusion

There is well-merited concern that medically prescribed marijuana will cause public harm when people under the influence drive, use it recreationally and in an inappropriate manner, or allow it to be used by children and young adults who may suffer from addiction, apathy, and other adverse side effects. However, the documented medical benefits it provides to many who suffer from certain medical conditions in undeniable. As compassionate humans we should no longer hide behind antiquated, misinformed and fearful ideas that a plant will be the downfall of our society when it can provide relief to those who need it.

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Forbes Corner with Alan Gassman

What to do When You Might Get Sued

It is never pleasant to be in a situation where someone may file a lawsuit against you. Whether this is the result of an accident, a business argument, or the inability to pay a debt, some common principles apply across the board that should be considered.

1. **Do not panic.**

Many times, defendants in lawsuits say things, send emails or letters, or take actions that are harmful to their situation. Remember that you have a number of days to respond to a lawsuit, and you have the ability to get an extension to file an Answer or Motion to Dismiss.

To view the full article, click HERE

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Richard Connolly's World

Insurance advisor Richard Connolly of Ward & Connolly in Columbus, Ohio often shares pertinent articles found in well-known publications such as *The Wall Street Journal*, *Barron's*, and *The New York Times*. Each issue, we feature some of Richard's recommendations with links to the articles.

The attached article from The Wall Street Journal reports:

Billions of dollars have started piling into new real-estate funds *targeting disadvantaged U.S. neighborhoods, as* ***investors line up to capitalize on a section of last year's tax overhaul.***
The tax bill created more than 8,000 tax-advantaged ***"opportunity zones."***

The zones have ***multiple tax benefits****.* ***Anyone with capital gains****—from real estate, Amazon shares or most any other source—****can defer taxes on them until 2026*** *if they roll those gains into investments in these designated zones. Investors can also get* ***a discount of up to 15% on those taxes when they eventually pay them****. And* ***capital gains*** *from qualified investments in the zones that are* ***held for at least 10 years won't be taxed at all.***

James Lang*, a tax attorney in* ***Greenberg Traurig's*** *Tampa, Fla., office, says he has fielded* ***10 to 15 calls each day*** *on the topic since July and his* ***firm has assembled about 45 lawyers to focus on opportunity-zone investing.***

To view the full article, click HERE

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Humor

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Upcoming Seminars and Webinars

Dentists are Different:

Estate, Corporate and Financial Planning Considerations for Dentists and Those Who Advise Them

A Complimentary Webinar Presentation

with Alan S. Gassman, J.D., LLM.

Friday, November 2, 2018 12:30 PM - 1:30 PM EST

Dentists and their practices have unique characteristics, opportunities and challenges that are commonly unknown to the dentists and their families and advisors.

Join Alan as he shares planning techniques and traps for the unwary for dentists, along with new practical ideas, useful client explanation charts, and checklists.

With the ever-changing tax & planning landscape, you can not afford to be left behind. Find out why, when it comes to financial planning considerations,

Dentists are Different.

GASSMAN CROTTY DENICOLO P.A.
ATTORNEYS AT LAW

To Register, please CLICK HERE

Calendar of Events

EVENT	DATE/TIME	LOCATION	DESCRIPTION	REGISTRATION	FLYER
Notre Dame Tax Institute	October 11-12, 2018	South Bend Indiana	Planning Under Section 199A and Associated Tax and Practical Considerations	Contact: Agassman@gassmanpa.com	
Federal Tax Institute of New England Seminar	October 17-18, 2018	TBA	Asset Protection Techniques for Businesses and Individuals (With No Need for Offshore Trusts)	Contact: Agassman@gassmanpa.com	
Las Vegas Life Insurance Conference	October 25, 2018	Las Vegas, Nevada	Dynamic Planning techniques for Cautious Advisors Note-this is a private event	Contact: Agassman@gassmanpa.com	
FICPA 2018 University of South Florida Accounting Conference	October 25 - 26, 2018	Barrymore Hotel Tampa Riverwalk	Nuts and Bolts and Creative Planning with Sections 199A and 1202	Contact: Agassman@gassmanpa.com	
AAA-CPA Conference	November 5, 2018	Miami, FL	Topics to be Announced	Contact: Agassman@gassmanpa.com	
MER Primary Care Conference	November 8-11, 2018	JW Marriott Los Cabos Beach Resort & Spa	1. Lawsuits 101 2. Ten Biggest Mistakes That Physicians Make in Their Investment and Business Planning 3. Essential Creditor Protection & Retirement Planning Considerations. 4. 50 Ways to Leave Your Overhead & Increase Personal Productivity.	Contact: Agassman@gassmanpa.com	
Leimberg Information	November 16, 2018	Gotowebinar.com	Dynamic Planning Strategies for the Well Informed Advisor	Contact: Agassman@gassmanpa.com	

Services Webinar					
Mote Vascular Foundation Symposium	November 30 – December 2, 2018	The Westin-Sarasota, 1175 N. Gulfstream Ave, Sarasota, FL 34236		Contact: Agassman@gassmanpa.com	
Johns Hopkins All Children's Foundation 2019 Estate, Tax, Legal and Financial Planning Seminar.	February 7, 2019	TBD	Alan will be serving as moderator and speaking.	Contact: Agassman@gassmanpa.com	

Newly announced events in RED

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