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Rock Solid™ NEWS

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WALTER A.WINSLOW JOINS COAN, PAYTON & PAYNE, LLC

Coan, Payton & Payne, LLC is pleased to announce that Walter A. Winslow has joined the firm. Mr. Winslow has been practicing law since 1996. He obtained his B.S.B.A. in accounting from the University of Dayton and was a member of Beta Alpha Psi, an accounting honor society. Mr. Winslow is admitted to practice before all courts in the Sate of Colorado in addition to the Northern District of Ohio, and the U. S. Court of Appeals, Sixth and Tenth Circuits. Mr. Winslow's practice focuses on complex business and real estate transactions, mergers and acquisitions, business formation and other business matters, owners agreements and covenants, commercial leases, landlord-tenant issues, liens and foreclosures, eminent domain, construction law and related litigation. He has a strong accounting and business background which benefits our business clients. Mr. Winslow resides in Fort Collins, Colorado and will be based at the firm's Fort Collins office.

For more information go to www.cp2law.com

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PROTECTING YOUR BRANDS IN THE NEW gTLDS

By: Kay L. Collins, Esq.
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The landscape of the Internet is beginning to change rapidly with the launch of hundreds of new gTLDs. A gTLD (generic top-level domain name) is the top-level domain name of an internet address that identifies it generically as associated with some domain class, such as .com, .net, .org, .gov, and .edu. Trademark owners are likely to have their company or brand name registered as a second-level domain in conjunction with a gTLD such as IBM.com. IBM is the second-level domain and .com is the top-level domain. Until recently there were approximately 24 top-level domains in which businesses and individuals could register their chosen names. But over 1,300 new gTLDs have been approved to launch beginning in late 2013 and continuing over the next several years.

These new suffixes represent various subjects, industries, hobbies and geographic locations such as .shop, .coffee, .app and .berlin. Many see this as the opening of a new internet frontier providing more choice, diversity and competition in domain name presence. The .com domain has become very crowded, making it difficult for new businesses to register their names and establish a brand-identifying presence in this top-level domain environment.

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Protecting Your Brands In The New gTLDS (continued)

Business owners may wish to take advantage of promoting their brands in the new industry specific gTLDs, such as IBM.computer. But for trademark owners it also opens new avenues for cybersquatting. Businesses must now adopt strategies to protect their trademarks from registration by others as second-level domains in new gTLDs related to their particular industry.

The Internet Corporation for Assigned Names and Numbers (ICANN) has developed the Trademark Clearinghouse (TMCH) as a rights protection mechanism for trademark owners. The TMCH will allow brand owners to register their trademark ownership information into a centralized database. The TMCH will then authenticate and store the information and, eventually, disseminate it to all new gTLD registries for use in connection with the "Sunrise Service" and the "Trademark Claims Service" described below. Brand owners will be required to submit their trademark information (such as U.S. or other country registration data) to the TMCH in order to participate in these rights protection mechanisms. There is no stated deadline by which brand owners need to register with the TMCH, and the verification system will be available on an ongoing basis as new gTLDs are approved. However, trademark owners will want to register prior to the Sunrise Period for gTLDs of concern, as described below.

The first advantage of the TMCH is the Sunrise Service, the right to acquire second-level domains for trademarks in new gTLDs during the sunrise period – the 30-day period after a new gTLD launches. Trademark owners registered with the TMCH may purchase second-level domain names for the new gTLD before the name is made available to the general public. For many companies, this will be a defensive registration, to prevent cybersquatters, competitors, or innocent parties from obtaining domain names that infringe or cause other problems. For example, a restaurant franchise may want to register its primary mark in the .restaurant or .food gTLD, and a wide variety of companies, especially those that have been targeted by abusive derogatory websites, may want to register defensively in the .sucks gTLD. To take advantage of this period, a trademark owner must provide evidence of use of the relevant trademark.

The second advantage of the TMCH is the Trademark Claims Service. During the first 90 days (or longer, depending on specific gTLD policies) following the sunrise period, the trademark owner will be notified when any third-party seeks to register a second-level domain name identical (or nearly identical) to a mark registered with the TMCH in any of the new gTLDs. During that process, the registry also notifies the gTLD registrant about the trademark owner's rights in the mark. The trademark owner will then be able to enforce its trademark rights through the new Uniform Rapid Suspension System (URS). The URS complements the existing Uniform Domain-Name Dispute Resolution Policy (UDRP) by offering a cost-effective, expedited procedure for rights holders experiencing clear cases of infringement.

Trademark holders may submit their registration applications directly to the TMCH or through authorized agents. The filing fees associated with registration will vary, depending on the registration method and fee structure selected by the brand owner but, in most cases, registration with the TMCH will carry a filing fee of $150 per mark for a one-year period, $435 for a three-year period, and $725 for a five-year period. The three-year period is recommended because the launch of the new gTLDs will not be completed within the next year.

Brand owners should strategically analyze their trademark portfolios to determine which marks may benefit from the services the TMCH offers. Most experts are recommending that companies look to register only exact matches of their core trademarks in registries where there is a close correlation between the brand and the TLD. For example, financial institutions should consider registering in TLDs such as .bank, .loan(s), and .mortgage. Breweries may wish to register in the .beer gTLD. Identifying these kinds of close matches is not too difficult because only a portion of the new gTLD's are industry specific and open to the public. In addition, brand owners should plan to submit any trademark for which they desire a Sunrise registration. The list of new gTLD's that have launched to date may be found at *http://newgtlds.icann.org//en/program-status/delegated-strings.* The list of gTLD's that have been approved for later launch dates may be found at *http://www.newgtldsite.com/new-gtld-list/*. Rights holders may also wish to monitor the gTLDs once they go live and consider utilizing the URS or other dispute resolution procedures to bring claims against domain name registrants or abusive registry operators.

It remains to be seen whether these new gTLDs will be embraced by the business community. It will take time to build awareness and acceptance among Internet users. Some suffixes will thrive and others will fail, and only time will tell whether any new domain address will ever be as valuable as .com. But internet habits will be changing and brand owners are wise to get involved now in domain acquisition planning from both a defensive and offensive perspective. ◆

We are available to answer your questions and to assist in developing a trademark protection strategy. We also will help you with the TMCH registration process or with locating authorized agents to administer these applications. Contact Kay Collins for more information.
kcollins@cp2law.com

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PROMOTION

Ginger Hagel Coatman has been named Firm Administrator and Systems Manager for the firm. Ms. Coatman will oversee all administrative and business functions of the firm in addition to her continued management of all technology and computer information systems.

"We are incredibly fortunate to have Ginger on our team," said Member G. Brent Coan. "Ginger is one of the brightest and most talented people I have worked with," he continued.

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Government War on Trusts

By: Peter B. Scott, Esq.
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On the morning of January 1, 2013, Congress enacted the American Taxpayer Relief Act of 2012 ("ATRA"), which was signed by President Obama on January 2, 2013. ATRA effectively eliminated the estate and gift tax on 99.7% of Americans by increasing the exemption to $5,000,000, indexed to $5,340,000 this year. However, ATRA also increased the federal income tax rate for all Americans, including trusts, to a maximum rate of 39.6% on ordinary income and to 20% on long-term capital gain, above certain thresholds. The threshold for individual taxpayers is $406,750 this year and $457,600 for married couples filing joint income tax returns this year. These threshold amounts are adjusted for inflation each year. However, all non-grantor trusts (see below) will pay the maximum income tax rate this year on income over $12,150.

Beginning on January 1, 2013, the Health Care and Education Reconciliation Act of 2010 (often referred to as the Affordable Care Act ("ACA"), or more popularly, ObamaCare) imposed an additional tax of 3.8% on Net Investment Income and 0.9% tax on wages and self-employment income, over a certain threshold. Those thresholds are Modified Adjusted Gross Income of $250,000, in the case of married taxpayers filing a joint return and $200,000 for everyone else, except trusts and estates. The threshold for trusts and estates is $12,150. Net Investment Income, under ACA, is: Dividends, Royalties, Interest, Rent, Annuities, Capital Gain, & Income received from passive activities.

Table 1 below illustrates the disparity in tax rates now imposed on individuals as compared to trusts. Basically there are two types of trusts, grantor and non-grantor trusts. Only "non-grantor" trusts bear the burden of these additional taxes. The most common examples of non-grantor trusts are marital trusts, family or bypass trusts, and trusts we establish for our children after we have died. The most common and familiar "grantor" trust is the revocable living trust that many of us employ in our estate plan. Grantor trusts do not pay any income tax on income received or earned by the trust; instead, the trustmaker (grantor) reports the income on his or her income tax return and pays the tax on that income. As a result, grantor trusts are ignored by the IRS for income tax purposes.

ALL NON-GRANTOR TRUSTS WILL PAY THE MAXIMUM INCOME TAX RATE THIS YEAR ON INCOME OVER $12,150.

Upon the death of a spouse, the deceased spouse will often establish a marital trust and a family trust for the surviving spouse. There are many reasons for creating these trusts for the surviving spouse, such as remarriage protection and creditor protection. Prior to 2011 these trusts were established primarily for tax reasons, and continue to be used for larger estates. Both the marital and the family trust will be subject to these higher income tax burdens since they are non-grantor trusts. Following the death of the surviving spouse, trusts are often created for the children to provide protection for the money and property inherited by the children. These trusts protect the child's inheritance from his or her divorcing spouse, a business failure, a law suit or, in some cases, from the child himself, if he lacks maturity, fiscal responsibility, experience or discipline. These trusts are all non-grantor trusts and are subject to the higher income tax rates imposed by ACA and ATRA.

The income tax returns for non-grantor trusts (Form 1041) are very similar to the income tax returns for individuals (Form 1040). However, the trust is able to deduct from its taxable income all distributions made to the trust beneficiaries, except distributions of capital gain, which are normally not deductible by the trust, even if capital gain is distributed to the beneficiaries. As a consequence of these distributions, trusts are able to shift most of the taxable ordinary income to the beneficiaries and avoid the higher taxes imposed by ACA and ATRA.

For example, the family trust established for the benefit of Mrs. Smith, by her late husband, received $30,000 of interest and dividend income for the year. The trust incurred $8,000 in trustee fees and paid the accountant $1,000 for the preparation of the income tax return for the trust. The trustee, by the terms of the family trust, has the discretion to distribute $21,000 of net income ($30,000 - $8,000 - $1,000) to Mrs. Smith. The trustee is fully aware that any taxable income of the trust over the threshold amount of $12,150 will be subject to the maximum ordinary income tax rate of 39.6%. The trustee is also concerned that the ACA surtax of 3.8% will be imposed on the $21,000 of net investment income of the trust, in addition to the 39.6% tax. The trustee decides to distribute $21,000 to Mrs. Smith thus reducing the taxable income of the trust to zero and thus eliminating any tax liability for the trust. Mrs. Smith will receive a K-1 form from the trust informing her that she must report the $21,000 of net income on her income tax return.

As stated above, distributions of capital gain by the trust are not normally deductible by the trust. For example, a non-grantor trust requires the trustee to distribute all of the income of the trust each year and has the discretion to distribute as much of the principal of the trust as the trustee determines. This year the trust receives ordinary income from dividends of $25,000 and recognizes long-term capital gain of $20,000 from the sale of stock. The trustee distributes $30,000 to the beneficiary, but only receives an income tax deduction of $25,000 for the dividends distributed. As a consequence, $25,000 of the $30,000 distribution will be taxed to the beneficiary as dividend income, but none of the remaining $5,000 will be taxed to the beneficiary because the distribution deduction that the trust may claim is limited to ordinary income of the trust. The trust will pay the tax due on the $20,000 of long-term capital gain, despite distributing $5,000 of that gain to the beneficiary. Because the capital gain exceeds the $12,150 threshold, $7,850 of the $20,000 will be taxed to the trust at the maximum long-term capital gain rate of 20% plus an additional ACA tax of 3.8%. (Continued on page 4)

TABLE 1:

	Ordinary Income Tax Bracket		Capital Gain Tax Bracket	
	Beneficiary	Trust	Beneficiary	Trust
Regular tax	28%	39.6%	15%	20%
Surtax	0%	3.8%	0%	3.8%
Total	28%	43.4%	15%	23.8%
Difference		+15.4%		+8.8%

Leigh Downing Rejoins CP2 Team

Ms. Downing has worked as a paralegal in northern Colorado focusing on real estate and business transactions since 1994. "We are very excited that Leigh has rejoined our team," said G. Brent Coan. "Her experience level in our practice areas is virtually impossible to find in northern Colorado. Leigh is and will be an important part of our transactions team," he continued.

Ms. Downing joins the firm's real estate and business transactions team as a Senior Paralegal.

Government War on Trusts (continued)

However, if capital gain is redefined as income, for trust accounting purposes, or the trust gives the trustee certain powers to do so, then the distributions of capital gain by the trust will be deductible on the income tax return to the trust; and taxable to the beneficiary at the beneficiary's income tax rate, which is likely lower than the trust's income tax rate. Unfortunately, most trusts in existence today do not contain these provisions.

The only problem with utilizing the distribution deduction to reduce the income tax of the trust is that the trustmaker may not want the beneficiary to receive significant and continuing distributions from the trust for a number of reasons, some of which are:

- The amounts distributed to the beneficiary are now exposed to the beneficiary's creditors and predators;
- The distributions may put too much money in the hands of a young or immature beneficiary who is ill prepared to manage money wisely; or
- A former spouse of the beneficiary may be able to attach the trust funds as they are distributed to the beneficiary following the beneficiary's divorce.

A means of mitigating the concerns of the trustmaker with the distribution strategy is to amend the trust to provide the beneficiary with a power to withdraw the income of the trust each year, which will cause the income to be taxed to the beneficiary, but will not require the income to be distributed to the beneficiary. This is a sophisticated strategy that must be carefully evaluated and safeguards should be provided to protect the trust assets.

Finally, a more conservative method of reducing the income tax imposed on the trust by this new legislation is to consult with your financial advisor about changing the character of the investments owned by the trust. Municipal bonds and other tax-exempt investments are not subject to income tax, even when held by a trust. Tax deferred annuities may be another approach. The trustee may even consider purchasing a life insurance policy on the life of the beneficiary, which would shelter the income earned inside of the life insurance policy, since that income is not subject to these increased taxes. As with all investment strategies, the key is working with a knowledgeable investment advisor who will fully analyze your situation and goals to design an investment plan that will meet your needs and goals.

Very few, if any, of the trusts in existence today address these new tax laws. If you have utilized trusts in your estate plan, or you are a beneficiary of a trust, be sure to consult with a qualified professional to analyze the impact of these new tax laws on your trust and to discuss the options available to mitigate the impact of these new laws. ◆

To comply with the U.S. Treasury regulations, we must inform you that (i) any tax advice contained in this newsletter was not intended or written to be used, and cannot be used, by any person for the purpose of avoiding federal tax penalties that may be imposed on such person and (ii) each taxpayer should seek advice from their tax adviser based on the taxpayer's particular circumstances.

Michael C. Payne, Esq. has been appointed to the Board of Directors for the Northern Colorado Chapter of the Risk Management Association!

Contact CP2

Coan, Payton & Payne, LLC has offices conveniently located throughout Colorado, giving you effortless access to the best team of legal professionals in the state.

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The name of the lawyer responsible for this newsletter is G. Brent Coan, Esq., who can be contacted at gbcoan@cp2law.com.

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