Hodgson Russ LLP ATTORNEYS

TRUSTS & ESTATES

Hodgson Russ's Trusts & Estates Practice provides sound legal advice and insight to help protect your assets during your lifetime and for your family's future. Whether for high-net-worth individuals, businesses, nonprofits, or corporate trust departments—and in local, multistate, and multinational transactions—the Trusts & Estates Practice delivers sophisticated strategies. We advise clients on all aspects of planning, administration, settlement, and taxation of estates and trusts, collaborating with other practice areas to provide comprehensive solutions.

Our Comprehensive Trust and Estate Legal Services

The group's attorneys go beyond navigating complicated laws and tax codes. Hodgson Russ is known for developing and implementing strategies to protect the assets of its clients from creditors, including spousal creditors in the event of a divorce. This can reduce significantly, and in some cases eliminate completely, death taxes that can otherwise consume more than half of the wealth accumulated over a lifetime, allowing these asset-protection and tax-saving features to continue for future generations. Hodgson Russ was among the first law firms to implement estate planning strategies involving the use of family limited partnerships and related entities. We have lectured widely in this area, including on sales to grantor trusts, and have considerable experience successfully defending these techniques from attacks by the IRS.

Hodgson Russ attorneys serve as advisors to nonprofit organizations and develop strategies to enhance the tax benefits of lifetime and testamentary charitable giving, both to public charities and to private and supporting foundations. Hodgson Russ attorneys routinely counsel clients regarding the effective use of living trusts and durable powers of attorney to avoid the need for expensive and time-consuming guardianships and probate and to thus enable the families of our clients to settle the affairs of a deceased family member with minimum delay and publicity and at minimum cost.

We're Experienced Trust and Estate Attorneys

Our trusts and estates attorneys have decades of experience counseling families with international interests on U.S. estate and tax planning matters. We are very familiar with creating and implementing effective estate plans that take into account the effects of U.S. tax laws on U.S. family members as well as on non-U.S. families that own U.S. assets. We collaborate with clients' trusts and estates lawyers in their

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Professionals

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Marla Waiss
Michael Zahler

Paralegals

Kerri Donohoe
Meredith McCarthy
Jack Van Der Puy

Senior Paralegals

Randy Ahmed

Erin Young

countries of residence to ensure estate plans that coordinate the laws of multiple jurisdictions. We have significant experience advising on the related income tax issues that can arise for international families, including with respect to ownership of an interest in foreign trusts, corporations, or other entities. Hodgson Russ attorneys also represent such families in income, gift, and estate tax controversies with the IRS. In addition, with offices in New York State and Florida, Hodgson Russ is particularly well positioned to assist clients who spend time in both states.

Hodgson Russ's trusts and estates attorneys work closely with the Firm's business tax attorneys to structure personal retirement plans for high-net-worth individuals and family gift programs to accomplish the multigenerational transfer of assets, as well as to integrate corporate and operational business considerations in the sale or other transfer of closely held corporations to family members or others. The focus is on minimizing taxes and facilitating family and estate-planning objectives. This area of practice encompasses advice on insurance planning, structuring family partnerships, and business-succession planning.

In conjunction with Hodgson Russ's Employee Benefits Practice, our trusts and estates attorneys offer highly specialized experience and advice in the field of taxation of pension plans, profit-sharing plans, IRAs, and other forms of retirement plans. In addition to working with businesses, professional practices, and self-employed individuals on the design and structure of retirement plans, we frequently advise clients concerning tax and other issues related to distributions from qualified plans and IRAs. Absent successful planning through a complicated maze of federal and state pension and tax rules and regulations, retirement plan assets are subject to both income and estate taxes that can consume in excess of 70 percent of the asset value.

Occasionally litigation arises with respect to various estate and trust instruments, including will contests, interpretation of wills and trust agreements, accountings, and breach of fiduciary duty issues. Our experience ranges from simple will contests to complicated and occasionally high-profile cases. We have experience dealing with the IRS and state departments of taxation and revenue and, when necessary, we represent our clients in connection with tax audits and litigation. We are frequently consulted by accountants, trust companies, and other advisors to assist in a "special counsel" capacity in various tax dispute resolution matters.

Clients advocating for or against changes in the tax law and regulations are assisted by Hodgson Russ attorneys in the Government Relations Practice. Our clients are alerted to legislative and administrative developments by receiving "early warning" services.

Partner with Hodgson Russ for Trust and Estate Legal Representation

Hodgson Russ has been awarded a prestigious "Best Law Firms" National Tier 1 ranking by *Best Lawyers/U.S. News & World Report* in the Trusts & Estates Law category as well as Metropolitan Tier 1 rankings for this practice area.

To learn more about our trust and estate services and how we can partner with you, contact us today.

Experience

Hodgson Russ assisted a client with a $50 million pledge to a university for a charitable purpose. The work involved drafting and negotiating various provisions of the gift agreement with the university and advising on the federal tax material restriction rules for donors, including the level of involvement a donor may have with respect to the gifted funds for purposes of the charitable deduction rules under Internal Revenue Code Section 170.

Hodgson Russ created a family limited partnership during the economic downturn. Our client sold a portion of his limited partnership interest to a multigenerational, generation-skipping grantor trust in an income tax-free sale, freezing the value of the limited partnership included in his estate. Our client contributed a portion of his remaining limited partnership interest to a multi-year grantor retained annuity trust. The market recovered, and the value of the limited partnership rebounded, with the result that client had successfully removed tens of millions of dollars from his taxable estate into trusts for his descendants.

A Hodgson Russ client wanted to leave a family business to the next generation, but it was unclear which members of the next generation, if any, were able and willing to take over the business. Hodgson Russ worked with the client to develop a business succession plan whereby the company would be owned by a trust, with the client's advisors acting as trustees. In accordance with the client's directions to the trustees, the trustees were given the discretion to pick which child would become CEO of the company and to distribute the voting stock to that child.

Hodgson Russ assisted a Canadian client with the purchase and sale of U.S. vacation property and advised on the federal and state tax considerations for nonresidents owning U.S. real property, including the reporting of U.S. source rental income and the implications of the Foreign Investment in Real Property Tax Act (FIRPTA) upon a sale of the property. Our services also involved U.S. estate planning with respect to the ownership of the property.

A Hodgson Russ client wished to make income tax-deductible charitable contributions to charities in a foreign country. While individuals are not permitted to claim an income tax deduction for donations to foreign charities, an individual may claim an income tax deduction for donations to a private foundation, and the private foundation may make international grants. Hodgson Russ worked with this client to form a private 501(c)(3) foundation so that client could support his preferred international charities while still enjoying a federal income tax deduction.

Represented an estate in the sale of a large real estate portfolio. This included the sale of a New York City co-op, and a multi-transaction sale of 16 properties in Brooklyn, NY for a total purchase price of $85,750,000.

Hodgson Russ collaborated with a client on the purchase, structuring, and financing of a large life insurance policy designed to offset estate tax and provide a significant inheritance at a relatively low transfer tax cost. Utilizing a strategy commonly known as "premium financing," the client created an insurance trust and arranged for that trust to borrow money from a banking institution to pay the annual insurance premium. Under the structure, the client only pays the interest on the loan, allowing the client to obtain a significant insurance policy while utilizing a minimal amount of the client's federal transfer tax exemption. A team of attorneys in the Estates & Trusts, Finance, and Tax Practices worked with the client to establish the insurance trust, negotiate the loan documents, and analyze the tax implications associated with the various financing and structuring options.

Charities were named as the beneficiaries of a multimillion-dollar estate. During the course of the estate administration, it became clear that the decedent's advisors had diverted assets from the decedent, and then later from her estate, to themselves. Hodgson Russ initiated litigation in Erie County Surrogate's Court to recover the decedent's assets for the charities, successfully making the charities whole and honoring the decedent's charitable intent.

A Hodgson Russ client wished to purchase tens of millions of dollars of life insurance to provide liquidity to pay for estate tax on family owned business, but the amount of the insurance premium was prohibitive if the client were to pay the premium. If the client's company decided to pay the premium, the client would have to include the whole amount of the premium in taxable income, dramatically increasing his personal income tax bill. Hodgson Russ worked with our client to implement a split-dollar life insurance plan so that the company could pay the premium on the policy while minimizing the amount that our client would have to include in income. In addition, the life insurance was purchased via a life insurance trust, removing the death benefit on the insurance from the client's estate and increasing his children's inheritance.

Hodgson Russ represented the Trustee of a trust that converted from a taxable New York resident trust to an exempt-resident trust in a multi-million dollar New York tax audit. At issue was whether the gain realized by the trust as the result of a substantial business transaction involving the termination of an S election was reportable on the last day of the resident period or on the first day of the exempt-resident period. Hodgson Russ took the matter through audit to a BCMS conference. New York ultimately agreed that the income was recognized in the exempt-resident period and therefore not subject to New York income tax.

In the News

Coronavirus Resource Center

Attorney says pandemic brought sharper focus on estate planning
Buffalo Business First, December 10, 2020

How the New Tax Rules Affect Taxpayers
October 26, 2020

A Pandemic is the Perfect Time to Make an Estate Plan
Chronicle of the Horse, May 20, 2020

Received a stimulus check for a dead loved one? Here's what you should do
The Buffalo News, May 11, 2020

Thomas J. Collura Elected as Fellow of The American College of Trust and Estate Counsel
November 17, 2017

Buying Property Across Border Is Complex
Buffalo Business First, March 21, 2014

Hodgson Russ Announces New Practice Group Leaders
April 12, 2012

Watch: Carol A. Fitzsimmons Discusses U.S. Estate Tax Law on CBC's 'The Lang & O'Leary Exchange
June 2, 2011

Darcy M. Katris Joins Hodgson Russ
May 6, 2011

Press Releases

Fifty-Nine Hodgson Russ Attorneys Ranked in 2022 Edition of Upstate New York Super Lawyers
Hodgson Russ Press Release, August 23, 2022

71 Hodgson Russ Attorneys Ranked in 2023 Edition of *Best Lawyers in America*
Hodgson Russ Press Release, August 19, 2022

Hodgson Russ Receives Top Tier National and Metropolitan Rankings in 2022 Best Law Firms Listings
Hodgson Russ Press Release, November 15, 2021

Carly Cazer Joins Hodgson Russ LLP as an Associate
Hodgson Russ Press Release, June 25, 2021

Hodgson Russ Earns Five National-Level Rankings in *U.S. News & World Report/Best Lawyers* 'Best Law Firms' Report
Press Release, November 18, 2015

Five Hodgson Russ Attorneys Newly Admitted to NYS Bar, Another Admission Pending
Press Release, February 7, 2014

Publications

Estates and Trusts Update – 2022 In Review and 2023 Outlook
TaxStringer, January 3, 2023

New York Taxation of Trusts: In-Depth Review and Planning Opportunities
Trusts and Estates Law Section Journal - NYSBA, December 12, 2021

Cross-Border Philanthropy: Obtaining a U.S. Income Tax Deduction for a Donation to a Canadian Charity
New York Law Journal, January 22, 2021

U.S. Election Update: Are Changes to the Estate and Gift Tax Coming?
Hodgson Russ Trusts & Estates Alert, November 11, 2020

Remote Notarization and Witnessing Extended in New York
Hodgson Russ Trusts & Estates Alert, July 21, 2020

A Time for Reflection: Estate Planning During a Market Downturn
Hodgson Russ Trusts & Estates Alert , March 25, 2020

Small Estate Threshold Increased
Hodgson Russ Trusts & Estates Alert, January 14, 2020

Clawback Final Regulations
Hodgson Russ Trusts & Estates Alert, January 2, 2020

SECURE Act Brings Major Changes to Retirement and Estate Planning
Hodgson Russ Trusts & Estates Alert, December 27, 2019

Estate and Gift Tax Exclusions Increase to $11.58 Million in 2020
Hodgson Russ Trusts & Estates Alert, November 18, 2019

Presentations & Events

New York State Society of CPAs Southern Tier Chapter
Binghamton, NY, October 31, 2023

Southern Tier Chapter Taxation Conference
Holiday Inn Binghamton Downtown, 2-8 Hawley Street, Binghamton NY 13901, October 26, 2023

NYSSCPA Southern Tier Chapter Taxation Conference
Doubletree by Hilton Hotel Binghamton, October 26, 2022

Current Trends in Charitable Planning
April 28, 2021

Estate and Trust Taxation – Planning Opportunities Created by the COVID-19 CRISIS
February 25, 2021

NYSBA Trusts and Estates Law Section Fall Meeting
October 2, 2020

TRUSTS & ESTATES

Planning with IRAs After the SECURE and CARES Acts
July 22, 2020

Hodgson Russ/FAE COVID-19 Webinar Series
April 1 & 2, 2020

Complex Issues in Estate Administration
Buffalo, NY, October 21, 2019

Practical Estate Planning Techniques Every Financial Advisor Should Know
New York City, New York, September 25, 2019