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IVORY COLLECTORS BEWARE

Many valuable antiques and artworks contain ivory, from table silverware to musical instruments. It now appears that ivory has created controversy and confusion in the antique industry. Until recently, federal laws pertaining to the sale and import of ivory were not strongly enforced ... but that apparently has changed. Prior to 1989, ivory imported legally, with a CITES (Convention on International Trade in Endangered Species) certification that international standards have been met, could be sold. However, apparently very few pieces containing ivory have full proper import documentation and new enforcement initiatives by the US Fish and Wildlife Service will affect virtually every collector, dealer and auctioneer who handles ivory and other objects linked to endangered species.

New guidelines adopted by the Advisory Council on Wildlife Trafficking now include efforts to ban all imports into the United States, limit exports to items confirmed as antique (100 years old) and prohibiting the sale of ivory nationally and internationally. The goal of the ban is to be sure that United States markets do not contribute further to the declining population of endangered species.

Concerns regarding these new enforcement initiatives have arisen, given the fact that small amounts of ivory can be found in many objects such as piano keys, sculptures, table silverware, antique furniture, musical instruments, jewelry, guns, walking canes and a host of other articles. Questions arise: If not a wholly "ivory" object, what content of ivory will trigger the law? Also, if an owner removes ivory piano keys, is he or she destroying the value and appeal of the piano? These issues will greatly affect the antique trade market and formal appraisal valuations.

The Endangered Species Act of 1973 carved out an exception for antiques, if the owner could attest that the antique was over 100 years old and could provide extensive documentation relating to proof of age, provenance, date of import, use of the item and whether it is composed in whole or in part of the endangered species material. The reality was that very few people had proper documents, making the exemption guideline nearly impossible to meet. The result may be that an owner's inability to definitely prove the age of the ivory item could prevent its legal sale.

New York State has passed legislation to help owners, by making an exception to articles that are less than 20% by volume of an endangered species, or part of a musical instrument. The purpose of the law is to allow musical instruments and valuable works of art or furniture with minor ivory inlays or components be transported, marketed and sold, as long as they meet all of the requirements. Bear in mind that this is only New York Law and Federal Law controls the issue also.

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*Merry Christmas & Happy
New Year from all of us at
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Ivory Collectors Beware, Cont'd.

WHAT TO DO? Identify any pieces that you may own that contain ivory. Then gather family documents, letters, receipts, shipping invoices, property inventories or photographs to help solidify the origins of the item or items. These documents themselves may not be enough to allow a sale in the near future, but a thorough exploration of each item's origin and history is an important start.

MUSEUMS ARE AFFECTED ALSO -

Museums are now concerned about enforcement of the regulations which would eliminate charitable tax deductions for donated ivory pieces and works that are partially composed of ivory, regardless of the item's age.

**Stepped-Up Cost Basis:
An Increasingly Important
Tax Planning Strategy**

With the recent increases in the exemption amounts for Federal and New York State estate taxes, very few estates will actually have to pay an estate tax. This means that the tax planning emphasis is income taxes for the beneficiaries. This is achieved by the principal known as "stepped-up cost basis."

What is "Stepped-up Basis"? Simply stated, it is the fair market value of an asset in a decedent's estate for estate tax purposes. This value then becomes the new income tax cost basis for the estate or the beneficiary. A simple example illustrates this: A decedent paid \$10 a share for stock in some company. At the time of the decedent's death, the stock was worth \$100 per share. That's \$90 per share of capital gain. However, since the stock is included in the estate for estate tax purposes at \$100 per share, the law provides that the new cost basis for income tax

purposes is \$100 per share. If the estate then distributes the stock to a beneficiary, the beneficiary receives this new tax costs basis. If the beneficiary then sells the stock for \$100 per share, there is \$0 capital gains and thus \$0 income tax. The entire \$90 per share gain essentially becomes tax free.

Be Careful Though - a recent tax court case, *Brett VanAlen et al v. Commissioner, 2013-235* holds that the beneficiaries must use the value as reported for the estate when property is later sold, even though the value may have been wrong. In the VanAlen case, siblings inherited, in trust, part of a family ranch. The trustee of the trust valued the ranch at \$100,000 on the decedent's estate tax return. Years later, the trust sold a conservation easement on the ranch for more than \$900,000. Since the entire ranch was only valued originally at \$100,000, that lead to an \$800,000 capital gain, which was passed through the trust to the siblings.

The Court found that the duty of consistency applied in this case and the siblings' basis in the property was established by the value reported on the decedent's estate tax return, even though the trustee had made a tax election to lower the value of the property at that time.

So what is the take away? It is to be sure that assets passing through a decedent's estate or trust are properly valued to reflect fair market value at date of death and are valued in anticipation of a later sale and the capital gains consequences.

We at Brooks & Brooks have always paid close attention to tax laws in the estate context to be sure that we can properly advise our clients and beneficiaries, so that these tax rules can be maximized for the beneficiaries' benefit.