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Newsletter

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FDA FOOD SAFETY MODERNIZATION ACT

Foreign Supplier Verification Program Under the Food Safety Modernization Act

By: Stephen J. Galati, Esquire

In December 2010, Congress passed the most comprehensive food safety legislation since the 1930's: the FDA Food Safety Modernization Act, or FSMA. Among its many provisions, FSMA expanded the Food and Drug Administration's (FDA) authority to protect the public from unsafe foods.

The FDA now has powers to establish new preventive controls and food safety plans, enhance food traceability, investigate illness outbreaks, and to conduct a mandatory recall of contaminated food products. The Act also expanded the FDA's authority and oversight capabilities over foreign companies that supply food imports to the United States.

Seven "foundational rules" were required to implement the FSMA. These rules cover:

(1) Preventive Controls for Human Food: Requiring food facilities to have safety plans to identify and minimize hazards;

(2) Preventive Controls for Animal Food: Establishing good

manufacturing practices and preventive controls for animal foods;
(3) Produce Safety: Establishing science-based standards for growing, harvesting, packing, and holding produce;
(4) Foreign Supplier Verification Program: Requiring importers to verify that food imported into the United States has been produced in a manner that provides the same level of public health protection as that required of U.S. food producers;
(5) Third Party Certification: Establishing a program for the accreditation of third-party auditors to conduct food safety audits and issue certifications of foreign facilities producing food for humans or animals;
(6) Sanitary Transportation: Requiring those who transport food to use sanitary practices to ensure the safety of food; and
(7) Intentional Adulteration: Requiring domestic and foreign facilities to address vulnerable processes.

The Foreign Supplier Verification Program (FSVP) is of particular import to the port community of the Delaware River and Bay. FSVP requires that importers verify that their foreign suppliers are producing food that is as safe as that produced in the United States.

For the purposes of FSVP, an importer is the U.S. owner or consignee of a food offered for import into the United States. If there is no U.S. owner or consignee, the importer is the U.S. agency or representative of the foreign owner or consignee at the time of entry, as confirmed in a signed statement of consent.

Importers are required to develop, maintain and follow an FSVP for each food brought into the United States and for each foreign supplier of that food. If the importer obtains a certain food from a few different suppliers, a separate FSVP would be required for each of those suppliers. Similarly, if the

Our Attorneys:
Presentations, Seminars and Honors

Gene Mattioni was a guest and participant on the Executive Leaders Radio show, which aired on many regional stations on December 24th. If you missed the original air date, you can access the show on iTunes and you will find ELR content listed on these podcast sites: iTunes, Stitcher, Google Play, Sound Cloud and iHeartRadio. In addition, within a few weeks after it airs, it will also be posted on our website, where it will be archived (www.executiveleadersradio.com).

While Gene had only a few minutes on this particular show, called a spotlight, Executive Leaders Radio has invited him back for a 15 minute program segment where he will be co-hosting.

importer obtains many different foods from a single supplier, a separate FSVP would be required for each food.

One of the key aspects of the law is the requirement that importers perform a hazard analysis which identifies and evaluates, based on experience, illness data, scientific reports and other information, the known or reasonably foreseeable hazards for each type of food it imports. Evaluations must include biological, chemical and physical hazards that may be reasonably likely to cause illness or injury. These hazards may occur naturally, be intentionally or unintentionally introduced, or intentionally introduced for purposes of economic gain, such as substituting a less costly ingredient. Based upon the evaluation of risk conducted, the importer must establish and follow written procedures to ensure that it only imports from approved foreign suppliers.

Supplier verification activities must provide assurances that the hazards requiring a control in a food have been significantly minimized or prevented. Depending on what verification activities the importer conducts, the importer might request information from the foreign supplier, such as results of audits or copies of relevant food safety records, so that the importer can meet its verification requirements. The FSVP importer is permitted to rely on others to conduct certain FSVP activities, provided the importer reviews and assesses the results of these activities. For example, an importer may rely on a food's hazard analysis conducted by the foreign supplier, or an importer is permitted to rely on the results of an independent third-party audit of the supplier that the supplier has requested. The evaluation of the risk posed by the imported food and the supplier's performance must be reevaluated at least every three years, or when new information comes to light about a potential hazard or the foreign supplier's performance.

If an importer determines that an audit is the appropriate

SOUTH JERSEY Biz BEST OF BiZ 2017

Mattioni was honored by being voted **Best of Biz** for Law: in Transportation Law by South Jersey Biz magazine readers for 2017. This is the fourth consecutive year the readers have nominated the firm. Thank you for your continued support.

verification activity, it must make sure the audit considers all FDA food safety requirements, and that the auditor is qualified to perform the audit. Several organizations, such as the USDA's Agricultural Marketing Service (AMS) and the Global Food Safety Initiative (GFSI), are working to ensure their audits meet the FDA's requirements.

Of note, importers are not required to evaluate the food, its supplier or conduct supplier verification activities if they receive adequate assurances that a subsequent entity in the distribution chain, such as the importer's customer, is processing the food for food safety in accordance with applicable requirements.

Less onerous, modified FSVP requirements apply to very small importers and importers of food from certain small suppliers. There are also modified requirements for certain foods from a foreign supplier in a country whose food safety system has been recognized as comparable or determined to be the equivalent of the United States' system.

Unlike traditional facility inspections, enforcement of the FSVP is made by inspecting the importer's records, rather than observations of food production. While most of the FSVP inspections will be at the importer's place of business, the FDA may request that importers provide FSVP records to FDA electronically, or through other means that delivers the records promptly, as part of a pilot program.

Compliance dates for FSVP are not based on the size of the importer, but rather on the size of the foreign supplier. FSVP compliance dates are linked to the other FSMA rules in order to minimize the likelihood that an importer would be required to comply with the FSVP regulation before its supplier is required to comply with other FSMA food safety regulations. The first major compliance date for importers covered by the Foreign Supplier Verification Programs (FSVP) rule was May 30, 2017. Importers can refer to a

Joe Bouvier was recently re-appointed to serve on the Board of Directors for the Greater Swedesboro Business Association (GSBA). With the firm's New Jersey office being located in the center of Swedesboro's business district, Joe has been a dedicated and supporting member of the community for over 15 years. The GSBA was established to promote and foster a feeling of fellowship among its members and generally promote trade and commerce in the area. Its objectives are to preserve the Swedesboro downtown business district and the greater Swedesboro community. Members take part in local civic affairs and support educational and charitable endeavors that are in the interest of GSBA members and the greater Swedesboro community.

Joe currently serves as chairperson of the GSBA's biggest fundraiser of the year. This year, the "Greater Swedesboro Open" golf tournament will be held on May 24th at Town and Country Golf Links in Woodstown, New Jersey. This is followed by a "Taste of Swedesboro . . and Beyond" dinner where guests enjoy a dinner supplied by local eateries. If you would like more information, please contact Joe at (215) 629-1600 or email jbouvier@mattioni.com chart on the FDA website titled *"Am I Subject to FSVP?"* to determine if the rule applies to them.

Steve Galati is a Shareholder with the law firm of Mattioni, Ltd., with offices in Philadelphia, PA and Swedesboro, NJ. He focuses his practices in the areas of Admiralty and Maritime, Civil Litigation, Transportation and Warehousing & Insurance.
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Incomplete Thank You

By: Kira M. Lynch, Esquire

Adding gratuity to a bill is likely the most common way to say "thank you" for services. Most would agree that the amount of gratuity paid is directly related to how grateful a customer is for the services they received. Bad service usually amounts to a low tip, while good service is usually rewarded with a higher tip. But did you know that your service person is not currently receiving your full thank you?

Under current laws, employers may take a portion of the gratuity paid to the employee by customers. Employers may also deduct credit card processing fees from tips paid by credit card. Current laws also permit employers to credit gratuity against the employee's wages. Under the current legal structure, service employees only receive a portion of the "thank you" given to them by customers.

To correct this "incomplete thank you," the Pennsylvania General Assembly is considering legislation that would prohibit employers from taking gratuity given to employees. The proposed amendment to the Wage Payment and Collection Law would prohibit an employer from deducting

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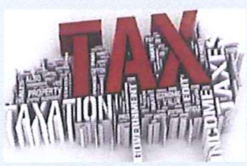
credit card payment processing fees from those tips paid to employees via credit card. The amendment would also prohibit an employer from requiring an employee to credit gratuities against the employee's wages.

If this amendment passes, service employees will begin receiving the customer's "complete thank you."

Kira primarily focuses her practice on Admiralty and Maritime and Commercial Litigation. She works with the Maritime Group in handling transportation, warehousing, and insurance matters. Her practice also involves civil litigation, real estate, and small business planning. She represents and advises clients in both litigation and transactional matters. If you have any questions about this article, please contact Kira at *klynch@mattioni.com*



Death Taxes in 2018 and Beyond

By: Jennifer Popelack, Esquire

The Tax Cuts and Jobs Act became effective on January 1, 2018. Much has been reported about the effects it will have on individual income taxes and corporate taxes. While there have been significant changes in those arenas, there has also been significant change to the estate and gift tax imposed by the federal government. This article will explore those changes, as well as the current state of death taxes in Pennsylvania and New Jersey, which has also seen sweeping changes in the last few years.

Federal

In 2017, before the implementation of the Tax Cuts and Jobs Act, an individual could pass up to $5.49 million ($10.98 million for a married couple) to beneficiaries, without

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incurring any federal estate or gift tax. Anything over that exemption amount would be taxed at rates up to 40%. Further, in 2017, the annual gift tax exclusion was $14,000 per donee, meaning individuals could gift up to $14,000 a year, per donee, without having to use any of their exemption or having to file a federal gift tax return.

As a result of the Tax Cuts and Jobs Act, the estate and gift tax exemption amounts have doubled and the annual exclusion amount has slightly increased. Individuals can now pass up to $11.2 million ($22.4 million for a married couple) without incurring any estate or gift tax. The tax rate maximum remains at 40%. The annual exclusion amount has been raised to $15,000 – allowing individuals to transfer up to $15,000 per donee per year without have to use any of their exemption amount.

This doubling of the exemption is quite astounding as it will shield numerous estates from any estate tax requirements whatsoever.

New Jersey

The estates of persons who are New Jersey residents at the time of their death are subject to New Jersey death taxes. New Jersey has recently made significant changes to its death tax system. New Jersey has two types of death taxes – inheritance tax and estate tax. New Jersey Inheritance Tax Returns are due eight months after a decedent's passing and the tax is based on the relationship of the beneficiary to the decedent. For example, if a beneficiary is a spouse, parent, child, or grandchild of the decedent, no inheritance will be owed on their inheritance. However, if a beneficiary is a sibling, niece, nephew or non-relative, inheritance will be owed on their inheritance at a rate up to 16%.

New Jersey Estate Tax Returns used to be due nine months after a decedent's passing. However, a recent law that went into effect on January 1, 2017, significantly changed the NJ

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Estate Tax for 2017, and eliminated it entirely for 2018. For persons dying before January 1, 2017, any estate whose value exceeded $675,000 was subject to NJ estate tax at rates that can reach up to 16%. For decedents dying on or after January 1, 2017, but before January 1, 2018, estate tax was imposed on estates whose value exceeded $2,000,000. Starting January 1, 2018, New Jersey's estate tax is completely eliminated.

This change means that New Jersey residents who die after the start of 2018 and who leave their estate to their spouse and/or children and other lineal descendants will have no state death tax obligations whatsoever.

Pennsylvania

The estates of decedents who pass as Pennsylvania residents are subject to Pennsylvania Inheritance Tax. Unlike the federal government and New Jersey, Pennsylvania has not made any significant changes to its death tax laws recently. Pennsylvania does not tax an estate based on the value of the estate, but rather taxes based on the relationship of the beneficiary to the decedent (similar to NJ Inheritance Tax). While New Jersey has a 0% tax rate on spouses, children and other lineal descendants, Pennsylvania taxes the inheritance of a child or grandchild at the rate of 4.5%. Pennsylvania's system of death taxes, unfortunately, leaves a large majority of estates of Pennsylvania residents subject to the tax.

This article provides a broad and general overview of federal and state death taxes. It does not provide legal advice. Anyone seeking more information about these subjects is encouraged to seek advice from an appropriate professional as every situation is different.

Jennifer Popelack, Esquire is a Senior Associate of the law firm Mattioni, Ltd., where she focuses her practices in the areas of estate planning, estate administration, real estate and corporate litigation. If you would like more information about this article, please contact Jennifer at jpopelack@mattioni.com