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Law Notes
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IS IT TIME TO UPDATE YOUR ESTATE PLAN?

By **Dennis M. Mitzel**

How long has it been since your estate plan was reviewed? If any of the **following events** are about to occur or have recently occurred in your life, there's a good chance that it's **time to reevaluate your estate plan** to make sure that it still fits your needs:

- More than 5 years have passed since your estate plan was last reviewed,
- Birth or death in the family,
- Long term illness of a parent or other family member,
- Marriage or divorce in the family,
- Disability of a child or other family member,
- Receipt of substantial assets, whether through inheritance, insurance proceeds, gift, or windfall,
- Business acquisition or sale,
- Contemplated sale of business or real estate,
- Contemplated sale of large stock holdings, and
- Contemplated large gift to a charity or to an individual.

In many cases, planning in advance of an event may achieve the best results. Through proper planning and structuring, your personal goals may be achieved and your income, capital gains, gift, and estate taxes may be minimized.

For 2007-2008, the amount of property a person can pass **exempt from estate taxes remains at $2,000,000**. The **top estate tax rate has been reduced to 45%**. The exemption is scheduled to be increased in the year 2009 to $3,500,000. The estate tax is then to be eliminated in the year 2010 but revived in 2011 with a $1,000,000 exemption.

We anticipate that Congress will address this bizarre result and set a permanent exemption level within the next few years.

The amount that **a person may give away each calendar year without incurring a gift tax remains $12,000 per gift recipient** for 2007. The otherwise taxable lifetime amount that a person may transfer that will be **exempt from gift taxes remains at $1,000,000**.

Contact any of our estate or tax planning attorneys to assist you with any questions you may have regarding your estate plan or taxes.

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AN INTRODUCTION TO OUR BUSINESS LAW PRACTICE GROUP

By **J.P. Murphy**

Building Relationships and Delivering Solutions

The attorneys that comprise Berry Moorman's business law practice group understand that today, more than ever, businesses face new and evolving challenges. Our approach to business law goes well beyond giving legal advice. We strive to understand each of our clients' goals, preferences, operations, and competitive environments. In this way, we provide practical, innovative, and real world solutions to help our clients solve challenges and exploit opportunities.

Our attorneys are licensed in Michigan and several other jurisdictions, including Florida, New York, Illinois, and Ontario. With three offices in metropolitan Detroit and an affiliated office in St. Petersburg, Russia, the firm serves clients in Michigan and throughout the world. Our professionals are experienced in a wide range of assignments from the most complex to the routine. Our size permits us to accept substantial and complex projects, but also allows partner level expertise in most matters.

Representing Every Kind of Business Organization

We serve corporations, limited liability companies, every form of partnership, professional firms, sole proprietorships, nonprofit and charitable organizations, and individuals. The businesses we represent range from small and emerging enterprises to large, publicly held corporations. Our clients are engaged in diverse pursuits and industries including:

- Manufacturing and services,
- Computer and high technology,
- Construction and real estate,
- Transportation and automotive,
- Sales and retail industries,
- Securities and finance, and
- Non-profit community service.

Assisting in the Creation and Operation of Businesses

Because great lawyers come from multidisciplinary backgrounds, our partners and associates each focus on several practice areas. We use this background to work with entrepreneurs and CEOs in creating and operating their companies. The variety and depth of our experience and expertise enables us to act as general counsel to companies that do not have staff attorneys. We –

- Advise management teams in strategic planning, labor and personnel issues, tax, financing, technology licensing, and immigration matters.
- Counsel and represent on commercial and business litigation and dispute resolution.
- Address regulatory, shareholder, environmental, and liability and casualty insurance issues.
- Resolve shareholder and partner disputes.
- Negotiate and draft employment agreements, stock options, and other compensation and benefit plans.
- Advise management on qualified and non-qualified deferred compensation arrangements.

Helping Our Business Clients Grow

We apply our extensive experience to build domestic and international business relationships. Our attorneys possess the special skills needed to negotiate and structure financings, acquisitions, sales, mergers, and reorganizations. We frequently negotiate and prepare financing agreements with banks and other lenders, leases, sales and supply contracts, joint business venture agreements, distribution and agency contracts, franchise agreements, and a multitude of other contracts for specific business transactions. We help formulate and implement strategies for downsizing, work outs, and liquidation. From start up to exit strategy, we achieve the results our clients need.

For the names, locations, and practice areas of Berry Moorman attorneys that can help your business succeed see the Attorney Directory on the back page of this Law Notes issue or go to www.berrymoorman.com.

2007 TAX NOTES

By **Patrice M. Ticknor**

Two major tax laws were passed last year. The new laws affect a variety of tax planning issues and many of their provisions are favorable to taxpayers. Below are some of the most important new items.

Retirement Planning

The **higher annual contribution limits** for workplace savings plans and IRAs **have been made permanent**. The **"catch-up" contributions for people 50 and older have also been made permanent**. Both contribution and "catch-up" amounts may be adjusted annually to take into account the effect of inflation.

A **designated beneficiary of a qualified retirement plan who is not the account owner's surviving spouse may now rollover the inherited amount tax-free to his or her own IRA**. The IRA receiving the rollover will be treated as an inherited IRA. As a result, the amount no longer must be completely distributed to the beneficiary within a year of the account owner's death – with the result of a large income tax bill that must be immediately paid. Instead, IRA distributions may be stretched out (and the resulting income tax paid) over the beneficiary's life expectancy. Prior to 2007, this opportunity was available only to an account owner's surviving spouse.

Effective in 2007, taxpayers can **rollover after-tax contributions between 401(k) and 403(b) plans**.

The new law provides for **Roth 401(k) and Roth 403(b) plans** which allow contributions of after-tax dollars and withdrawal in retirement of the amount contributed and earned without income tax.

Effective in 2008, taxpayers will be permitted to make **direct rollovers from qualified plans to Roth IRAs**. Formerly, these rollovers could only be made to traditional IRAs.

Beginning in 2010, **all taxpayers, regardless of income, may convert their traditional IRAs into Roth IRAs**. The income and resulting income tax can be averaged over two years.

Charitable Contributions from IRAs

During 2007 only, individuals age 70 1/2 or older may use their IRAs to make charitable contributions. **Up to $100,000 from an IRA may be excluded from the individual's gross income if the withdrawal is paid directly to a qualified charity**. The amount contributed will also count toward the individual's required minimum distribution for 2007.

Income Tax Rates

The **15% long term capital gains rate** has been extended through 2010.

The **15% rate on qualified dividends** has also been extended through 2010.

A **child's excess earned income is now taxed at the parents' rate until the child attains age 18 instead of age 14**.

Itemized Deductions

For 2007 and beyond, **charitable donations made by cash, check, or other monetary gift of any amount may be deducted on your income tax return only if supported by a cancelled check, bank record, or receipt from the charity** showing its name plus the date and amount of the contribution. Charitable contributions of cash or property that exceed $250 must be documented by a written acknowledgment from the charity.

The election to take an **itemized deduction for state and local sales taxes instead of for state and local income taxes** has been restored for 2006 and extended through 2007. The law authorizing the election for 2006 was passed after the 2006 tax forms were finalized – therefore, look for supplementary 2006 instructions if you wish to make this election!

The **deduction for qualified higher education expenses of up to $4,000** has been extended through 2007. Again, look for supplementary instructions to take this deduction for 2006.

YOUR BUSINESS AND ELECTRONICALLY STORED INFORMATION

By **J.P. Murphy**

The Federal Rules of Civil Procedure ("FRCP") are the procedural rules governing lawsuits in federal court. These rules have evolved to require disclosure to the opposing party of any information relevant to a party's claims and defenses. The FRCP's latest amendments address the disclosure of electronically stored information ("ESI") in anticipation of future technological issues between parties litigating in federal courts across the country. The new amendments address how ESI will be handled during the investigative phase of federal litigation known as discovery. Among other matters, the amendments change the FRCP by –

- Requiring parties to turn over any relevant ESI or describe the location of any relevant ESI to the opposing party prior to discovery.

- Requiring parties to prepare a discovery plan that includes the specifics of how and in what form ESI will be produced.

- Allowing parties to subpoena ESI from their opponents and from third parties.

- Instructing parties how to respond to document requests and questions regarding ESI.

Why Is this So Important?

Today, businesses receive and generate vast quantities of information daily. Effective record keeping and management is a key component to the success of your enterprise by helping to manage finances, compliance with state and federal laws, inventory, logistics, transportation, labor, and communications. Most of this information is stored electronically and a great deal is not even visible. Because of this volume, effective information management policies must include regular and routine destruction of ESI.

Although the FRCP amendments relate to discovery in federal litigation, their impact is much broader. Adoption of similar rules is probably not far behind for state courts. Information management policies are also critical in responding to audits and regulatory inquiries.

Laws such as Sarbanes-Oxley, FACTA, and HIPAA require that certain company records be kept or destroyed. Employment-related laws such as ADA, FMLA, OSHA, ERISA, and even the Internal Revenue Code require companies to keep certain records for their employees. These laws set forth their own set of information management requirements.

Haphazard destruction of electronic information or destruction not related to a reasonable policy may result in criminal responsibility for the decision makers and/senior management. Businesses failing to adhere to or implement information management policies may suffer default judgments, adverse inferences, penalties, fines, and increased attorneys fees.

Some Examples

Consider Enron's accounting firm, Arthur Anderson. As the Enron scandal unfolded, against its own policy, Arthur Anderson's managers accelerated destruction of Enron related information and failed to enforce a "litigation hold" to cease destruction of documents relevant to the pending litigation. Arthur Anderson's failure to follow its own policy eventually led to criminal charges and the premature conclusion of many careers. Civil suits followed the criminal charges and the 89 year old accounting firm closed its doors.

Similar consequences can result from the lack of a policy. In another business-ending catastrophe, a badly coordinated search for back-up tapes led to the late discovery of over 2,000 tapes. This eventually led to a partial default judgment and contributed to a jury verdict of $1.5 billion, including punitive damages.

If a business cannot isolate, gather, and produce all relevant ESI, judges, juries, and opponents will still be inclined to believe the failure to supply the information

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was intentional. In such a circumstance, recent trends in court decisions allow for evidentiary inferences that such unintentional failures can be treated as though the failures were intentional.

Implementing an Information Management Policy Is Essential

An effective information management policy must be implemented well before the lawsuit, audit, or regulatory inquiry lands on your desk. Even though Arthur Anderson and other similar companies had excellent and defensible information management policies, their failure to follow those policies on a day-to-day basis ultimately led to their demise. In extreme cases, the failure to implement a policy may result in a business-ending liability. In less extreme cases, the failure to capture, coordinate, and manage information and to keep records may result in lost business, failure to comply with certain laws, and lost profit opportunities.

Information is everywhere. There are bits and bytes on every computer in your organization. There are internal and external servers, hard drives, C drives, CDs, and software. There is email. There may be back-up tapes and, more likely than not, there are hard copies of documents created by endless varieties of software programs. In addition, your employees may have access to your company's information and may store some of that information on their home computers. Lurking in all ESI is metadata and other invisible information. The trick is organizing all this information from each source and managing how it is kept and destroyed.

Key Points to Implementing a Policy

There are some important points to remember in implementing a policy. First, backing up data at regular intervals is a critical function but it is not an information management policy. Second, not all data everywhere needs to be kept. In fact, even the United States Supreme Court in the Arthur Anderson case recognized that regular disposal or destruction of data and hardware is necessary and good policy. Third, the policy should be realistic, practical, and tailored to the circumstances of the enterprise. Fourth, the policy must be flexible so that destruction practices can be suspended in appropriate circumstances. Fifth, and finally, an information management policy is a mandatory component of cutting edge success.

A specific policy tailored to each enterprise is best provided by professionals specializing in this field. However, there are guidelines that every enterprise can begin with –

- Information and records management must be realistic and matched to the circumstances of the enterprise.

- Electronic data should be destroyed at regular intervals.

- Any policy should include all aspects of electronic data, including its creation, retention, identification, retrieval, and disposition or destruction.

- The policy must be capable of suspension in order to comply with preservation obligations in the event of a lawsuit, audit, or regulatory inquiry.

- Every person in an organization, from the top to the bottom, handles some electronic data – so all must understand and comply with the policy.

IRA AND PENSION PLAN LIMITATIONS FOR TAX YEAR 2007

By **Bruce M. Stone**

If you contribute to an Individual Retirement Account or participate in an employer-sponsored pension plan, the following information will be of important interest to you. Below are some of the 2007 limits for your easy reference.

IRA Contribution Limits –

- The contribution limit for traditional and Roth IRAs remains $4,000.

- The "catch-up" contribution limit for taxpayers age 50 and over remains an additional $1,000.

Benefit and Contribution Limits for Qualified Retirement Plans –

- The dollar limit on elective deferrals under §401(k) plans and §403(b) annuities is $15,500.

- The dollar limit on elective deferrals for government and tax-exempt organization deferred compensation plans under §457 is $15,500.

- The "catch-up" contribution limit for people age 50 and above remains an additional $5,000 for participants under §401(k) plans, §403(b) annuities, and §457 plans.

- The dollar limit on elective deferrals to SIMPLE IRA and SIMPLE §401(k) plans is $10,500.

- The "catch-up" contribution limit for people age 50 and above remains an additional $2,500 for participants in SIMPLE IRA and SIMPLE §401(k) plans.

- The limit on annual compensation that may be taken into account for determining contributions and benefits under a qualified plan is $225,000.

- The limit on annual benefits that may be received under a defined benefit plan is $180,000.

- The limit on annual additions to a defined contribution plan is $45,000.

- The threshold dollar amount concerning the definition of a key employee in a top-heavy plan is $145,000.

- The threshold dollar amount concerning the definition of a highly compensated employee remains $100,000.

If you have any questions concerning IRAs or pension plans, please talk with a Berry Moorman tax or estate planning attorney.

FEDERAL AND STATE 2006 INCOME TAX FILING DEADLINE NOW APRIL 17

Michigan taxpayers will have until Tuesday, April 17, 2007 to file their 2006 individual income tax returns and pay any taxes due. The Michigan Department of Treasury approved the deadline change to remain consistent with the Internal Revenue Service deadline for filing federal income tax returns. The IRS recently moved the federal income tax filing deadline to April 17th in recognition of April 16, 2007 as Emancipation Day in the District of Columbia. On April 16, 1862 President Abraham Lincoln signed the "District of Columbia Emancipation Act," ending slavery in the District of Columbia.

Under federal law, filing and payment deadlines that fall on a Saturday, Sunday, or legal holiday are satisfied if met on the next business day. Under another federal statute, holidays observed in the District of Columbia have an impact nationwide. For more information, go to the IRS or Michigan Department of Treasury website. They can be found at www.irs.ustreas.gov and at www.michigan.gov/treasury.

FIRM NEWS

Bruce M. Stone gave a presentation on the uncapping of a property's taxable value following a transfer of ownership to the Washtenaw County Bar Association on December 5, 2006. Bruce is also teaching an estate planning course at Ave Maria Law School in Ann Arbor, Michigan during the Spring 2007 semester.

Albert Taylor Nelson, Jr. has been appointed a Board Member of City Year Detroit. City Year Detroit is a part of the National Service movement which brings together young adults, up to age 24, to serve the community full time for 10 months. Corps members serve schools through mentoring, tutoring, and after school programs. They strengthen neighborhoods through physical service projects such as park clean-ups, playground builds, and work in food pantries. Corps members are compensated with a weekly stipend, health insurance, federal loan forbearance, and an education award to use towards tuition or student loan repayment.

Patrice M. Ticknor was recognized for her 15 years of service as a literacy tutor at the Dominican Literacy Center's annual Tutor Appreciation Dinner on February 15, 2007. The Dominican Literacy Center is an adult learning center on Detroit's eastside which provides free one-to-one tutoring to help adults improve their reading, writing, speaking, listening, mathematics, and basic computer skills.

Dennis M. Mitzel appeared on the Ann Arbor Community Television Program "Senior Moments". Dennis discussed the new charitable IRA rollover provisions on behalf of Leave a Legacy.

Dennis will also be speaking at the Leave a Legacy Annual Development Day Seminar at the Fairlane Club in Dearborn on May 10, 2007. Dennis will be speaking on "Charitable Giving Techniques." Leave a Legacy is an organization sponsored by the Planned Giving Roundtable of Southeast Michigan to encourage charitable giving through estate plans. Dennis is a past chairman of the Roundtable and a member of the Leave a Legacy steering committee.

Randolph T. Barker participated in the Washtenaw County Bar Association's "Lawyers' Road Show" on February 27, 2007 as a volunteer attorney. Randy offered free consultations to area residents in different areas of law, including real estate, business, and construction law. Randy regularly participates in these events in Washtenaw and Monroe counties as a service to the community.

Randy will also serve as faculty to the State Bar of Michigan Real Property Law Section's Breakfast Roundtable program on April 19, 2007 regarding commercial lease agreements. Randy's presentation addresses lease financing issues, including the use of personal guaranties and letters of credit to secure tenant lease obligations. The program is offered in cooperation with the International Council of Shopping Centers.

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