

ESTATE PLANNING UPDATE

THE FEDERAL ESTATE TAX

Who would have believed it! In 2001 when President Bush signed the bill providing for an increase in the estate tax exemption amount, the bill included a 'sunset provision' which called for a return to the law as it existed in 2001 unless enough members of the House and Senate voted for a permanent enactment. Well, here we are almost 7-1/2 years into the 10 year period and the legislation is still ready to sunset in 2011. While the sun setting will impact several areas of the tax law, including the capital gains tax, we here key on the federal estate tax which remains a moving target as highlighted here.

Not only does the exemption return to the 2001 level of \$1,000,000 (the maximum one person can pass on to anyone other than a US citizen spouse or charity), the estate tax returns to a progressive tax reaching 55%. Currently, the rate is, for the most part, capped at 45%.

We are monitoring how this important tax matter will settle.

YEAR	ESTATE TAX EXEMPTION
2001	\$1,000,000
2008	\$2,000,000
2009	\$3,500,000
2110	UNLIMITED
2011- ?	1,000,000

GIVING IT AWAY DURING YOUR LIFETIME

The **annual gift exclusion** remains at \$12,000 for 2008. This is the amount anyone can give to another without any formalities. Married couples are able to double the gift amount to \$24,000.

Remember, 529 plans used to fund the educational costs of a child, grandchild, niece or nephew can be funded up front with 5 years of annual exclusion, or \$60,000.

If you have a grandchild, niece or nephew attending a school which charges tuition, you may be interested to learn that so long as you pay the educational institution directly and the money is directed towards paying the cost of attending the school and

(Tax Exclusion-Continued on page 2)

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CELEBRATING 55 YEARS

McDowall Cotter celebrates its 55th anniversary this year! We continue to maintain offices in San Mateo, Palo Alto and we also have an office in Pleasanton.

Many of you knew

Chris Canning. Chris retired in December after many years of loyal service to Lino Guslani and then our firm.

You may know that we have several attorneys at the firm. Will

McDowall and Bernie

Cotter are of-counsel to the firm and still actively practicing law. Between them they bring just about 100 years of legal experience. Both are seasoned mediators. Will McDowall works with individuals and

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TAX EXCLUSION

not put towards books and supplies, the payments are exempt from the gift tax. The same is true for medical expenses. In order to qualify for a gift tax exemption the money must be paid directly to the medical facility and not to the individual who received services as reimbursement. The money gifted for medical expenses cannot be covered, and therefore reimbursed, by insurance.

Gifts to qualified charities are not subject to gift tax. If you have appreciated property (your home, income property or stocks) and you are think-

ing of selling and want to avoid the impact of the capital gains tax, give us a call to discuss the use of Charitable Remainder Trust. While it is true that a Charitable Remainder Trust will eventually benefit a charity, the fact is that the tax savings to you, and the corollary increase in the amount of money left for you to invest, makes the use of a Charitable Remainder Trust a strategy that must be considered.



Investing in Your Family's Future

THE TEAM

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companies involved in insurance disputes while Bernie Cotter remains a tried and true trial attorney representing individuals who have suffered personal injuries. He also defends individuals against whom claims are brought.

Associate Emiko Burchill, a recent Santa Clara Law graduate, joined our firm as an intern last year and is now actively involved in assisting the more senior attorneys answering your ques-

tions and addressing your concerns.

Partner David Rosenbaum is the firm's go-to person for litigation matters. Whether the dispute involves real property, an inheritance or a business matter, David and his support staff are at your service. David also teams with Bob Vale and Brett Lytle for small business counseling from employment to trademark issues.

We are pleased to announce that Brett Lytle, who joined our firm last year, is now a partner. Brett continues to assist clients with their estate

planning needs. He teams with Bob Vale and the firm's support staff to assist clients with incapacity planning and Brett continues to work with clients and their families when there is incapacity or a death.

Bob Vale recently celebrated his 25th anniversary with McDowall Cotter. Bob continues to his work with clients in the area of estate planning, incapacity planning and implementation and post mortem administration of decedents' estates.

(The Team -Continued on page 4)

UPCOMING WORKSHOPS

SUCCESSOR TRUSTEE WORK SHOP

Date: September 18, 2008

Time: 2:00 p.m. & 7:00 p.m.

Place: To be announced

What happens when we are alive and well, alive and not-so-well, and when we are gone.

LEAVING YOUR FAMILY A LEGACY, NOT A LEGAL MESS

Date: October 23, 2008

Time: 2:00 p.m. & 7:00 p.m.

Place: To be announced

Estate Planning tools to reduce taxes and protect family wealth.

Registration Information

If you or a family member is interested in attending, please call our Client Services Coordinators, Sylvia or Irene at 650-572-7933. You can also send an email to:

clientservices@mcldlawyers.net

PROTECT YOUR BUSINESS' ASSETS — CELL PHONE USE POLICY

The employee was talking on the cell phone while driving. The police report showed the accident happened at 5:15 p.m. Cell phone records showed a call started at 5:13 p.m. and lasted for two minutes. The next call, to the employer, was at 5:17 p.m.

The pedestrian was severely injured and suffered brain damage.

The employer settled for \$950,000.00.

In California, an employer must indemnify (pay back to) an employee for negligent acts "which occur in direct consequence of the discharge of his or her

duties, or of his or her obedience to the directions of the employer,



even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful." Labor Code Sec. 2802.

As of July 1, 2008, all drivers must use a handheld wireless telephone while operating a motor vehicle. Vehicle Code Sec. 23123. Motorists 18 and over may use a hands-free device. Drivers under the age of 18 may NOT use a wireless telephone or hands-free device while operating a motor vehicle. Vehicle Code Sec. 23124.

(Cell Phones-Continued on page 4)

SALARY, HOURLY, OVERTIME, INDEPENDENT CONTRACTOR—AVOID WAGE CLAIMS

California Labor Code requires employers provide employees a 10 minute rest break within, and to be taken in the middle of, every four hours work. Employees are also to be given a 1/2 hour meal period for days exceeding five hours. Thus, in one work day, they must be given two ten minute breaks, plus 1/2 hour for lunch.

The rest breaks must be paid for; the meal does not. Failure to insure,

"Failure to insure, not just provide, these breaks can lead to overtime, fines and penalties."

not just provide, these breaks can lead to overtime, fines and penalties.

For non-exempt employees, overtime starts at over 8 hours per day, not just 40 hours per week. If the employee is not relieved of all duties

of the job for lunch, that 1/2 hour counts towards the eight hours.

What constitutes a "non-exempt" employee is subject to some confusion, depending on the authority, role and wage of the employee. So too, is the question of what constitutes and independent contractor—is this person working at your site? using your tools (a computer is a tool)? Being there when you tell them?

David Rosenbaum can help.

PARTITION ACTIONS—SEPARATING FROM A CO-OWNER OF REAL PROPERTY

You've inherited property jointly with your siblings. One wants to rent it to others, one wants to live in it, and one wants to take the money and run. No one can agree, the property sits wasting away due to the indecision.

In California, one has a right to seek a separation of the ownership. This is called a Partition Action. This

type of action gives the court the power to order the property sold and divided. The court will appoint a referee (third party neutral) who becomes responsible for selling the property and accounting for the proceeds.

It does not have to involve family members. Partition Actions can be brought by any co-owner of property

The court can order the house sold and the proceeds to be divided and distributed to the owners.



or business (partnerships). The peti-

(Partition-Continued on page 4)

CELL PHONES

(Continued from page 3-Cell Phones)

One solution to limiting damages is to implement a cell phone use policy. We can help prepare the policy and conduct the training.

PARTITION

(Continued from page 3- Partition Actions)

tioning party need only prove that she is a co-owner of the property and that she has not waived, in writing or orally, her right to the partition.

THE TEAM

(The Team -Continued from page 2)

The firm's attorneys are supported by a great staff which includes Client Service Coordinators Sylvia Hart and Irene Dominguez, Assistant Client Service Coordinator Felix Castillo, Paralegal Zia Mirza, and the firm's bookkeeper, Barbara Barrett.

A Common Sense Approach to the Practice of Law

McDowall Cotter has served clients in the greater San Francisco Bay Area for more than half a century. In that time, we have established a reputation, in the courts and in the community, for ingenuity, integrity, and a common-sense approach to the practice of law.

It has been said that in some ways we are an old-fashioned law firm. We believe in civility, value long-term relationships, cultivate a healthy work environment, and provide the highest quality legal representation in matters large and small. And we agree — we are old-fashioned, but then again we've been old-fashioned for more than fifty years and still somehow we remain ahead of our time.

- Defending Civil Lawsuits
- Estate and Trust Planning
- Trust Administration
- Probate
- Will Contests
- Trust Contests
- Trustee Challenges
- Employer/Employee Relations
- Personal Injury Lawsuits
- Partition Actions
- Construction — Mechanic's Liens
- Trademark Applications
- Corporation, LLC Formation



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