

## ASSET PRESERVATION OPPORTUNITIES

New tax statutes affect your 2008 and 2009 tax returns and provide estate planning and asset preservation opportunities.

**Gifting:** Beginning January 1, 2009, each person can give up to \$13,000.00 per calendar year per person; the limit in 2008 was \$12,000.00. In addition, in 2009, the first \$3.5 mil. worth of assets passes estate tax free on death, although the threshold is reduced by any "lifetime taxable gifts." The threshold for 2008 was \$2 million.

**2008 AMT:** Congress raised the alternative minimum tax exemption to the following levels:

- \$69,950 for a married couple filing a joint return and qualifying widows and widowers, up from \$66,250 in 2007;
- \$34,975 for a married person filing separately, up from \$33,125 and \$46,200 for singles and heads of household, up from \$44,350;

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## EMPLOYER MINEFIELDS

Employee sued his employer claiming he was not provided meal and rest breaks or paid overtime. Since the employer failed to pay, the complaint also cited the Labor Code section entitling the employee to 30 days of waiting time penalties.

"But my employee was paid on a commission, I shouldn't owe him overtime or breaks," exclaimed the employer.

"Did the employee spend more than 50% of his time performing sales?" the lawyer asked.

"No."

The pensive lawyer asked, "How did you come up with your classification?"

*"It's the way it has always been done."*

Since, employer thought he could pay employee by commission, he never tracked employees hours; another violation: improper record

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## REFERRALS

Referrals constitute a majority of our business. If you have a family member, friend or co-worker that needs our assistance, please feel free to give them our number. Rest assured they will receive the same ingenuity, integrity, and common sense approach that you received. **Referrals are the greatest compliment we can receive.** Thank you!

## FIFTH THURSDAY SPENT BAGGING CARROTS

McDowall Cotter has always been dedicated to non-profit service. *Legal Aid Society of San Mateo and Youth and Family Enrichment Services* (YFES) a private non-profit agency in San

Mateo are just a couple of institutions to which McDowall lawyers have given their time. We were honored when *Legal Aid* awarded Bob Vale the Dorothy Wolff award for his generous donation

of time for assisting the elderly and infirm, and when YFES awarded McDowall Cotter the 2006 "Silver Barbell Award" recognizing "the extraordinary contributions of those

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## OPPORTUNITIES

**Standard Deductions:** increased for most taxpayers

- \$10,900 for married couples filing a joint return and qualifying widows and widowers, a \$200 increase over 2007;
- \$5,450 for singles and married individuals filing separate returns, up \$100; and
- \$8,000 for heads of household, up \$150.

**Standard Mileage Rates:** for business use of a car, van, pick-up or panel truck is 50.5 cents per mile from Jan.

1, 2008, to June 30, 2008, up 2 cents from 2007. The rate is 58.5 cents for each mile driven during the rest of 2008.

**California Estimated Tax Payments:** Due to California economy situation the California Legislature has changed the estimated tax payment schedule to the following:

- 1st Quarter 30%
- 2nd Quarter 30%
- 3rd Quarter 20%
- 4th Quarter 20%

The federal estimated payments have not been changed and remain the same.

The current economic downturn, while having many negative aspects, offers some of the best opportunities in years to transfer wealth to younger generations. On October 18, 2008, the Wall Street Journal ran an article entitled "*Why Now is the Time to Help Your Heirs*," which discussed several strategies that should be considered. Strategies include transferring temporarily depressed assets to your heirs (e.g. real estate and family busi-

## BAGGING CARROTS

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helping to make a tangible difference to the thousands of low income and at-risk youth and families served in San Mateo County."

McDowell Cotter also has a "Fifth Thursday Community Service Program". On the afternoon of the Fifth Thursday in the month, the entire office volunteers as a group, taking time to assist those who are less for-

tunate.

January, May, and October 2009 each have five Thursdays.

On January's Fifth Thursday, the troops rallied over to *Second Harvest Food Bank* of San Mateo County. Trading in suits and ties for blue jeans and work shirts, turning off computers and cell phones in favor of human interaction, and, getting up and away from desks, we stood around two huge boxes of carrots.

Second Harvest issued plastic bags, non-latex gloves and put us to work. Our mission: create as many one pound bags of carrots as we could in a three hour period.

Estimates were that we succeeded in bagging nearly  $\frac{1}{2}$  ton (1000 lbs) of carrots. *Eat your heart out Bugs Bunny.!!*

## McDOWALL COTTER ROUNDTABLE DISCUSSIONS

Do you have a group of friends, colleagues, clients or family members that would like to learn what Estate Planning means, how to make plans for incapacity and insure that end-of-life wishes are honored?

Do you know a business owner who would like to learn about why

Employee Handbooks are a valuable tool or how to avoid lawsuits for labor Code violations?

McDowell Cotter would be happy to host your group, at no charge, for a roundtable discussion on any of these topics.

Simply give a call to our Client Services Coordinators, Sylvia or Irene at 650-572-7933. You can also send an email to: [clientservices@mcdlawyers.net](mailto:clientservices@mcdlawyers.net) to reserved a lawyer and some time.

## ***WAGE & HOUR, EXEMPT V. NON-EXEMPT, MEAL & REST BREAKS — AN EMPLOYERS MINEFIELD***

keeping.

The Federal Statutes provide the employer is liable for two years worth of the unpaid overtime and also allows for "liquidated damages" of an equal amount. State law says it can be at least three and possibly up to four years of unpaid overtime.

California law provides that when an employer fails to provide a non-exempt employee her meal break, one hour of premium pay is owed.

Failure to pay it on the next paycheck subjects the employer to waiting time penalties for failure to pay wages. The 3-year statute of limitations exposes even small employers to massive potential liability: e.g., an employer with 10 employees earning \$20 an hour could be subject to a \$156,000 liability (\$200 a day x 5 days a week x 156 weeks).

In almost any form of employment lawsuit—Wage and Hour Viola-

tion, Age Discrimination, Family Medical Leave act — if the employee wins just \$1.00 she may be entitled to attorneys fees. Thus, the employer may have to pay two sets of fees -his own and the employees.

Test your understanding of the Labor Laws below. Afterward, contact our office to have David Rosenbaum conduct an audit and make suggestions on how to stop the violations.

### **EMPLOYER RISK KNOWLEDGE QUIZ**

	True	False
The classification of "non-exempt" means the employer must pay overtime.	<input type="checkbox"/>	<input type="checkbox"/>
The California labor code, not the employer, classifies who is "exempt" and who is "non-exempt".	<input type="checkbox"/>	<input type="checkbox"/>
Over time in California means greater than eight hours worked per day or greater than 40 hours worked per week.	<input type="checkbox"/>	<input type="checkbox"/>
Improper classification can result in 30 days waiting time penalties owed by the employer to the employee.	<input type="checkbox"/>	<input type="checkbox"/>
Employees who are not exempt from overtime payment requirements must be given a paid 10 minute rest break in the middle of every four hours of work.	<input type="checkbox"/>	<input type="checkbox"/>
Employees who are not exempt from overtime payment requirements and who work more than 5 hours in a day are entitled to a meal period of at least 30 minutes.	<input type="checkbox"/>	<input type="checkbox"/>
Employees cannot waive their 30 minute meal break if they work more than six hours in a day.	<input type="checkbox"/>	<input type="checkbox"/>
Employee or and employees can only waive the 30 minute meal break with a written waiver.	<input type="checkbox"/>	<input type="checkbox"/>
To be fully compliant with the 30 minute meal break requirement, the employee must be completely relieved of all duties for the entire 30 minutes.	<input type="checkbox"/>	<input type="checkbox"/>
Allowing the employee to check just one e-mail pertaining to work, or asking the employee about something that has occurred during work, during the employee's 30 minute meal break renders the break noncompliant	<input type="checkbox"/>	<input type="checkbox"/>
An employer who fails to provide rest periods must pay the employee one additional hour of pay at the employee's regular rate for each day that a rest period was not provided.	<input type="checkbox"/>	<input type="checkbox"/>
The California Fair Employment and Housing Act ("FEHA") prohibits employment discrimination based on a variety of grounds including age, an individual's "national origin", religion, gender, and sexual orientation, among others.	<input type="checkbox"/>	<input type="checkbox"/>
The FEHA applies to employers with <i>five or more</i> employees.	<input type="checkbox"/>	<input type="checkbox"/>
The FEHA's age-related provisions apply only to employees who have reached their 40th birthday.	<input type="checkbox"/>	<input type="checkbox"/>
Discrimination on the basis of "pregnancy, child birth, or related medical conditions" is treated as sex discrimination under both Title VII and the FEHA.	<input type="checkbox"/>	<input type="checkbox"/>

## TAX CHANGES

(Continued from page 2-Cell Phones)

nesses). These reduce the size of your estate and give heirs the opportunity to cash in on the hopeful rebound. Also, low federal interest rates (AFR) for family loans, make purchasing additional assets from parents extremely attractive. Take advantage of the current economic situation, schedule an appointment to review your options.

## 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
- Challenges to Trustees and their actions
- Employer/Employee Relations
- Personal Injury Lawsuits
- Partition Actions
- Construction—Mechanic's Liens
- Trademark Applications
- Corporation, LLC Formation



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