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Big, BIG Tax Changes: New MN Gift Tax & Modifications to the Estate Tax

Minnesota has the dubious honor of being one of two states that now has a gift tax, the other being Connecticut. The new law creates a Minnesota gift tax of 10 percent on taxable gifts made by an individual during his or her lifetime. There will be a credit against the first $1 million of taxable gifts. This is also called a $100,000 lifetime credit, equivalent to a $1 million exemption. In other words, there will be no state gift tax owed by either the donor or donee on the first $1 million of taxable gifts made. Once the credit is exhausted, there will be a 1 percent gift tax on any taxable gifts. The new gift tax will not apply to gifts made before June 30, 2013 – only to taxable gifts made on or after July 1, 2013.

What is a taxable gift? Minnesota follows the federal definition of taxable gifts. Thus, any gift below the annual exemption amount ($14,000) is excluded. Gifts to charities, spouses, and certain transfers for education or medical expenses are also excluded. Now that Minnesota has passed a law recognizing same sex marriages and the United States Supreme Court has struck down DOMA, it is likely that transfers between married same-sex couples will also be exempt – but no pronouncement on this issue has been made by the Department of Revenue or the IRS.

A gift in excess of the exemption amount ($14,000) must now be reported on both a federal gift tax return and a Minnesota Department of Revenue form (yet to be created). This is a separate tax from any federal gift tax. The donor of the gift is liable for paying the gift tax – BUT if the donor does not timely pay the Minnesota gift tax, the donee will be personally liable for the tax owed!

This new gift law also impacts the Minnesota estate tax. Any Minnesota taxable gifts made after June 30, 2013, and within three years of the decedent's death must be added to the Minnesota adjusted taxable estate when calculating the Minnesota estate tax. Any credit extended on the taxable gift during life is lost but any gift tax paid would be applied against the estate tax owed. In addition to inclusion of the value of the previously transferred assets in decedent's estate, there will be no cost basis adjustment in the previously gifted assets.

The new estate tax laws are effective for estates of decedents who died on or after January 1, 2013. We are in the very early phase of understanding the impact of the new gift and estate tax laws and the preceding summary represents an interim opinion. This summary is also not inclusive of all of the tax changes implemented in this legislative session.

Long Reher Hanson News

Cathryn Reher and Laurie Hanson were once again recognized by their peers as Super Lawyers in Elder Law. We are also proud to announce that two of our attorneys had their articles published recently. Laurie Hanson's article, "Developing Special Needs Estate Plans for Parents of Children with Disabilities," was published in the May 2013 issue of the *HENNEPIN LAWYER*, the official publication of the Hennepin County Bar Association. Laura Zdychnec's article, "The Perilous Path to Long-term Care," was the cover article in the June 2013 issue of the Minnesota State Bar Association's official publication, *BENCH & BAR*. You can read both articles by clicking on the link on our website: www.mnelderlaw.com.

In April, Laurie and Cathryn were in Washington DC lobbying (on a pro bono basis) for two bills introduced in Congress in 2013 that if passed, will have a significant positive effect on people living with disabilities. They met with staff from the offices of Rep. Betty McCollum, Rep. Keith Ellison and Senators Klobuchar and Franken to secure their support for these bills:

1. The Disability Military Child Protection Act of 2013 (S. 1076 and H.R. 2249). This bill would allow disabled children of veterans to receive survivor benefits through a special needs trust without fear of losing access to Supplemental Security Income (SSI) or Medical Assistance. Currently, a veteran must leave a survivor benefit directly to the disabled child, thereby jeopardizing that child's needs-based benefits.
2. The Special Needs Trust Fairness Act of 2013 (S. H.R. 2123). Federal law now prohibits individuals from establishing their own special needs trusts. Rather, the trusts may be established only by the individual's parent, grandparent, or guardian or by a court. While this limitation makes sense for those with limited mental capacity, it is unfair (and insulting) for those individuals living with physical but not cognitive disabilities. If this law is passed, individuals living with disabilities who are competent will be able to establish their own special needs trusts. We expect the bill to be introduced in the Senate soon.

We urge you to call your representative and Senators to support these important bills – and call us if you have any questions.

Medical Assistance Update

ALERT! Current married recipients of CAC, CADI and BI

The Affordable Care Act requires application of spousal impoverishment rules for married waiver recipients receiving CAC, CADI and BI. Under the spousal impoverishment rules, the amount of available assets the community spouse can retain is between $32,890 and $115,920. Historically, these financial eligibility rules only applied to persons needing long term-care Medical Assistance or Elderly Waiver. The waivered programs for persons under age 65 currently do not deem the assets of the community spouse as available in determining the ill spouse's eligibility. Minnesota authorized DHS in this legislative session to seek a waiver so that it can continue to use the current financial eligibility criteria. If the waiver is not granted, the available assets of the community spouse would be included in determining the ill spouse's eligibility for waivered services. Many married recipients of waivered services could lose their eligibility and will need to closely track the outcome of this waiver.

Community Spouse Income Contribution Repealed!

We are happy to report that effective July 1, 2013, the state law requiring a community spouse to contribute a percentage of his or her income if his or her spouse is receiving Medical Assistance was repealed.

Marriages Between Sex Couples

Marriages between sex couples will now be recognized for all Medical Assistance purposes now that Minnesota has passed a law allowing same sex marriages and the United States Supreme court has overturned the federal Defense of Marriage Act (DOMA). Couples who were married in another state will be considered legally married as of August 1, 2013. For many couples, being married may not be beneficial for Medical Assistance purposes and couples should seek legal advice before marrying – or divorcing!

The Numbers

Highlighted below are the basic Medical Assistance figures that change annually in July:

- Income Standard for those who are either age 65 or older, blind or disabled and living in the community:

   - One person household: The income limit is 100% of federal poverty guideline standards (FPG), **$958** per month as of July 1, 2013. People with income over 100% of FPG may be eligible by spending down to 75% of FPG, currently **$719**. In other words, they can pay a "deductible" (for medical costs) equal to the amount by which their countable income exceeds **$719**.
   - Two person household: The income limit for a household of two is **$1,293** per month. Couples with income over 100% of FPG may be eligible by spending down to 75% of FPG, currently **$971**.
- A community spouse is entitled to a spousal income allocation to bring his or her income to **$1,940/**month (or up to a maximum of $2,841 depending on shelter costs greater than **$582** per month). There is a standard utility allowance of $450 per month; and an electricity and phone allowance of $138 and $37 per month, respectively, used in calculating shelter costs.
- If you are receiving Elderly Waiver services and your gross monthly income (not including your spouse's income) does not exceed $2,130, your monthly personal needs allowance will be **$971**, otherwise if it exceeds this amount, it will be $94 if married or $719 if single.
- The penalty for uncompensated transfers is **$5,583** from July 1, 2013 – June 30, 2014.

Special Needs Trust Alert Follow-up!

In our January 2013 newsletter we alerted you to some special needs trust disbursement policy changes made by the Social Security Administration (SSA) for those beneficiaries who are on SSI. Since then there have been a few positive changes made by the SSA which will make trust administration easier:

1. Trustees may reimburse third parties for goods or services purchased for the sole benefit of the beneficiary. For example, if the mother of the beneficiary purchases diapers on her credit card and submits the receipt to the trustee requesting payment, the trustee may reimburse the mother for the expense as long as the trustee knows that the beneficiary needs diapers and that the diapers are not covered by Medical Assistance.
2. Trustees may pay travel expenses of third parties (for example family members or friends) which are necessary in order for the trust beneficiary to obtain medical treatment.
3. Trustees may pay third party travel expenses to visit a trust beneficiary who resides in an institution, nursing home or other long-term care facility (e.g., group homes and assisted living facilities) or other supported living arrangement in which a non-family member or entity is being paid to provide or oversee the individual's living arrangement. The travel must be for the purpose of ensuring the safety and/or medical well-being of the individual.

Trustees should still make no payments from special needs trusts to third parties for companion services unless the third party (even a family member) is a certified PCA. We understand that the SSA is looking at revising these rules, but as of this date, third parties should not be reimbursed for travel or other companion services. We will let you know when this policy changes.

New Power of Attorney Laws

On April 24, 2013, the Governor signed into law changes to the current statutory short-form power of attorney. This is a form that most of our clients have executed as it allows a person (the principal) to appoint an agent (called the "attorney-in-fact") to handle the person's financial matters. This law passed because of concerns regarding abuse by some attorneys-in-fact.

So what has changed? The form is longer and more complicated, adding several pages of warnings regarding asset transfers and required acknowledgements by the agents. These law changes are effective for statutory short forms executed on or after January 1, 2014. Current statutory short form powers of attorney executed before January 1, 2014 remain valid.

The new law contains a provision that concerns us. It allows any "interested party" to go to court to get an order directing the attorney-in-fact to provide an accounting. This controversial provision of the new law is effective August 1, 2014 and applies to to a power of attorney executed on any date. The attorney-in-fact has always had a duty to account to the principal and

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LOOK INSIDE

for these articles:

REVIEW OF YOUR SITUATION

If you have questions or concerns about any of the information presented in this newsletter or would like to consult with us about how the changes might affect your own circumstances, please call our office to set up an appointment with Cathryn Reher, Laurie Hanson or Laura Zdychnec. We will be happy to meet with you to answer any questions you may have and to help you re-evaluate your particular circumstances.

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to others identified by the principal. On its face, a judicial remedy to make the attorney-in-fact accountable is a good thing. This new law, however, allows any interested party to seek an accounting – and any interested party is broadly defined. There are times that a principal explicitly excludes certain family members from participation in or having knowledge of the principal's finances. These family members will now have the legal authority to file an action in court to force the disclosure of financial information. The principal will most likely not have capacity at that time and will be unable to explain why he or she did not want the particular family members involved. There is no method by which a principal can exempt persons from seeking a court-ordered accounting when establishing a power of attorney. Furthermore, this law allows certain interested parties to recover attorney's fees if the court finds the attorney-in-fact failed to render an accounting. We are very concerned that a person may choose not to act as the attorney-in-fact for the principal where family dynamics are difficult or the principal may choose not to execute a power of attorney to avoid this possible outcome. We will be evaluating options for our clients in the coming months to address these concerns.