

Ohnstad Twichell, P.C., is a full service law firm having a general and trial practice in North Dakota, Minnesota, and federal courts and offering services in the fields of probate, real estate, estate planning, corporate, labor/employment law, family law, elder law, municipal finance and bonding, taxation, personal injury, criminal, negligence, commercial, insurance defense, water rights, oil, gas and wind law, and automobile law.

TAX RATES...AND MORE TAXES



Lindsey J. Scheel
works in the West Fargo office and devotes her practice to probate, estate planning and corporate/ business law.

Near the end of 2012, the fiscal cliff loomed ominously on the horizon. Under previously enacted laws, higher taxes and lower spending were scheduled to begin in 2013. In an effort to avoid the fiscal cliff, Congress passed the American Taxpayer Relief Act of 2012 on January 1, 2013. The President signed the Act into law the following day.

The Act provides a “permanent” set of tax provisions—that is, the provisions are not set to expire on a certain date. However, Congress can still enact new tax laws in the future. Key provisions of the Act include the following:

- A unified gift and estate tax exemption amount of \$5 million, indexed for inflation. For 2013, the unified credit amount is \$5.25 million. (See Asa K. Burck’s article on page 3 for additional detail.)
- A flat tax rate of 40% for estates, gifts, and generation-skipping transfers exceeding the unified credit amount. From 2010 through 2012, the rate was 35%.
- Permanent portability. (See Asa K. Burck’s article on page 3 for additional detail.)
- A new income tax bracket. The tax brackets set during the Bush administration have been made permanent, but an additional bracket has been created. A rate of 39.6% applies to single taxpayers earning over \$400,000, head of household taxpayers earning over \$425,000, and joint taxpayers earning over \$450,000.

- A higher capital gains rate for taxpayers in the highest income tax bracket. A rate of 20% on capital gains and dividends applies to taxpayers in the 39.6% income tax bracket. The 15% rate remains for taxpayers in the middle income brackets, along with the 0% rate for taxpayers in the lowest two income brackets.
- A new Medicare tax. Under Obamacare, an additional 2.9% tax is imposed on earned income up to \$200,000 for single and head of household taxpayers and \$250,000 for joint taxpayers. The rate on investment income at these levels is 0%. For income exceeding these amounts, the Medicare tax rate on earned income and investment income is 3.8%.
- The annual gift tax exclusion amount has been adjusted to \$14,000 for 2013, an increase from \$13,000 in 2012.

Any gifting completed in 2012—when the exemption amount for 2013 was uncertain—remains beneficial because the future appreciation of the gifted assets has been removed from the estate. Further, Minnesota residents who completed gifts in 2012 minimized their state estate taxes, which are imposed on estates over \$1 million. If you have questions on sheltering your assets from taxes, contact our firm to discuss your estate plan.

Attorney Lukas D. Andrud was recently appointed to the North Dakota Mineral Title Standards Committee.

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A legal newsletter from Ohnstad Twichell, P.C., with offices in West Fargo, Hillsboro, Casselton, and Page, North Dakota, and Barnesville, Minnesota.

EMPLOYERS' OBLIGATIONS UNDER EXPANDED SMOKING BAN



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With the North Dakota Legislative Session in full swing, a number of new bills are being debated that will directly impact North Dakota employers in the coming months. One new law is already in place, however, that places additional obligations on employers and individuals when it comes to smoking in the workplace.

In the November 2012 election, North Dakota voters approved Measure Number 4, which expands the statewide ban on smoking in enclosed public places and places of employment. The law went into effect on December 6, 2012, and contains a number of new requirements that employers need to meet.

First, the ban is broad in scope, as it extends to both open and enclosed public places, including restaurants, bars, truck stops, hotels/motels, healthcare facilities, long-term care centers, assisted living centers, licensed adult day care facilities, retail tobacco stores, hookah establishments, workplace vehicles, charitable gambling and gaming licensed facilities, and places of public access that may be leased for private functions. The law does not restrict smoking in private residences or in areas not commonly accessible to the public that are part of an owner-operated business having no employees other than the owner-operator.

The new law prohibits smoking within 20 feet of entrances, exits, operable windows, air intakes, and ventilation systems of enclosed areas of places of employment. The law also requires employers to clearly and conspicuously post no smoking signs or the international no smoking symbol in places of employment, entrances, and vehicles that constitute a place of employment.

In addition to the signage requirements, employers must remove all ashtrays from any area where smoking is prohibited, except for those ashtrays displayed for sale and not for use on the premises. Finally, employers must communicate to their existing employees and prospective employees on their application for employment that smoking is prohibited in the workplace.

Employers should carefully review the statute, available at <http://www.legis.nd.gov/cencode/t23c12.pdf/20130220155211>, to determine whether their workplace policies, employee handbooks, and workplace signage comply with the new law. Employers should further take the actions specified in the new law to direct smokers to comply with the smoking ban, such as directing individuals to cease smoking in prohibited places, and refusing service to those who do not abide by the directive.

Otherwise, employers could face potential fines ranging from one hundred to five hundred dollars for noncompliance, or even the suspension or revocation of permits and licenses. Individuals who smoke in prohibited places are also subject to a fifty-dollar fine.

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SIDEWALKS AND SNOW REMOVAL



Sarah M. Nyhus-Wear

works in the West Fargo office and devotes her practice to water law and municipal law.

Winter in the Midwest means snow, snow, snow. There is just no way around it. Whether there is a little snow or a lot of snow, there will always be snow in this area during the winter. A lot of fun activities come with the arrival of snow. If you are someone who enjoys winter outdoor activities, the snow is a welcome sight. If you are not one of those, then the sight of snow may make you cringe. Snow is often a reminder of the long, cold winter ahead of us. The sight of that first snowfall brings on thoughts of heavy clothes and, of course, the dreaded snow removal. That's right, even for those of you who love a good snowfall, there are few who are really able to say they love spending time outside in the freezing cold removing the snow that has just blanketed their property. The worst part is when you have to shovel back-breaking, wet, heavy snow. The wet snow may make the best snowman, but it's sure not fun to shovel. Whether you are moving snow from your driveway, from a parking lot, or from the sidewalk, it can be a pain, especially after a large snowfall, and especially if you don't have a snow blower! Pain or not, there are places that, by law, have to be cleared of snow and ice. Around the Fargo/Moorhead area, the general rules regarding snow removal are fairly similar.

*New bills will impact
North Dakota
employers.*

In West Fargo and Mapleton you are required to keep the sidewalks free of snow and ice. If you do not, Section 2-0121 of the West Fargo City Ordinances and Section 2-0121 of the Mapleton City Ordinances permit a city official to give you notice that the sidewalks need to be cleared within 48 hours. If the sidewalks are not cleared after 48 hours, the City can remove the snow or ice and the associated fee will be assessed against the property. The property owner could also face a penalty of an infraction which can be punished by a maximum fine of \$500 for a first offense.

Barnesville residents have 24 hours after the snow and ice has stopped to get their sidewalks cleared pursuant to Section 7.05, Subd. 5 of the Barnesville City Code. Any associated fees can be assessed against the property.

Fargo and Moorhead residents are required to clear their sidewalks of snow and ice before 9:00 p.m. each day pursuant to Section 18-0301 of the City of Fargo Ordinances and Chapter 1, Title 8 of the Moorhead City Code. If the sidewalks aren't cleared by 9:00 p.m., the city can remove the snow and ice and the associated expenses will be charged and assessed against the property.

Each day the snow or ice is not removed can be a separate violation, so the fines could add up quickly! And, in some areas, allowing snow and ice to remain on the sidewalk can be declared a nuisance and subject you to even more penalties.

The bottom line is, snow and ice need to be removed in a timely fashion. When removing the snow and ice, do not deposit it on the roadway because that can be an additional ordinance violation.

Like it or not, we live in an area where snow will fall. That's all part of the beauty of living in the Midwest! It will only last a few, or more likely quite a few, months and then spring will arrive and bring with it flowers, green grass and budding trees. You will be able to retire the snow blower and shovel for a few months until next winter comes around. So, until spring arrives, keep those shovels handy and keep those sidewalks clear!

* * * * *

THE "FISCAL CLIFF" – IMPACT ON GIFTS AND ESTATE TAXES



Asa K. Burck

works in the Hillsboro office and devotes his practice to probate, estate planning, real estate and corporate/business law.

As 2012 drew to a close, there was no end to the warnings of the impending "fiscal cliff." What exactly was this fiscal cliff? At its most basic, it was the expiration of many large tax cuts that would have drastically increased the tax burden on millions of Americans overnight coupled with heavy government spending cuts. While the issue is broad and complex, its impact on gifts and estate taxes was much clearer.

Under the Tax Relief Act of 2010, itself an extension and modification of the 2001 Bush-era tax cuts, taxpayers could transfer, tax free, a large amount of money either by gift or through their estate after death. In 2011 and 2012, an individual could transfer up to \$5,000,000 and \$5,120,000, respectively, free of gift or estate taxes. Any amount in excess of this exclusion amount was subject to tax at a rate of 35%.

A transfer can be either a lifetime gift or a testamentary transfer provided for in a will and paid out of the estate. The federal government currently has a unified credit, meaning that the gift and estate tax exclusions are essentially the same. Any gift tax exclusion not used up by lifetime gifts remains available as an exclusion for estate taxes.

Married couples could effectively double their transfers by gifting jointly-owned property or splitting their gifts. A surviving spouse could even take advantage of a deceased spouse's unused exclusion amounts as this exclusion is portable. Further, there is an unlimited marital deduction resulting in no tax on a transfer to a spouse. This means that if a husband dies leaving his entire estate to his surviving wife, using a so-called "sweetheart will," not only does the husband's estate not pay a tax on the transfer, the surviving wife can transfer her entire unified credit and her deceased husband's unused credit, allowing for transfers in excess of \$10,000,000 without incurring a tax liability.

This portability is not automatic. Instead, the deceased spouse's executor or personal representative must act to preserve the unused exemption by filing an estate tax return, even

*Impact of "Fiscal
Cliff" on Gifts and
Estate Taxes.*

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if there were no taxable transfers. The executor must do so within nine months of the deceased spouse's death unless they file for and are approved for a six month extension. Failure to file the return results in a loss of the entire unused exemption.

Had these tax cuts been allowed to expire, as they were scheduled to on December 31, 2012, the exclusions would have dropped to \$1,000,000 with taxes on amounts over the exclusion being taxed at a rate of up to 55%.

Fortunately, Congress worked out a last-minute deal and passed the American Taxpayer Relief Act of 2012, extending, with some changes, many of the tax cuts. Under the new Act, an individual can transfer up to \$5,250,000 and a married couple can transfer up to \$10,500,000 tax free. However, anything over that amount will be taxed at the new rate of 40%.

What does this mean for taxpayers? The uncertainty caused by the fiscal cliff fears led many to consider estate planning before the end of 2012. Many people rushed to transfer money and property out of their estate to take advantage of the 2012 tax rules. However, if you didn't get around to updating your estate, don't worry, you didn't miss the boat. If you did get

update your estate plan in 2012, you now have a bit more room to play around with. Individuals have an additional \$130,000 and married couples have \$260,000 to gift or bequeath tax free. Also, don't forget to take advantage of the annual exclusion of \$14,000 per person for gifts of present interests.

Congress made these current transfer tax cuts "permanent." Unfortunately, that just means they removed the automatic expiration dates. The transfer taxes remain at the whim of Congress and may be modified at any time.

Thanks to the generous exclusion amounts, many will not be affected by these changes. But that doesn't mean you should put off your estate planning. Even those under the \$10,000,000 threshold can benefit from proper planning. You can take advantage of Wills and trusts to care for your loved ones after your death, distribute money and property while you are still around to see your family enjoy it, set up medical or education funds, protect family farms and businesses, make charitable donations and even make health care directives to ensure your end-of-life decisions are clearly communicated.

The information provided in this letter is of a general nature and should not be acted upon without prior discussion with your Ohnstad Twichell, P.C., attorney.

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