

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.

CHANGES IN MINNESOTA ESTATE TAX



Robert E. Rosenvold works in the West Fargo and Page offices and devotes his practice to estate planning and probate.

During this past Minnesota Legislative session, two laws were passed by the Legislature and signed by the Governor which have a significant effect, not only on Minnesota residents, but North Dakota residents as well.

First of all, Minnesota became only the second state in the nation to institute a gift tax. The new law imposes a 10% Minnesota gift tax on taxable gifts over a \$1,000,000 exemption. The law is effective for gifts made after June 30, 2013. This compares with a federal estate tax exemption of \$5,250,000. The federal gift tax exemption is indexed for inflation beginning in the year 2011. The Minnesota gift tax exemption is not indexed for inflation. The Minnesota definition of "taxable gift" is very similar to the federal law, and it also allows an annual exclusion of up to \$14,000 per year, per donee. In other words, gifts of up to \$14,000 per year, per donee, is not counted towards the \$1,000,000 exemption. If the client is married, the amount of the gift tax exemption and the annual exclusion is doubled.

This gift tax can be very significant in the case of a large gift. For example, if a taxable gift is made this year by an unmarried individual in the amount of \$5,250,000, no federal gift tax would be owed. However, Minnesota gift tax of \$425,000 would be owed.

The Minnesota gift tax applies to gifts of real or tangible personal property located in Minnesota made by any individual, even a resident of North Dakota. It also applies to gifts

of intangible property made by an individual who is a Minnesota resident.

In effect, our Minnesota clients, in particular, will have to seriously consider not making lifetime gifts in excess of \$1,000,000 (\$2,000,000 if the client is married).

The second change in the Minnesota estate tax, perhaps is more significant, because it applies to North Dakota residents as well and affects North Dakota residents' current estate plans.

More specifically, in the last few years our office has assisted our North Dakota clients to avoid the Minnesota estate tax on Minnesota lake property, as well as other Minnesota real estate. In regards to Minnesota lake property, this usually has involved the use of a single person North Dakota Limited Liability Company. The process was quite simple. Articles of Organization were filed with the North Dakota Secretary of State. Once the filing was complete, a Deed was then filed with County Recorder in the county in Minnesota in which the lake property was located transferring the lake property into the North Dakota Limited Liability Company. Because we felt (as well as others who practice law in North Dakota) that Minnesota cannot tax an out of state entity which owns Minnesota real estate, the Minnesota estate tax would be avoided.

Apparently, the Minnesota legislature became aware that this procedure was becoming common place by non-Minnesota residents, and they passed a law, which subsequently was signed by the Governor. The new law provides that if Minnesota real estate is owned indirectly through a pass-through entity (such as an S-Corporation, Partnership, single member Limited Liability Company, or a Trust), Minnesota will now look through the entity, as if it does not exist, for purposes of applying the Minnesota estate tax.

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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.*

*Changes in
Minnesota estate tax
could affect you.*

Our office has always been concerned that Minnesota may some day act to eliminate this estate planning technique. However, we have always assumed that those entities which were formed prior to any legislative action, would be exempt from any new law. Unfortunately, this change in the Minnesota estate tax law is effective for decedent's dying after December 31, 2012. Therefore, if you are reading this, and if you have formed such an entity to avoid the Minnesota estate tax, it applies to you.

Incidentally, as noted above, pass-through entities used to avoid the Minnesota estate tax also includes Partnerships. Occasionally, we have used a Partnership to avoid Minnesota estate tax, not only on lake property, but also on farm real estate and commercial real estate as well. Such an entity will not avoid the Minnesota estate tax.

The question is then raised as to what our clients should do. Should they contact us to transfer the Minnesota real estate back into their sole names, or should they continue to own the Minnesota real estate in the Limited Liability Company or the Partnership?

Before deciding to terminate the entity, the following should be considered:

1. A Limited Liability Company does offer protection if, for example, someone is hurt on the lake property and brings a legal action against the owner.
2. A Minnesota probate is avoided. This is simply because if the real estate is owned either by a Limited Liability Company or a Partnership based in North Dakota, no court proceedings are needed in Minnesota. On the other hand, a Revocable Living Trust or a Transfer on Death Deed can also be used to avoid probate.
3. There is a chance that the legislation, which has been passed, may be challenged in court. It could be challenged on the basis that Minnesota does not have the right to subject an out of state entity to its estate tax. Whether or not such a challenge will be successful is uncertain. However, there certainly is a distinct possibility that such a challenge may be raised.
4. As noted above, the Minnesota gift tax applies to intangible property. However, it apparently does not apply to intangible property if the intangible property is owned by a North Dakota resident. *Therefore, a gift of a Partnership interest or the single*

person Limited Liability Company by a North Dakota resident will not be subjected to Minnesota gift tax. This could be very significant if the Minnesota real estate is substantial in value. However, before a client considers gifting their lake property or other Minnesota real estate to their children, he or she must be aware of the fact that the cost basis in the real estate (the cost basis is the amount the parent paid for the property plus any capital improvements) is then carried over to the child. On the other hand, if the real estate is not gifted, and instead, the parent continues to own the real estate until the parent's death, a new cost basis equal to the date-of-death value will be obtained. Therefore, in the case of appreciated real estate, it is much better to own the property until a person's death to allow the heir to achieve a new cost basis. Of course, cost basis and the resultant savings in capital gains taxes is only important if the real estate is subsequently sold. Furthermore, typically, the Minnesota estate tax will be less than federal and state capital gains taxes.

Another estate planning technique should be considered if the Minnesota estate tax is substantial. Such an entity would be a Family Limited Partnership. This would involve transferring the Minnesota real estate into the partnership and creating voting and non-voting units. The parents could retain, for example, 2% of the value of the real estate, which would be represented by voting units. The 98% would consist of non-voting units which could then be gifted to the children over a period of years using the \$14,000 per year annual exclusion, as well as the one time \$1,000,000 Minnesota gift tax exemption. Hopefully, by the time of the parent's death, only a small portion of the partnership interest will be owned by the parent to be subjected to the Minnesota estate tax.

* * * * *

NEW FMLA RULES



Susan L. Ellison works in the West Fargo office and devotes her practice to labor law, family law, and elder law.

On March 8, 2013, new rules became effective governing how employers handle family leave for employees serving in the military services and for a covered veteran. Specifically, the

changes include military care giver leave for a veteran. The following discusses only a few of the several changes to the Family and Medical Leave Act (FMLA).

The FMLA was enacted in 1993 and entitled eligible employees to take unpaid leave, without risking their jobs, for specified family and medical reasons. The new rules effective March 8, 2013, are a result of 2010 amendments to the FMLA.

The FMLA applies to public agencies (state, local and federal), local educational agencies (schools), and private employers with 50 or more employees. An eligible employee entitled to military leave must have worked for the employer for a total of 12 months, have worked at least 1,250 hours over the preceding 12 months, and worked at a location where at least 50 employees are employed by the employer within 75 miles. A covered employer is not required to offer paid military leave; the FMLA only requires unpaid leave; although, the covered employee may elect, or the employer may require the covered employee, to use accrued paid leave, as determined by the employer's leave policy.

The amendments also increased the length of time an eligible employee may take for rest and recuperation from 5 days to 15 days and created a new "qualifying exigency leave" category for parental care. Further, the definition of "serious injury or illness" was expanded to include preexisting injuries or illnesses aggravated by military duty.

The new rules are meant to protect families of eligible veterans by providing them with the same entitlement to leave under the FMLA as that granted to families of military service members. The new rules also allow additional leave for activities surrounding a service member's deployment.

The bottom line is that employers must allow military families time off to care for their loved ones and reinstate them in their positions following leave.

Covered employers must permit eligible employees to take up to 26 workweeks of leave to care for a current service member with a serious injury or illness. In addition, a newly created "qualifying exigency leave" permits eligible employees to take up to 12 workweeks of leave for "qualifying exigencies" caused by active duty or call to active duty in support of a contingency operation of a family member serving in the National Guard or Reserve.

The new rules affect activities such as caring for an injured service member, as well as time off to find alternative childcare upon deployment of a spouse overseas or to attend a farewell or homecoming for a family member entering or returning from deployment. Covered employees may also be able to spend time with family members on leave from active duty service under the new leave rules.

As a result of these modifications, it is advisable that employers display the new U.S. Department of Labor's revised FMLA forms and FMLA poster in the workplace.

The effective date of the new rules coincides with the 20th anniversary of the signing of the FMLA.

Ohnstad Twichell, P.C. attorneys have over 25 years of experience in the area of labor and employment law. If you have questions or concerns about how the new FMLA rules affect your business or employment, Ohnstad Twichell attorneys will offer their knowledge and expertise to assist you.

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OHNSTAD TWICHELL HIRES NEW ASSOCIATE AT- TORNEY



Jacob L. Geiermann will join Ohnstad Twichell as an associate attorney in September 2013. A native of Bismarck, he attended the University of North Dakota, where he received both his undergraduate degree in Accountancy and his law degree with Honors.

While in law school, Jacob clerked for the Schneider Law Firm and the Schultz, Geiermann, Bergeson, and Guler Law Firm. He also interned for Legislative Council during the 63rd North Dakota Legislative Assembly.

Jacob will work in the West Fargo office. He will maintain a general practice, but will concentrate on the areas of estate planning, trusts, tax, and business law.

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GETTING PERSONAL!!

Lisa R. Kilde joined Ohnstad Twichell in April of 2013 as a Probate Paralegal. She was born and raised in Crookston, Minnesota. Lisa graduated from Minnesota State University

*Changes in
FMLA which apply
to family leave for
employees serving in
the military or for a
covered veteran.*



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OFFICE ADMINISTRATOR & EDITOR
PEG BUCHHOLZ, PLS

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Moorhead in May 2008 with a Bachelor of Science Degree majoring in Paralegal. During her college years she worked at Cass County Abstract and completed her internship there. Lisa previously worked at Serkland Law Firm from September 2008 until April 2013, working primarily in probate, real estate and estate planning. She is an active member of the Red River Valley Paralegal Association and is currently the Newsletter/Website/Public Relations Chairperson. Lisa lives in Dilworth, Minnesota, with her husband, Pat, and two children Brennan (2 ½) and Addison (1). Her hobbies are volleyball, scrapbooking, going to the lake, and reading a good book.

Karla Maertens began her employment as a legal administrative assistant at Ohnstad Twichell in March 2013. A graduate of Shanley High School and Moorhead Area Vocational and Technical Institute, Karla has 23 years experience as a legal secretary including 15 years as a secretary to the Judges at Cass County District Court. She has spent the last 12 years raising her three children. Karla and her husband Joe spend much of their free time with home improvement projects and attending their children's concerts. Karla is a member of the Adult Choir at Nativity Church.

Shannon Kay Rieman joined the Ohnstad Twichell Law Office August 13, 2013, and is working with the Probate and Estate

Planning Department as a Legal Administrative Assistant. She has over 25 years of experience as a Legal Assistant/Paralegal, 17 years of which she spent with the law firm of Solberg, Stewart and Miller. Shannon took six years off from the legal field and worked at Prairie St. John's, St. Sophie's and just recently the Veteran's Administration Hospital in Fargo. She obtained an Associates of Legal Secretarial Science from Miles Community College in Miles City, Montana, in 1983 and is a 2004 graduate of the University of Mary, accelerated program, with a Bachelors degree in Management. When she's not working, she enjoys renovating her home, playing with her cats, reading, crocheting, crafting, walking, and being with friends and family.

* * * * *

DANIEL R. TWICHELL
MEMORIAL SERVICE
SEPTEMBER 14, 2013, 11 A.M.
BLESSED SACRAMENT CHURCH
210 FIFTH AVENUE WEST
WEST FARGO, ND 58078

Daniel Twichell will be greatly missed. Our thoughts and prayers are with Hilda and her family.

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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