

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 CHANGES FOR 2010 AND BEYOND



Delvin J. Losing works in the Casselton office and devotes his practice to real estate, estate planning and probate law.

On December 17, 2010, President Obama signed into law a compromise tax package that freezes income tax rates at their current level. The income tax cuts from the beginning of the decade were set to expire on January 1, 2011, without congressional action. The compromise essentially extended the current income tax rates for two more years for all income tax brackets.

Estate Tax

Prior to the legislation, the estate tax was set to return with a vengeance, with estates above \$1 million taxed at a rate of 55 percent. The compromise changes the exemption to \$5 million with a top rate of 35 percent. In addition, the \$5 million exemption may be used for those that died in 2010, as the estate tax went away in 2010 and carryover basis returned. This means 2010 estates may utilize the \$5 million exemption with a stepped-up tax basis at the date of death.

Keep in mind that Minnesota still has a state level estate tax starting at \$1 million. This affects anyone who has a gross estate of \$1 million or more and either is a resident

of Minnesota or owns any Minnesota property (such as a lake cabin). Nonresidents often assume that their estate will not be taxed because they do not live full-time in Minnesota. This is not the case. A North Dakota resident with a gross estate of more than \$1 million who owns a Minnesota lake cabin is subject to the Minnesota estate tax. The good news is simple planning can avoid a costly tax bill in Minnesota.

Although the higher federal estate tax exemption may demand less tax planning for some, there are still many reasons to complete estate planning. Some may think if they are not subject to estate tax, they do not need a will. This is absolutely not the case. There are many non-tax reasons to complete a will and other estate planning.

Capital Gains

The Bush tax cuts reduced long-term capital gains and qualified dividends to 15 percent at the highest rate. The compromise bill extends this rate for 2011 and 2012, giving a window of time for those who may want to sell farmland or other real estate. The 15 percent rate is historically low, and may not continue past 2012 at a time when land prices are at historically high levels. Attorneys at Ohnstad Twichell help landowners sell their land when the need or desire arises.

Table of Contents

| | |
|--|---|
| Tax Changes for 2010 and Beyond | 1 |
| Oil and Gas: Division Order Basics..... | 2 |
| Profile of Attorney Lukas D. wAndrud | 3 |
| Getting Personal..... | 4 |
| News From Ohnstad Twichell | 4 |



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

*Tax issues
to note.*

Unlike others, the attorneys at Ohnstad Twichell can provide a full range of services from conducting bidding procedures that produce competitive prices to completing the necessary legal work to complete the sale. Those interested in this service may contact Bob Rosenvold, Marshall McCullough, David Wanner or Luke Andrud at the West Fargo office, John Juelson or Ross Keller at the Hillsboro office, or Del Losing at the Casselton office.

Other Changes for 2010

There are a number of tax issues to note for the 2010 year and future years.

- The 2010 health care bill allows children under age 27 to be considered a dependent for purposes of accident and health plans.
- The limit on premium deductibility for long-term care plans is \$1,230 for those more than 50 years old but not more than 60, \$3,290 for those more than 60 years old but not more than 70, and \$4,110 for those more than 70 years old.
- Mileage rates for 2010 were 50 cents per mile for business purposes, 14 cents per mile for charitable purposes, and 16.5 cents per mile for medical or moving purposes. For 2011, mileage rates are 51 cents per mile for business purposes, 14 cents per mile for charitable purposes, and 19 cents per mile for medical or moving purposes.
- The tax compromise includes a one-year 100-percent accelerated deduction under section 179 for property placed in service in 2011.
- Keep in mind that tax legislation can change at any time. If you need help with

estate planning or tax planning, contact John Juelson in the Hillsboro office, Marshall McCullough or Srihari Panjini in the West Fargo office, or Del Losing in the Casselton office.

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Sometime next month a special newsletter will be mailed informing clients on how this will affect your estate planning.

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OIL AND GAS: DIVISION ORDER BASICS



Sara K. Sorenson works in the West Fargo office and her practice includes oil, wind, and gas litigation.

After a well begins production, royalty interest owners should expect to receive a division order from the operator of the well. The division order sets out the percentage interest that the royalty interest owner has in the well, meaning the percentage of proceeds the royal interest owner will receive from the well's production. Generally, the percentage is calculated by the operator of the well based upon: (1) the royalty percentage set forth in the lease governing the royalty interest owner; and (2) the number of mineral acres attributable to the royalty interest owner as that number bears to the mineral acres attributable to all royalty interest owners in the well. For example, if the royalty interest owner is governed by a lease granting a 3/16 (0.1875) royalty and the owner has an interest in 10 mineral acres of the 1,280 acres that share in the well's production,

the royalty interest owner's interest in the well would generally be calculated as follows:

$$.01875 \text{ (royalty interest percentage)} \times 10 \text{ acres} / 1280 \text{ acres} = .00014648$$

This number is typically referred to on the division order as the "decimal interest." Thus, the division order will ask the royalty interest owner to certify that this is the owner's appropriate decimal interest in the proceeds or production of the well because the operator uses the division order in an attempt to limit its own liability for improper payment of royalties. The operator may also attempt to insert additional terms or conditions into the division order that were not present in the underlying lease. For example, the division order may provide that the royalty interest owner agrees to certain deductions from the royalty payment.

Under North Dakota law, royalty payments may not be withheld because a royalty interest owner has not signed a division order. Therefore, it is generally advisable that North Dakota royalty interest owners SHOULD NOT sign division orders. Accompanying a division order is generally a request for the interest owner to provide his or her taxpayer identification number. The royalty interest owner SHOULD provide this information to the operator; otherwise, the operator will generally withhold a certain percentage (generally 28%) from the royalty payments for tax purposes.

So, instead of returning a signed division order to the operator, the royalty interest owner should send a written statement to the operator indicating: (1) his or her name; (2) the well description (as set forth on the division order); (3) that he or she has an ownership interest in the described well; and (4) his or her tax identification number. The

royalty interest owner should keep a copy of this statement for his or her records.

Finally, the mineral interest owner SHOULD attempt to verify that the calculated percentage set forth in the division order is correct because even if no division order is signed, the operator will pay the interest owner based upon the percentage set forth in the division order.

Mike Stefonowicz, Sara Sorenson, and Lukas Andrud are available to assist you if you have any questions regarding a division order or any other oil and gas issues.

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Robert Hoy, Sara Sorenson, Erin Muldoon Haug, and Lukas Andrud attended the Oil & Gas Law Short Course in Houston, Texas, on October 18-22, 2010. This week-long course presented the most recent developments in oil and gas law, leasing, regulations, and practice.

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**PROFILE OF ATTORNEY
LUKAS D. ANDRUD**



Lukas D. Andrud works in the West Fargo office and devotes his practice to real estate law, water law, oil and gas law, and wind law.

Lukas D. Andrud has been with Ohnstad Twichell since October 2008, when he joined the firm as an associate attorney. He is a native of the Jamestown area and earned his Bachelor of Arts from Concordia College, Moorhead, Minnesota. In 2007, he received his law degree from the University of Kansas School of Law.

*How to
determine
royalty interests.*



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Before joining Ohnstad Twichell, Lukas served as a law clerk for the Seventh Judicial District of Kansas, and then he worked as a landman involved in oil and gas leasing in western North Dakota.

Lukas practices in the West Fargo office. He maintains a general practice of law, but concentrates his practice in the areas of water law, real estate law, municipal law and oil and gas law.

Sara Sorenson and Lukas Andrud will be presenting an Oil and Gas Law Session at the KMOT Ag Expo in Minot from 1-2 p.m., on Wednesday, January 26, 2011.

NEWS FROM OHNSTAD TWICHELL!!

Sean M. Fredricks was awarded the Steamboat Award during the

47th Annual Joint North Dakota Water Convention and Irrigation Expo in Bismarck in December. He was recognized by the Red River Joint Water Resource Board for his distinguished service in management of water resources in the Red River Watershed of North Dakota. Sean represents several water resource districts, rural water systems, political subdivisions, and other water entities. The Steamboat Award exemplifies the pioneering spirit of the settlers who traveled the Red River by steamboat.

In October 2010, Mike Stefonowicz was honored at the annual convention of the North Dakota Association of Counties. Mike was placed in the organization's Hall of Honor. According to the program, "Michael W. Stefonowicz personified 'Law in the Vast Lane,' which was the title of an

article in the American Bar Association Journal in 2001 that featured him."

GETTING PERSONAL!!

Jackie Pratschner began working for Ohnstad Twichell in October 2010, as a Legal Administrative Assistant. She previously worked at Bank of the West, Microsoft and ACN Inc. She graduated in 2007 from MSUM with a degree in English, an emphasis on literature, and a minor in mass communications. When not filling her free time with reading, writing, hiking, amateur photography and scrapbooking, Jackie can typically be found spending time with friends and family.

<http://www.legis.nd.gov>
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