

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, employment law, family law, elder law, municipal finance and bonding, taxation, personal injury, criminal, negligence, commercial, insurance defense, water rights and automobile law.

## BEWARE OF MINNESOTA ESTATE TAX ON LAKE PROPERTY



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

The Economic Growth and Tax Relief Reconciliation Act of 2001 dramatically changed the federal estate tax law. Although the changes are scheduled to expire on December 31, 2010, as of this writing, it appears the current \$3,500,000 federal estate tax exemption will remain, at least through 2010. Minnesota, however, did not adopt the estate tax changes in the 2001 Act. Instead, the state estate tax exemption for Minnesota residents remains at \$1,000,000. In effect, this means a Minnesota resident who dies without a surviving spouse can transfer up to \$3,500,000 free of any federal estate tax but only up to \$1,000,000 free of any Minnesota estate tax. If a person is a North Dakota resident, because there is no North Dakota state estate tax, the only estate tax a North Dakota resident has to worry about is the federal estate tax.

However, if a North Dakota resident owns real estate in Minnesota, there may be a significant amount of Minnesota estate tax payable on that real estate. This is because Minnesota has the ability to subject Minnesota real estate to Minnesota estate tax regardless of the state of residency of the owner. This has come as quite a surprise to many North Dakota residents who own lake property in Minnesota.

Furthermore, just because a North Dakota resident's lake property may be worth less than \$1,000,000, it cannot be assumed that there will be no Minnesota estate tax. What Minnesota has done is to allow an out-of-state resident owning Minnesota real estate only a portion of the \$1,000,000 state estate tax exemption. More specifically, the amount of Minnesota estate tax exemption allowed for a North Dakota resident who owns Minnesota lake property is the ratio of the value of the Minnesota lake property bears towards the total value of the North Dakota resident's estate.

Thus, for example, if a North Dakota resident owns Minnesota lake property worth \$500,000, and the North Dakota resident dies with a total estate of \$2,000,000, only one-fourth, or \$250,000, of the \$1,000,000 Minnesota estate tax exemption is available. Thus, a \$500,000 Minnesota lake property, under this example, would result in a \$250,000 taxable estate. To add to the problem is the fact that the Minnesota estate tax is very regressive. The actual Minnesota estate tax due would be \$24,900. As another example, if a North Dakota resident dies owning Minnesota lake property valued at \$900,000 and had a \$3,000,000 gross estate, the Minnesota estate tax would be \$54,600.

Under current Minnesota Law, there is a simple way to completely avoid this tax. It involves creating a one person Limited Liability Company by filing Articles of Organization at the Secretary of State's Office in Bismarck. Thereafter, the Minnesota lake property would be deeded into the Limited Liability Company. The initial filing is \$135.00 and each year there is a \$10.00 reporting fee. A small price to pay for the elimination of the Minnesota estate tax.

\* \* \* \* \*

## DEATH AND TAXES MAY BE CERTAIN, BUT FEDERAL ESTATE TAX LEGISLATION IS NOT



**John A. Juelson** works in the Hillsboro and Page offices of Ohnstad Twichell and devotes his practice to estate planning, probate, real estate, and taxation.



**David L. Miller** works in the West Fargo office where he is a probate paralegal.

The provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 that trigger the repeal of the estate tax for 2010 make

## Table of Contents

Beware of Minnesota Estate Tax on Lake Property.....	1
Death and Taxes May Be Certain, But Federal Estate Tax Legislation is Not.....	1-2
Business Corner!.....	3
Where Should Wills Be Kept?.....	3
Responding to the H1N1 in the Workplace .....	3-4
News From Ohnstad Twichell .....	4



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

it likely that Congress will enact new legislation relating to the estate tax by the end of the year; however, the uncertainty as to the form and substance of that legislation will make estate planning more challenging in the near future.

In 2001, Congress passed comprehensive legislation entitled the Economic Growth and Tax Relief Reconciliation Act (EGTRRA). With regard to the estate tax, the EGTRRA provided for a gradual increase in the unified credit from \$1,000,000 in 2002 and 2003 to \$3,500,000 in 2009. At the same time, EGTRRA provided for a gradual decrease in the maximum estate tax rate from 49 percent in 2003 to 45 percent in years 2007-2009. Thus, under current law estates under \$3.5 million would pay no estate tax, while estates in excess of that amount would pay a maximum rate of 45 percent. These provisions, however, are set to expire at the end of 2009.

EGTRRA further provides that the estate tax will be repealed for the year 2010. Thereafter, in 2011, the unified credit reverts to \$1,000,000, with a maximum estate tax rate of 55 percent. As these dramatic changes in the estate tax law will go into effect absent Congressional action, the general consensus among estate planning practitioners is that Congress will act before the end of the year by passing some form of legislation relating to the estate tax.

While some form of estate tax legislation is probable this year, the ultimate content of that legislation is uncertain. The budget submitted to Congress by the Obama Administration earlier this year contained a proposal that would permanently lock in the current 2009 unified credit (\$3.5 million) and estate tax rate (45 percent). In April of this year, both the House and the Senate passed non-binding concurrent budget resolutions that proposed extending the law as in effect in 2009 for both the estate and gift tax. Actual legislation that has been introduced in both houses of Congress range from bills proposing the complete repeal of the estate tax to bills proposing the unified credit be set anywhere from \$2 million to \$5 million.

While complete repeal of the estate tax is not a likely outcome, a review of the notable bills currently pending before Congress indicates fairly consistent proposals for establishing the unified credit at \$3.5 million and the estate tax rate at 45 percent. There are, of course, variations in the legislation. One bill proposes a 15 percent estate tax rate on estates up to \$25 million and a 30 percent tax rate on estates in excess of \$25 million. Another bill proposes the 45 percent rate on estates up to \$5 million, a 50 percent rate for estates between \$5 and \$10 million, and a 55 percent rate for estates in excess of \$10 million.

One interesting proposal that is contained in some of the legislation involves portability of the exemption amount to a surviving spouse. Generally speaking, these bills provide that the applicable exemption amount shall be the basic exemption plus, in the case of a surviving spouse, the deceased spouse's unused exemption amount. In practical terms, if the exclusion amount remains at \$3.5 million, and the first spouse to die only uses \$2 million of his or her exclusion, then the unused exclusion amount of \$1.5 million would be added to the surviving spouse's \$3.5 million exclusion. This would allow the surviving spouse to pass \$5 million to his or her heirs estate tax free. It should be noted that the Obama budget proposal mentioned previously does not have a portability provision. Nevertheless, the concept of portability appears to be popular in Congress, and some commentators have suggested that a portability provision has a 50-50 opportunity of being enacted into law.

The most recent legislation to date regarding the federal estate tax was introduced on October 22, 2009, in the House of Representatives as H.R. 3905 and entitled "Estate Tax Relief Act of 2009." This bill proposes to gradually increase the unified credit over the next 10 years from \$3,650,000 in 2010 to \$5,000,000 in 2019. In addition, the bill proposes to gradually reduce the maximum estate tax rate over the same time period from 44 percent in 2010 to 35 percent in 2019. It also proposes to terminate the deduction for state death taxes over the same 10-year period, until the deduction is completely phased out in 2019. While such a provision, if enacted into law, would have little effect on North Dakota estates, the elimination of the state death tax deduction would have ramifications for Minnesota estates, as Minnesota does have a state estate tax. There is not a portability provision in H.R. 3905.

While uncertainty surrounds the form of estate tax legislation, there has been definite extensions of the annual gift tax exclusion amount and the special use valuation deduction. You should be aware that the amount you may gift to any one person gift tax free will remain at \$13,000 for 2010. (Rev. Proc. 2009-50(.30)). In addition, the special use valuation deduction will remain at \$1,000,000 for the next year. (Rev. Proc. 2009-50(.29)).

The current uncertainty surrounding what form federal estate tax legislation will take this year raises some challenges for estate planning in the near future. Ohnstad Twichell is closely monitoring this situation on your behalf, and, if federal estate tax legislation is enacted into law this year, we will inform you as to the particulars of that legislation and how it may affect estate planning for the upcoming year.

As we go to press, on December 3, 2009, the House of Representatives passed, by a vote of 225-200, H.R. 4154 entitled "Permanent Estate Tax Relief for Families, Farmers, and Small Businesses Act of 2009." This bill, introduced by Rep. Earl Pomeroy (D-ND), provides for a \$3.5 million estate tax exclusion and freezes the maximum estate and gift tax rate at 45% for estates of decedents dying after December 31, 2009. The bill will now proceed to the Senate.

### BUSINESS CORNER!



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



*Sara K. Sorenson works in the West Fargo office and devotes her practice to labor/employment law and litigation.*

### WHERE SHOULD WILLS BE KEPT?

Some of our clients request that we keep the original copy of their Last Will and Testaments. When that is done, upon learning of the death of the person for whom we have the original Will, we promptly notify the Personal Representative of the existence of the Will.

However, other clients prefer to have the original Last Will and Testament in their possession. If this is the case, it is our recommendation that the original Last Will and Testament be placed in your safety deposit box. If the safety deposit box is registered in two names, no court order is needed by the survivor in order to open the safety deposit box in the event of your death. An officer of the bank, however, must be present when the safety deposit box is opened in order to inventory its contents.

If you do not have a safety deposit box, the original Last Will and Testament should be placed in a fireproof safe in your home or at your place of business. The advantage of doing this is that the Will is more accessible. However, if you do not have a fireproof safe, or if your important papers are stored in a variety of places, you are increasing the chances of the Last Will and Testament being lost, misplaced or destroyed.

\*\*\*\*\*

### RESPONDING TO H1N1 IN THE WORKPLACE

The following includes information and tips published by the Department of Labor, Centers for Disease Control (CDC) and Occupational Safety & Health Administration (OSHA) regarding the H1N1 flu season.

The best way to reduce your risk of exposure is to use basic hygiene precautions and avoid close contact with ill people. Because flu viruses can change, the 2009 H1N1 virus may cause a threat to you and your workplace. It is wise to plan to use additional workplace precautions, like social distancing (avoiding crowds, teleworking, etc.), if disease severity increases.

The CDC recommends that workers who have a fever or chills and a cough or sore throat to stay at home until 24 hours after their fever ends (defined as 100 degrees Fahrenheit [37.8 degrees Celsius]), without the use of medication. Not everyone who has 2009 H1N1 flu will have a fever. Other symptoms could include a runny nose, body aches, headache, tiredness, diarrhea, or vomiting.

Employers should educate and encourage workers to reduce the risks of spreading H1N1 by adhering to the following tips:

- Wash your hands frequently with soap and water for 20 seconds; use an alcohol-based hand rub if soap and water are not available.
- Avoid touching your nose, mouth and eyes.
- Cover your coughs and sneezes with a tissue, or cough and sneeze into your upper sleeve. Throw tissues into a "no-touch" wastebasket.
- Clean your hands after coughing, sneezing, or blowing your nose
- Keep frequently touched common surfaces (for example, telephones, computer equipment, etc.) clean.
- Try not to use a coworker's phone, desk, office, computer, or other work tools and equipment. If you must use a coworker's equipment, consider cleaning it first with a disinfectant.
- Stay in shape. Eat a healthy diet. Get plenty of rest, exercise and relaxation.

If the severity of 2009 H1N1 increases, employers should plan to use other control measures to reduce close contact among coworkers and others in the workplace. Not all of the following options can be used in every workplace or for every job task. The controls best suited for your workplace will depend on how the workplace is set up and what the job task involves. Here are examples of workplace controls:

*H1N1 in the Workplace*



# Ohnstad Twichell attorneys

Your life. Your law firm.

901 13th Avenue East  
West Fargo, ND 58078

PRSR STD  
U.S. Postage  
**PAID**  
Fargo, ND 58102  
Permit No. 1159

- LUKAS D. ANDRUD
- DUANE R. BREITLING, RETIRED
- SUSAN L. ELLISON
- SEAN M. FREDRICKS
- ERIN A. MULDOON HAUG
- ROBERT G. HOY
- JOHN A. JUELSON
- ROSS V. KELLER
- MARSHALL W. McCULLOUGH
- CHRISTOPHER M. McSHANE
- MICHAEL D. NELSON
- BRIAN D. NEUGEBAUER
- SRIHARI S. PANJINI
- ROBERT E. ROSENVOLD
- JOHN T. SHOCKLEY
- SARA K. SORENSON
- MICHEL W. STEFONOWICZ
- DANIEL R. TWICHELL, RETIRED
- S. LEE VINJE (1943-2009)
- DAVID L. WANNER

## ADDRESS SERVICE REQUESTED

OFFICE ADMINISTRATOR & EDITOR  
PEG BUCHHOLZ, PLS

- Installing sneeze guards, and plexiglas or other barriers between you, coworkers, clients and the general public.
- Setting up work and service areas to increase the distance between you, coworkers and clients.
- Using the Internet, phone and drive-thru windows more for customer service.
- Avoiding close contact (within 6 feet) with coworkers and clients.
- Minimizing face-to-face meetings; using virtual/remote meetings, emails, phones and text messaging. If meetings are unavoidable, minimizing close contact (within 6 feet) with others.
- Limiting visitors to minimize contact between workers and the general public.
- Discouraging hand shaking.
- Be ready for school and daycare closures; make backup child care plans.

For more information, see OSHA's Quick Card on *How to protect Yourself in the Workplace during a Pandemic* and CDC's *Guidance for Business and Employers to Plan and Respond to the 2009-2010 Influenza Season.*

\* \* \* \* \*

### NEWS FROM OHNSTAD TWICHELL!!

Abby R. Pitsenbarger began working at Ohnstad Twichell, P.C., in January 2009, as an intern in the probate practice group. She was hired as a probate paralegal in May 2009. Abby was a 2003 graduate of Minneapolis Southwest High School. In 2007, she graduated from Concordia College, Moorhead, earning a Bachelor of Arts degree with a major in history. She went on to earn a Bachelor of Science degree with a paralegal major in 2009 from Minnesota State University Moorhead.

She is a member of the Red River Valley Paralegal Association.

Abby currently resides in West Fargo and enjoys running, yoga and spending time at the lakes.

#### News from the Department of Labor

An update of the U.S. Department of Labor's *Employment Law Guide* is now available online. This publication outlines the major employment laws administered by the department and helps the public understand many of the laws affecting the workplace. For instance, small businesses may find assistance in the *Guide* to develop wage, benefit, safety and health, and nondiscrimination policies. The *Guide* also provides employees and employee representatives with information about worker rights and responsibilities under federal employment laws.

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.

901 13th Avenue East  
P.O. Box 458  
West Fargo, ND 58078  
(701) 282-3249

510 West Caledonia Ave.  
P.O. Box 220  
Hillsboro, ND 58045  
(701) 636-5700

EEE Building  
P.O. Box 65  
Page, ND 58064  
(701) 668-2318