

S & G Law Update

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(618) 281-7626

www.sg-attorneys.com

INCOME TAX UPDATE

Crystal Ball Thoughts – IRA's

Taxes are only part of the estate planning picture. We want to write your estate plan to achieve your plan for transfers of your property at death. Paying some attention to income taxes may increase the amount available to be transferred.

Stretch IRA's can defer income taxation to IRA beneficiaries for years. President Obama's 2013 "green book" proposes to limit the IRA "stretch" option to spouses by requiring that non-spouse beneficiaries must take a complete distribution within 5 years from date of death of the IRA owner. If this provision is enacted into law, you are on notice that the beneficiary designations to take advantage of the "see-through" provisions and subaccounts, etc., are established by Congress and may be removed by Congress. How do you hedge against tax law changes for IRA's?

We recommend that you hedge against changes in income tax laws designed to increase government income. When investing, you will want to work with your adviser with respect to alternative income tax strategies, and put your retirement eggs in different baskets while you accumulate wealth. Ask your

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New Laws

Here are a few new laws that may affect you or your family:

Cell Phones

The ban on cell phone use in commercial vehicles and in construction zones has now become a complete ban on hand-held cell phones while driving. There is an exception for "hands-free" or "voice-operated" operation. What this means isn't entirely clear, but there is a suggestion in the statute that Bluetooth headsets are OK.

Other exceptions include the following:

- 9-1-1 calls
- vehicle parked on the shoulder of the roadway
- vehicle stopped due to obstruction of normal traffic
- a device for which a single button will initiate or terminate voice communication (?)
- a "fleet management system"

This drastic change in the law takes effect on July 20.

Auto Liability Insurance

If you keep only enough liability insurance to be legal, your insurance bill is probably going up. The required minimum liability insurance for drivers is raised as follows: Bodily injury or death to any one person: raised from \$20,000 to \$25,000; bodily injury or death to more than one person: raised from \$40,000 to \$50,000; and injury or destruction of property of others is raised from \$15,000 to \$20,000. However, the increase won't take effect until January 2015.

Juvenile Offenses

The legislature raised the age of jurisdiction for juvenile court from 17 to 18 for most felony offenses. This matches the age for most misdemeanor offenses that was raised a few years ago.

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Conceal-Carry

investment adviser to consider and calculate the effect of an increase in taxable income in retirement over that required by the minimum distribution rules. Alternative asset strategies to avoid income tax, such as, a combination of taxable retirement accounts, Roth IRA's, municipal bonds, life insurance and assets that may be eligible for a step-up in basis could also hedge against income tax law changes.

Think about diversifying investment strategies to save income taxes. These strategies should be considered before age 60-70, even starting when our young clients (and our children) receive their first full time job and are able to start saving. Trustees are also encouraged to diversify investments under our prudent investor rules.

Retirement Accounts as an Estate Planning Strategy

Estate planning includes planning for distribution of assets remaining in retirement accounts. Estate planning for retirement accounts is commonly done by naming primary and alternate beneficiaries. When those beneficiaries do not include a spouse, named beneficiaries will receive the retirement account distributions in the form of an inherited IRA.

If beneficiary designations are not made to individual persons, income taxes due from the accounts must be paid based on distributions over five or fewer years. If beneficiary designations are made to individual persons, income can be distributed over the life expectancy of the beneficiary in an inherited IRA. Special rules, that require careful drafting of beneficiary designations, will apply if there is more than one beneficiary.

Another problem with retirement accounts is the penalty of 50% if a required distribution is not made. Care must be taken each year to ensure distributions are made in the required amount to avoid this substantial tax penalty.

Roth IRA's offer the greatest opportunity for income tax deferral because earnings on a Roth are not subject to income taxation, and because mandatory distributions required for IRA's and 401k retirement accounts are not required for Roth IRA's.

How do you get assets into a Roth IRA? An account owner can make annual deposits of \$5,000 per year. If the owner is age 50, or older, \$6,500 per year can be deposited. The rules of trustee-to-trustee IRA and 401k account rollovers into Roth IRA's will be the subject for another newsletter.

Subject to some restrictions, deposits made into a Roth account can be withdrawn before age 59½ without a 10% penalty. The income tax effect is that, like life insurance and appreciated property, the Roth IRA account's basis and increase in value can be transferred without income taxation on the date of death of the account owner. An inherited Roth IRA will require an individual (not an estate, charity, trust or other entity) beneficiary to take annual distributions over the life expectancy of the beneficiary.

To best achieve the use of the inherited IRA, each beneficiary and the share they take must be listed in the beneficiary designation. At your death, the account beneficiary will elect to roll over the account, via a direct trustee-to-trustee transfer, to an inherited IRA properly titled under the original account owner's name (e.g. Parent Jones Inherited IRA, Dec'd, FBO Child Jones) as required by the Internal Revenue Code. The forms provided by the bank, broker, or asset manager often are inadequate to include all the information to obtain maximum deferral of income taxes. We recommend that an attorney review the beneficiary designation forms to ensure proper drafting of the beneficiary designations.

Another concern is whether a beneficiary's creditors can garnish or make an immediate bankruptcy claim to the inherited IRA assets. Illinois and bankruptcy law will exempt a retirement account owner's assets from creditors' claims. However, the inherited IRA beneficiary generally is not afforded this protection under the theory that the inherited IRA beneficiary did not "earn" the benefit and asset protection is only meant for the owner of the account in his or her retirement. Although some courts in the United States have exempted inherited IRA's from creditor claims, there is no guarantee that Illinois law will be held to exempt this asset from a beneficiary's creditors.

A solution to assist account beneficiaries with creditor claims is to use a properly-drafted, irrevocable IRA beneficiary trust with spendthrift provisions. This trustee could be given discretion on how and when the beneficiary receives distributions. We recommend that an attorney draft the IRA beneficiary trust provisions that are part of your beneficiary designation. Banks, brokers, and investment managers will attempt to use the format of a "trusteed IRA." The trustee IRA format generally will not give complete protection from creditors or meet other unique estate planning goals.

We want to remind you that we do not have the ability to predict changes in the tax code. Therefore, it is necessary to make periodic reviews of wills, life insurance beneficiary designations, plan beneficiary designations, and other financial asset documents.

Condemnation: No Place for “DIY”

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A friendly person from the Illinois Department of Transportation (IDOT) knocks on your door. A new highway project will require a portion of your property, and the person from IDOT wants to talk to you about a “fair” price for that portion of the land. They tell you that the law requires the State to make a “good-faith” offer before they can file suit to take your property away from you. So, you have nothing to worry about, right? You can handle this on your own, right?

Eminent domain (condemnation) actions are no place to “do it yourself.” In our experience, the so-called “good faith” offer is based on the lowest appraisal the State can get for your property. In fact, one such “good faith” offer was actually only a fraction of what the original appraisal called for -- the IDOT review appraiser cut the offer in half, and the only reason he could give for the cut, when questioned about it, was that the original offer was, “too [darn] much.” So much for the State playing “fair,” right?

The lawyers of Stumpf & Gutknecht have years of experience in eminent domain law, and have represented both property owners and condemning authorities. They know the tricks the State will play, and they have developed strategies to negotiate the best deal on your behalf. They also have experience taking such cases to trial when the State refuses to negotiate fairly. If the State is knocking on your door, call us for an appointment at 281-7626. ■

This Newsletter

This newsletter is provided as a service to our clients and friends. It is intended to provide timely general information of interest, but should not be considered a substitute for legal advice. Be sure to consult with an attorney before taking action based on the contents.

We welcome comments and questions. We also welcome topic suggestions for future newsletters.

Finally, please be advised that this may constitute advertising material as defined under the Illinois Rule of Professional Conduct.



House Bill 183 authorizes Illinois residents to carry a concealed weapon in public after licensing and 16 hours of training. Concealed weapons are still banned in some public places, such as on public transit, public gatherings, schools, amusement parks, parks and playgrounds, universities and colleges, state and federal buildings, sporting events, and residential mental-health facilities. Concealed weapons are also banned from any establishment in which more than half of its sales come from alcohol. But at many privately-owned places, such as grocery stores and shopping malls, the decision will be up to business operators and property owners.

The new law defines "concealed" as carrying a firearm in a manner that is "concealed or mostly concealed from public view." What, exactly, "mostly" means remains unclear. Applicants can be rejected for two or more convictions related to driving under the influence of alcohol or drugs, or if they underwent residential or court-ordered treatment for substance abuse in the last five years. Also, police and prosecutors can object to a permit on several grounds if they believe a person is a danger to themselves or others. In addition to mental health issues, objections can be filed if a person has been arrested five or more times in the previous seven years, or three or more times on gang-related charges.

The new law preempts any ordinance by a unit of local government that is inconsistent on the regulation, licensing, possession, registration and transportation of handguns and their ammunition. Any ordinance regulating the possession or ownership of assault weapons that is inconsistent with the new law is invalid unless the ordinance is enacted on or within 10 days of the effective date of the new law, which is July 9.

However, don't expect any conceal-carry permits to issue any time, soon. Illinois State Police officials have 180 days to create an application process. Once they begin accepting applications, it will take them about 90 days to process and screen the first round of applications and begin issuing permits. They will have to run background checks, including fingerprint searches, on all applicants. One of the most complicated tasks will be searching for evidence of mental illness. County and state mental health agencies, as well as courts, will report mental health issues to the state.

Until permits start to issue, the ban on concealed carry will remain “officially” in effect. While some counties have indicated that they may not prosecute anyone with a valid FOID card before permits start to issue, we do not recommend taking a chance. ■

Medicaid Update

What happens if you need nursing care and want Medicaid assistance? The State of Illinois is heavily overburdened with debt, and the state Medicaid program appears to be a major component of that debt problem. Therefore, state legislators appear to have swung the pendulum full-tilt toward the identification of as many assets as possible for recovery by the state of all available funds.

Right now, it appears we are in a Brave New World with regard to Medicaid planning and the conservation of assets. Nursing homes are limiting spaces for Medicaid patients. Long term care insurance underwriting changes are making policies more expensive. Only time and the promulgation of detailed rules and regulation over the next months by the state will provide us with greater clarity. Gifts and other transfers for less than full value made 60 months before Medicaid application may disqualify you from Medicaid benefits.

There are strategies to ease the Medicaid burden. What assets are not required to be applied for nursing care and are exempt from the spend down rules? Subject to rules and post-death liens, you will not be required, in 2013, to sell the following assets:

Your residence, if it has a value of \$525,000, or less.

Your motor vehicle, if it has a value of \$4,500, or less.

Your income-producing property, if it has a value of \$6,000, or less.

Your investment assets, if valued at \$109,560, or less, assuming a spouse in care. The Department of Human Service's online manual states that the spousal asset exemption can be increased if it is demonstrated that assets will not yield \$2,700-2,800 in monthly income.

In 2013, you can obtain a pre-arranged funeral contract if it has a value of \$6,500, or less. A separate, pre-arranged burial space purchase and additions to or improvements on a burial space, such as headstones, markers, plaques and arrangements for opening and closing the gravesite, are exempt from spend-down rules and, at this point in time, do not have a limit.

Your monthly income, if it is \$2,739.22, or less.

You can keep general assets (if everything else is sold), if they have a value of \$2,000, or less, and your personal items.

If you desire, we can furnish you more information about Medicaid rules. Give us a call. ■

Stumpf & Gutknecht, P.C.
222 South Main Street, P. O. Box 228
Columbia, IL 62236

(618) 281-7626

ADDRESS CORRECTION REQUESTED



