



SANTEN & HUGHES

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The Center at 600 Vine

ABOUT US

As we enter our 51st year of practice, we cannot help but look back at the tumultuous events of 2008. While the downturn in the stock market took a bite out of everyone's 401(k) plans and other equity investments, the financial performances of many of the small and medium size businesses we represent were sound. We certainly hope that 2009 brings a better economy for all of us. As a firm, our attorneys continue to be busy, and we appreciate the trust and loyalty of our clients.

The articles in this newsletter are forward-looking. They deal with estate planning in a down economy, some of the likely tax policies of the new Administration, and proposed employment legislation. We anticipate that the economic environment of the New Year could spawn mergers and acquisitions, presenting opportunities for many of our clients to grow. We are here to help, whatever your legal needs.

With all of this in mind, we wish you much success and personal happiness in this New Year!

RECENT NEWS:

IRS Mileage Reimbursement Rates

Based upon IRS Rulings, there are two methods for deducting automobile expenses for business purposes. You may deduct either the actual costs of operating a vehicle for business purposes, or use the standard mileage rate. For those using actual expenses, the high price of fuel will obviously increase taxable deductions.

The following are the allowable mileage reimbursement rates effective as of January 1, 2009:

- Business—\$.55 per mile
- Medical—\$.24 per mile
- Moving—\$.24 per mile
- Charitable—\$.14 per mile

Please note that only the charitable rate is the same as last year's rate in effect. All others have dropped due to the recent drop in fuel prices.

RECOGNITIONS

Santen & Hughes was again recognized in The Best Lawyers in Southwest Ohio, Best Lawyers in America and the Cincinnati Business Courier

John D. Holschuh Jr., a Managing Partner who heads our litigation department, was included in The Best Lawyers in Southwest Ohio and named in Best Lawyers in America, which appeared in a recent supplement to the Cincinnati Business Courier. John was also named a 2009 Ohio Super Lawyer and was voted in the top 50 lawyers in Cincinnati, and top 100 in the State of Ohio by Ohio Super Lawyers .

C. Gregory Schmidt, a partner who specializes in the general corporate area, with a special interest in real estate law, construction law, acquisitions and commercial litigation, has been recognized as a 2009 Ohio Super Lawyer.

William A. DeCenso, a partner who specializes in the domestic relations and business areas, will once again be listed in The Best Lawyers in America, which appeared in a recent supplement to the Cincinnati Business Courier. He was also included in the Best Lawyers in Southwest Ohio and named a 2009 Ohio Super Lawyer.

Katrina Z. Farley, a partner who specializes in the estate planning area, worked together with Jim Chalfie in the UBS Wealth Management Education Program. She was recently elected to serve as the Treasurer of the Estate Planning Council of Northern Kentucky. She was named a 2009 Ohio Super Lawyer.

Sarah Tankersley, a partner who specializes in medical malpractice cases, has been appointed by the Board of Trustees of the Cincinnati Bar Association to the Certified Grievance Committee. This committee investigates claims by the public of improper or unethical conduct by attorneys in the Cincinnati area. Sarah was named a 2009 Ohio Rising Star.

William J. Liss, a partner who specializes in general business law, taxation, and estate planning, was named a 2009 Ohio Rising Star.

James J. Chalfie was appointed last fall by the President of the Ohio State Bar Association (“OSBA”) to its Estate Planning, Trust and Probate Law Section Board of Governors, which has members from throughout Ohio. Jim was also included in The Best Lawyers in Southwest Ohio and named in Best Lawyers in America, which appeared in a recent supplement to the Cincinnati Business Courier.

J. Robert Linneman, a partner who specializes in general business, real estate and transactions, was named a 2009 Ohio Rising Star.

Andrew W. Weisenberger, an associate who specializes in the probate, estate planning, and tax areas, was named a 2009 Ohio Rising Star

Brandon S. Waddle, an associate of the office recently passed the State of Kentucky Bar Exam, and as of October 2008 has been licensed to practice law in Kentucky.

** Lawyers recognized as “Ohio Super Lawyers” have been included in a legal publication known as “Ohio Super Lawyers” (2009). Used properly, the term is not descriptive, comparative or self-aggrandizing.*

LEGAL PERSPECTIVES

The Employee Free Choice Act

By: Edward S. Dorsey, Esq.



In the new year, Congress is likely to consider major changes in Federal labor laws known as the Employee Free Choice Act (“EFCA”), which will make it much easier for unions to organize employees. Since 1935, the procedure for organizing has been for the union to get at least 30% of the employees to sign authorization cards. The union would present these cards to the NLRB, and about 45 days later the NLRB would conduct a secret ballot election among the employees. The union would become the bargaining representative only if a majority of the employees voted for the union in the secret ballot election.

In these campaigns, employers would often be unaware that the union was soliciting their employees to sign authorization cards. The employer would find out about the organizing campaign only when the NLRB notified the employer that an election was going to be held. The employer would then have about 45 days to explain to their employees why going union was unnecessary or unwise. Unions are pushing for EFCA because they claim that employers use the 45 day period not so much to educate or inform employees, but to intimidate employees from voting for union representation.

EFCA will shorten the two step procedure described above into a one step procedure. The one step is for the union to obtain signed authorizations from a majority of the employees. Once the union does this, it becomes the bargaining representative of the employees. The secret ballot election will be eliminated, as will the 45 day period before a secret ballot election. This will make it substantially easier for unions to organize employees that presently operate without unions.

EFCA includes another major change. In the past, any union proposal in collective bargaining had to be agreed-to by the employer before it became part of the collective bargaining agreement. By threatening to strike, the union could persuade or threaten the employer into agreeing to proposals to which the employer might not otherwise agree. In making its decisions about bargaining, the employer had to balance the threat of a strike against the burden of wage increases, restrictive work rules, or the like.

That changes under EFCA. Under EFCA the employer would have to bargain with the union for a month, the same as it did in the past. If an agreement has not been reached within that time, the terms of the contract – including wages and benefits -- will be decided by a neutral arbitrator. What criteria such neutral arbitrators will use to make those determinations are not yet clear.

EFCA has not yet become law. But if it does, unions are likely to substantially increase their efforts to organize employees that presently do not have union representation. Employers that want to remain non-union will have to become proactive about doing so. There are a number of steps that an employer can take, including supervisor training, employee education, and diffusing the types of situations that could fuel an organizing campaign. To be effective, these steps must be taken well in advance of any organizing campaign. In many instances, these measures can be a significant benefit to both employers and employees.

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LEGAL PERSPECTIVES

What Will the New President Change About the Current Tax System?

By: Andrew W. Weisenberger, Esq.

After the election of a new President, an issue that is always on the minds of the American public is: “What will the new President change about the current tax system?” This past presidential election is no exception. While no one has a “crystal ball” to see what changes may actually be made to the federal tax system, the following are a few of President Obama’s main tax proposals.



- The federal income tax rates for individuals in the 10%, 15%, 25% and 28% tax brackets will stay the same. However, the federal income tax rates for individuals in the top two tax brackets will increase from 33% and 35% to 36% and 39.6%, respectively.
- The highest income tax rate on qualified dividend income will be increased to 20%. Dividends will not be taxed at ordinary income tax rates.
- Senior citizens (over age 65) with earnings of less than \$50,000 will be exempt from federal income tax and not be required to file a federal income tax return.
- The federal estate tax exemption will be \$3,500,000 and the maximum federal estate tax rate will be 45%.
- There are no proposed changes to the federal gift tax.
- The research and development credit for businesses will be made permanent.

“...highest income tax rate on qualified dividend income will be increased to 20%.”

In light of the current economic crisis, it is unknown how quickly these proposals may be put into law, or how they may be modified prior thereto. However, it is likely that we will see significant changes in the federal tax law in 2009.

LEGAL PERSPECTIVES

“It’s The Best Of Times; It’s The Worst Of Times!”

Estate Planning Opportunities in a Poor Economic Environment

By: James J. Chalfie, Esq.

The Estate Planning Group at Santen & Hughes is dedicated to helping our clients create, protect, and preserve a plan for a tax-efficient distribution of their estates. We often utilize a variety of planning tools in designing an estate plan that is appropriate for each client’s individual situation.

While estate planning may not be at the top of everyone’s “To Do List” during a time when unemployment is high, the housing market is depressed and many have lost substantial wealth in the stock market, this time actually presents a number of strategic planning opportunities. Specifically, interest rates this year are the lowest that they have been in years. The existence of these rates provides opportunities to leverage various wealth transfer techniques through the use of two estate planning strategies - **Grantor Retained Annuity Trusts and Intra-Family Loans.**

The lower the rate of interest, the greater the effectiveness of these techniques. The Applicable Federal Rate (AFR) or Section 7520 Rate published monthly is utilized to determine the amount of gift, if any, made in the process. Essentially, in each of these strategies, if the rate of return can exceed the applicable rate, wealth is transferred free of gift tax. The Section 7520 Rate for December is 2.4%; and the Applicable Federal Rates are as follows:

Term	Annual Payments	Semi-Annual Payments	Quarterly Payments	Monthly Payments
Short (0-3 yrs)	0.81%	0.81%	0.81%	0.81%
Mid (3-9 yrs)	2.06%	2.05%	2.04%	2.04%
Long (>9 yrs)	3.57%	3.54%	3.52%	3.51%

Grantor Retained Annuity Trust (“GRAT”)

A GRAT is set up by the contribution of assets to a trust which provides that the creator of the trust (the “Grantor”) receives periodic annuity payments over a certain term of years. The amount of the annuity payments is determined by an interest rate prescribed by the U.S. Treasury (the “Section 7520 Rate”) at the time the GRAT is funded. Typically, the arrangement is structured so that there is no reportable gift at its inception, but at the end of the term any assets remaining in the trust, after the annuity payments have been made, pass to the beneficiary free of gift tax. In essence, the assets remaining in the trust at the end of the term will be the return realized by the investments in the GRAT to the extent the return exceeds the Section 7520 Rate at the time the trust is funded. If the assets in the GRAT depreciate in value during its term, no wealth will be deemed to pass to the beneficiary of the GRAT but there will be no penalty imposed on the Grantor. If the Grantor dies before the end of the term, the assets in the GRAT are included in the Grantor’s estate without penalty.

“Specifically, interest rates this year are the lowest that they have been in years. The existence of these rates provides opportunities to leverage various wealth transfer techniques through the use of two estate planning strategies - Grantor Retained Annuity Trusts and Intra-Family Loans. ”

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LEGAL PERSPECTIVES

By way of example, assuming a Section 7520 Rate of 2.4% (the Section 7520 Rate for December 2008), one could set up a two year GRAT funded with \$1,000,000.00 in securities which, if properly designed, would not constitute a taxable gift to the beneficiary upon creation but would result in a tax-free gift of \$76,476.00 to the beneficiary at the end of the term assuming combined growth and income of 8% annually.

During the term of the GRAT, the Grantor would receive periodic payments totaling \$1,031,056, which are tax-free except to the extent of income and capital gains generated. The annuity payments may be made with the same securities that were initially transferred to the GRAT at its inception.

Low Interest Family Loans. Low interest rates also suggest another technique for the transfer of wealth free of any gift tax. The federal tax law allows you to make loans to family members at lower rates than those charged by commercial lenders without it being deemed a gift. Interest free gifts may constitute a gift, but loans at the Applicable Federal Rate ("AFR") are gift tax free. Loans at the AFR rate are much lower than at commercial loan rates.

The ability to shift wealth occurs when the loan is made to a family member and they earn a greater return on the amount borrowed than the AFR applicable to the term of the loan. For example, if a parent makes a nine year loan to a child of \$1,000,000.00 at an AFR of 2.06%, the child may invest the loan proceeds. If the child earns an 8% annual rate of return, he or she will have accumulated \$720,000.00 throughout the term of the loan, from which only \$185,400.00 in interest was paid. The child is entitled to retain the difference of \$534,600.00 without any gift tax consequence.

Intra-family mortgage lending may also be beneficial to a family unit. With this arrangement, a parent can lend a child or grandchild the same amount of funds that he would otherwise have borrowed from a mortgage company or financial institution. The child or grandchild is charged the AFR applicable for the term and frequency of payments existing at the time of the loan, which is secured by a mortgage so that he may deduct the interest. Currently the AFRs are substantially lower than rates charged by commercial lenders but higher than the rate of interest currently being paid on 30 year U.S. Treasury Bonds. In most instances, the actual monthly payments will be at least 20% less than those charged by commercial lenders. By way of example, a \$500,000.00 mortgage at 6.0% interest and thirty year amortization requires monthly payments of \$2,997.75. However, a mortgage at the long-term AFR rate for January 2009 (3.51%) would be only \$2,248.02 per month, generating a savings of almost \$750.00 per month.

This strategy may also enable a family member who has a poor credit history to buy a home and avoid much of the normal expenses incurred with loans, such as administrative costs, closing costs and appraisal fees.

The following attorneys in Santen & Hughes's Estate Planning Group are happy to review the above-referenced options with you: James J. Chalfie, Katrina Z. Farley, C. Gregory Schmidt, William J. Liss, Charles M. Meyer, Andrew W. Weisenberger, James P. Wersching and Deepak K. Desai.