

August 29, 2006



## Estate Planning & Probate Bulletin

### RECENT STATUTORY CHANGES IMPACT ESTATE PLANS

While the United States Congress did not adopt legislation to significantly liberalize the federal gift, estate, and generation-skipping transfer tax laws, there has been recent federal, Ohio and Florida legislation that will have an impact on estate plans. This may be an appropriate time to review the impact of these changes on your estate plan.

#### Charitable Gifts Directly from IRAs

Recent federal legislation permits individuals that have attained the age of 70-1/2 to transfer up to \$100,000 per year from traditional or Roth IRAs directly to a public charity without any adverse income tax consequences for 2006 and 2007. This new provision permits charitable contributions of IRA funds without increasing income. This avoids causing more of a reduction in itemized deductions. This new benefit does not apply to transfers to donor advised funds or supporting organizations. This new provision will benefit qualifying persons who do not itemize their income tax deductions, or who made charitable contributions in excess of the limit that is allowable as an income tax deduction.

#### Charitable Gifts of Clothing and Household Items

Recent federal legislation restricts charitable contribution deductions for clothing or household items that are not in "good condition". Regulations are to be issued providing specific rules. If such a contributed item is not in "good condition" and the single item has a

value of more than \$500, a written appraisal that meets certain requirements is necessary to obtain a tax deduction. This provision is effective for gifts made after August 17, 2006.

#### Charitable Cash Contributions

Recent federal legislation restricts tax deductions for charitable cash contributions regardless of the amount. For the deduction to be allowed, persons must retain a written communication from the charity or a bank record that shows the name of the charity, and the amount and date of the cash contribution.

#### Valuation Misstatement Penalties

If a valuation of an asset is reported for tax purposes, usually based on an appraisal, the IRS can impose penalties if the value of the asset has been misstated. Recent federal legislation lowers the thresholds for the IRS to impose such penalties.

#### Rollover From Retirement Plans

Under prior law, only a surviving spouse could make an income tax free rollover from an employer sponsored retirement plan of a decedent to an IRA established by the surviving spouse. Under recently enacted federal laws, this benefit also is available to persons other than surviving spouses beginning in 2007. Our estate planning attorneys can discuss with you whether this change in law will be beneficial in your situation.

#### Employer Owned Life Insurance

Generally, receipt of life insurance death benefits are not subject to federal income tax. However, recently enacted federal legislation complicates the income tax free status of life insurance where the policy is owned by an employer and insures the life of a director or highly compensated person.

For life policies issued after August 17, 2006, certain action must be taken BEFORE the policy is issued. Specifically, the person whose life is to be insured must receive written notice of the intent to purchase the life insurance policy, must consent in writing to the purchase, and must be informed in writing who will be the beneficiary of the death benefits.

#### Florida Repeals Intangible Tax

While Ohio imposes an income tax, Florida does not have an income tax but did have a tax on the value of certain intangible personal property, such as stocks and bonds. Florida has repealed its tax on intangible personal property. Being domiciled in Florida may be more beneficial, from a tax standpoint, for many persons than being domiciled in Ohio. Our estate planning attorneys are licensed to practice law both in Ohio and Florida. We can assist you with determining whether a change of domicile from Ohio to Florida will be beneficial and assist you with implementing the change of domicile.

## Administration of Trusts

Until recently, the laws concerning the administration of trusts was based partly on statutes and partly on case law. Florida and Ohio both have adopted new comprehensive statutes dealing with the administration of trusts. One aspect of the new trust laws deals with information that must be provided by the trustee to trust beneficiaries. If you are the trustee, or a beneficiary, of an Ohio or Florida trust, we can discuss with you the impact of the new trust laws on the administration of your trust.

## Funeral and Burial Arrangements

Both Florida and Ohio have adopted new laws concerning funeral and burial arrangements. The new Ohio statute becomes effective October 12, 2006. It permits persons to designate an agent to make funeral and burial arrangements by signing a form that meets certain requirements. If a person does not sign the form, then the statute provides a prioritized list of persons that can make the funeral arrangements. The list begins with the surviving spouse, followed by adult children, followed by parents, then others. The person that makes the funeral arrangements is responsible for paying the funeral director and thereafter can file a claim to be reimbursed from the decedent's probate estate.

The Florida law is not as comprehensive as the Ohio law. It permits persons to provide funeral instructions in a document that meets certain requirements.

The new laws dealing with the funeral and burial arrangements are important in situations where there may be controversies over such matters. For instance, where a person has remarried and has children from a prior marriage, the children and the subsequent spouse may not agree on such matters as religious observances, burial or

cremation, and cost of funeral arrangements. Also, unmarried couples may prefer that their partner make the funeral arrangements rather than family members. In such situations, it is recommended that persons sign an appropriate form dealing with funeral and burial arrangements. Our estate planning attorneys can assist you with such forms.

## Kiddie Tax

The income tax rate of parents has been applied to certain income of their dependent children who are under 14. Recent federal legislation expands the application of this tax. For 2006 and future years, it applies to unearned income in excess of \$1,700 of dependent children under 18.

*As a reminder, this Advisory is being sent to draw your attention to issues and is not to replace legal counseling.*

UNITED STATES TREASURY  
DEPARTMENT CIRCULAR 230  
DISCLOSURE: TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE IRS, WE INFORM YOU THAT, UNLESS EXPRESSLY STATED OTHERWISE, ANY U.S. FEDERAL TAX ADVICE CONTAINED IN THIS COMMUNICATION (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF (i) AVOIDING PENALTIES UNDER THE INTERNAL REVENUE CODE, OR (ii) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY TRANSACTION OR MATTER ADDRESSED HEREIN.

## Additional Information

Any of our estate planning department members, Gary Bilchik<sup>1</sup> (gbilchik@bfca.com), Ginger Mlakar<sup>1,2</sup> (gmlakar@bfca.com), Nick Shofar (nshofar@bfca.com), and Jeff Weiler<sup>1,2,3</sup> (jweiler@bfca.com) can be reached at (216) 363-4500. Biographical information is available at [www.bfca.com](http://www.bfca.com).

<sup>1</sup> Admitted to practice in Ohio and Florida.

<sup>2</sup> OSBA Board Certified Specialists in Estate Planning, Trust and Probate Law.

<sup>3</sup> Florida Bar Board Certified Tax Specialist.

# Live for today. Plan for tomorrow.

**Gary B. Bilchik**, Partner  
Chair, Estate Planning and  
Probate Practice Group  
*Licensed to practice law  
in Ohio and Florida*



For all the time and effort you've put into building your wealth, you deserve peace of mind in return. The kind that comes from knowing your assets are protected, your wealth will be distributed as you wish, and your future is as secure as you can make it.

Whether you need to build an estate plan from scratch, or ensure your current plan is in sync with today's rapidly changing laws, our attorneys can help. We have the specialized knowledge and experience to manage all aspects of your estate.

Have you considered how taxes will impact your wealth? Have you planned for charitable gifts...long-term care...incapacity? Do you have a living will? Have you drafted a letter of instruction to guide your heirs when you're gone?

We can assist in these areas and help you manage your assets in ways that will minimize the probate process and simplify post-death administration.

Having a solid plan in place for tomorrow makes enjoying today that much easier. Talk to us about how to get started.

**Ginger Fuller Mlakar**,  
Of Counsel  
OSBA Board Certified Specialist in  
Estate Planning, Trust and  
Probate Law  
*Licensed to practice law  
in Ohio and Florida*



**Jeffrey L. Weiler**, Partner  
OSBA Board Certified Specialist  
in Estate Planning, Trust and  
Probate Law  
*Licensed to practice law  
in Ohio and Florida*



 **B E N E S C H**  
Friedlander Coplan & Aronoff LLP  
Attorneys at Law

**Cleveland**

2300 BP Tower  
200 Public Square  
Cleveland, Ohio 44114-2378  
Phone: (216) 363-4500  
Fax: (216) 363-4588

**Columbus**

88 East Broad Street  
Suite 900  
Columbus, Ohio 43215-3506  
Phone: (614) 223-9300  
Fax: (614) 223-9330

[www.bfca.com](http://www.bfca.com)