WADE ♦ ASH ♦ WOODS ♦ HILL & FARLEY, P.C.
NEWSLETTER

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NEWS OF THE FIRM

We are very pleased to announce three important additions to our staff. Jill A. Griffiths is our new Legal Administrator. She has 18 years of experience and obtained her designation as a Certified Legal Manager in 2003. Jill is also actively involved with the Association of Legal Administrators and will serve on its Board for the 2005-2006 year.

In addition, Merry H. Balson, formerly of Gorsuch Kirgis, has joined the firm as a Senior Associate. She will continue her practice in the areas of estate planning, trust and estate administration, real estate and representation of non-profit, tax exempt organizations. She is presently Chair of the Statutory Revisions Committee of the Colorado Bar Association Trust and Estate Section.

Last, but not least, Ticia E. Dobbins has joined the firm as a Paralegal. Ticia has been a paralegal for 14 years, working both in Colorado and Missouri. Ticia will assist the Firm in the areas of Estate Litigation, Trust and Estate Administration, as well as Income and Estate Tax Return Preparation.

J. Michael Farley, a retired partner of Wade Ash Woods Hill & Farley, continues his life-long commitment to community service. On March 5, 2005, Mike received the Community Service Award from Regis University for his outstanding contributions.

TERRI SCHIAVO - FLORIDA CASE

We have all read the newspaper accounts regarding the Terri Schiavo case in Florida. Our Colorado statutes on living wills, health care powers of attorney and advance directives are designed to respect individual decision making and to eliminate the need for time-consuming and costly legal proceedings. Our statutes authorize you to provide both your own instructions regarding end of life care (including treatment and lack of treatment; the so-called living will) and also to delegate health care decision making to a trusted friend or family member. The use of these documents is critical to avoid the uncertainties of the Florida case. The current Colorado statute on living wills also requires the document to be specific as to the handling of tube feeding. We prepare these documents as a standard part of the estate planning process and would be pleased, at your request, to review the status of your documents in this regard.

WHITHER THE FEDERAL ESTATE TAX?

The federal estate tax is scheduled to expire in 2010, but the law repealing the tax is itself scheduled to "sunset" in 2010. In the meantime, the exemption from the tax has increased to $1.5 Million per taxpayer, and will increase to $2 Million in 2006 and to $3.5 Million in 2009. David Swank, who recently attended the 2005 Heckerling Institute on Estate Planning in Miami, reports that several of the experts expressed opinions that estate tax repeal could occur sooner than 2010. Others suggested that perhaps the estate tax would not be repealed altogether, but that a larger exemption would be phased in earlier than the scheduled increases in 2006 and 2009.

The repeal of the estate tax would likely have a collateral tax impact - the probable re-institution, in whole or in part, of so-called "carryover basis". Under the present estate tax, the income tax cost (or basis) of assets included in an estate is adjusted to its fair market value at date of death, with exceptions for IRAs and similar "income" assets. Under carryover basis, presently scheduled to become effective January 1, 2010, the fair market value adjustment is repealed, and the successors of a deceased taxpayer would take the assets at the decedent's historic acquisition cost, often burdened with substantial unrealized capital gains tax. The law does permit a basis adjustment of $1.3 Million, and a return would have to be filed allocating that amount back to the particular assets. Whatever happens, it will continue to be important to keep good records on date of acquisition and acquisition costs of assets.

AMERICAN JOBS CREATION ACT OF 2004

The effective date of this Act is generally for taxable years beginning after December 31, 2004. While the focus of most of the Act is on taxation of international businesses, some of the changes may apply to you:

A Positive Change Relates to Subchapter S Corporations: The Act increases the number of permissible S Corporation shareholders from 75 to 100 and it permits an election to be made that would treat a person's descendants and their spouses as one shareholder for purposes of counting the number of shareholders. Therefore, when stock passes at death or through gifting to a shareholder's descendants, the number of shareholders for purposes of meeting the 100 shareholder rule would not increase. For larger S Corporations, this had been a problem, and corporations had often been required to purchase the shares from the descendants to keep S Corporation status. Rules were also eased for "inadvertent terminations" of S Corporation status.

A Negative Change Relates to Charitable Deductions: For donations of cars, boats or airplanes after December 31, 2004, the "Blue Book" value cannot be used; the deduction will be limited to the amount for which the charity later sells the asset. The Act codifies the existing IRS rule requiring an appraisal for donation of property (other than cash or marketable securities) with a value in excess of $5,000.

Non-Qualified Deferred Compensation: The Act creates tighter rules on deferral of income tax on non-qualified deferred compensation plans, and unless the requirements in the Act were met by January 1, 2005, all deferred amounts will be includable in gross income to the extent not subject to a substantial risk of forfeiture. There is also a 20% penalty tax imposed.

Contact us for additional information about the American Jobs Creation Act of 2004 or visit our web site at *www.wadeash.com*.

ANNUAL GIVING OPPORTUNITIES

It is not too soon for clients to think about annual exclusion gifting. Gifts may be made to any individual in the amount of $11,000 per year without having to file a gift tax return and without utilizing the overall federal transfer tax exemption. The amount of the gift can be doubled by having your spouse join in, although this requires the filing of a gift tax return. The traditional reason for this kind of gifting is to take assets out of your estate which would otherwise be subject to federal estate tax at your death. In addition to the annual exclusion gift, gifts can be made tax-free by utilizing a portion of the overall gift tax exemption ($1 Million) during your lifetime. This is commonly done with assets which may be expected to appreciate in value. The gift tax exemption will remain at $1 Million even if the estate tax is repealed.

For larger gifts, there are special rules and opportunities for dealing with gifts of life insurance, gifts of residences and gifts of interests in family entities such as family partnerships and family limited liability companies. In this regard, specialized trusts such as irrevocable life insurance trusts and qualified personal residence trusts are available to achieve tax savings. It should also be noted that you can make a gift in excess of the $11,000 per year per donee by payment of the donee's medical expenses directly or by direct payment of certain educational expenses, including tuition.

We would be glad to help with the planning, design and implementation of these kinds of gifts.

PROPERTY TRANSFERS

As of August 4, 2004, Coloradans have a new way to transfer real property at their death without going through probate or using joint tenancy or a revocable trust. The new law allows a real property owner, prior to death, to file a "beneficiary deed", which will transfer the property automatically to the named beneficiary at the owner's death. The beneficiary does not have to consent to the deed, nor does the beneficiary have any rights to the property prior to the owner's death. Filing a beneficiary deed functions like placing a "payable on death" designation on a bank or investment account. The owner may still use the property freely and may revoke the beneficiary deed at any time without consent of the beneficiary. Because the beneficiary deed is only effective upon death of the owner, it does not change the owner's property rights during his or her lifetime. Conversely, titling real property in joint tenancy results in a current gift, and the new joint tenant has rights in the property which the owner may not have intended.

Although using the new law does allow for direct non-probate transfer of real property at the owner's death, there are still ways for the property to be "pulled back" into the owner's probate estate. The law contains a number of creditor protection provisions that could render the beneficiary deed ineffective. Creditor claims could return the property to the estate if the other estate assets are insufficient to satisfy all claims. The new law also contains protection for Medicaid and its interests in the estate of a recipient. An owner who is also a Medicaid applicant or recipient will not be entitled to aid if he or she has a beneficiary deed recorded. In addition, an applicant's personal residence, usually omitted as a resource for determining Medicaid eligibility, will be counted if there is a beneficiary deed for the residence. Using a beneficiary deed does not reduce the value of an estate for estate tax purposes.

The new beneficiary deed law is not a perfect way to convey property, but can be effective if Medicaid and creditors are not a concern, and we believe it is a better method than adding an owner in joint tenancy. Its use should be carefully coordinated with the owner's will. If you believe this type of property transfer may be useful to you, please contact our office for more information.

ESTATE PLANNING FOR INCAPACITATED PERSONS

In our estate practice, we find that families sometimes need the appointment of a "guardian" and "conservator" to assist a family member who unfortunately has suffered a loss of his or her mental faculties because of a stroke, Alzheimer's-type dementia, a head injury or some other medical condition that affects cognitive capabilities.

The question sometimes arises as to whether an incapacitated person's estate plan can be modified. The Colorado Probate Code allows a conservator, following hearing and Court Order, to create or modify a protected person's estate plan. Under the law, a conservator may create or amend trusts, coordinate non-probate beneficiary designations or create a will. It should also be noted that under our concept of limited guardianship, and recognizing levels of incapacity, the protected person may still be able to make dispositive changes. We have experience with these issues and can provide assistance in this area.

CHANGES IN STATE DEATH TAXES

If you own real estate in states other than Colorado you should consider changes in those states' estate or inheritance tax laws, and take those changes into account in your estate planning documents. As noted above, the current federal estate tax exemption is $1.5 Million and is scheduled to increase to $2 million in 2006. In addition, the state's portion of the federal tax (the state death tax credit) has been phased out effective January 1, 2005. Colorado's estate tax "piggy-backed" onto the federal estate tax system and merely collected the share attributable to the state's death tax credit. Due to the TABOR amendment, it is unlikely that Colorado will change its state laws to reinstate a state death tax. Many other states, however, have amended their state laws to impose a free-standing estate tax or inheritance tax (known as "de-coupling"), and they are also lowering the exemption for state death tax purposes.

Please visit our website at www.wadeash.com regularly for more information on our firm, lawyers and publications. This newsletter is for general informational purposes. It is not legal advice. If you have questions about your specific situation, please call (303) 322-8943 and reference this newsletter.

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