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NEWSLETTER

November 2006

NEWS OF THE FIRM

We are pleased to announce that Gregory B. Washington has recently become Of Counsel to the firm. Greg is a Phi Beta Kappa graduate of Stanford University. Greg's practice has focused, among other areas, on estate and trust litigation for the past 25 years and he comes to us most recently from the firm of Godfrey & Lapuyade. Greg will be a welcome addition to the firm's estate and trust litigation section.

Jim Wade has been designated by the American Bar Association Section of Real Property, Probate and Trust Law as liaison to the National College of Probate Judges and to the ABA Commission on Law and Aging. He spoke recently at a symposium on probate reform to Connecticut judges and lawyers in New Haven, Connecticut.

We are also pleased to announce that Barbara J. Cohen recently celebrated her 15th anniversary with the firm. Barbara is a Legal Secretary who has worked with several attorneys over the years, but has assisted James Wade for her entire tenure at the firm. Congratulations Barbara!

Herb Tucker, Marc Darling, Laurie Hunter, Spencer Crona, Michelle Mieras, Randy Robida and Greg Washington recently presented the Trust and Estate Section of the Colorado Bar Association's "Trial of a Will Contest" Continuing Legal Education Seminar in September, 2006 which was well attended by Denver metro lawyers.

FEDERAL TAX UPDATE

The Pension Protection Act of 2006, signed into law by President Bush on August 17, 2006, mainly addresses the funding and administration of defined benefit plans and attempts to force employers to bolster their pension plans and educate plan participants. The bill also contains more general tax provisions which provide new and continued estate planning opportunities.

DIRECT TRANSFER TO NON-SPOUSE IRA

Under prior law, only a surviving spouse could "roll over" benefits from a qualified plan or IRA to the spouse's own IRA income tax-free. Non-spouse beneficiaries were often limited by a qualified plan's provisions to lump-sum distributions. Commencing in 2007, the bill provides for direct transfers by non-spouse beneficiaries of qualified retirement plans, government plans and tax sheltered annuities into an "inherited" IRA. Surviving spouses are still the only beneficiaries who can roll over benefits to their own IRAs and completely defer any distributions until age 70½. However, permitting non-spouse beneficiaries to directly transfer their benefits to an IRA, and then take out distributions over the beneficiary's life expectancy, is a great improvement. The direct transfer rule (called a "rollover" in much of the literature, which is not really accurate) only applies to designated beneficiaries or a trust set up for the benefit of the designated beneficiaries, and will not apply to qualified retirement plan accounts which are payable to the estate or a non-see-through trust upon the account owner's death. In addition to benefitting descendants of an account owner, this new rule allows more flexible estate planning for unmarried couples, including domestic partners.

GIFTS TO CHARITY FROM IRA's

Under prior law, if an IRA owner wished to make a gift from the IRA to charity during the owner's lifetime, the owner would take a distribution that was fully income taxable, and then make the gift. However, the charitable deduction was usually limited to 50% of adjusted gross income, or less, depending on the charity, so there was not a complete offset of the taxable income. The bill permits certain individuals to make a direct transfer from an IRA to a charity, without recognizing the distribution in income (and without taking a charitable deduction). To take advantage of this income exclusion provision, the following restrictions apply:

- Only available in 2006 and 2007
- Limited to $100,000 per year
- The IRA owner must be at least 70½ years of age.
- Certain entities are not eligible recipients, including donor-advised funds, a supporting organization, certain private foundations, charitable remainder trusts, a pooled income fund, and charitable gift annuities.
- Does not apply to SEPs and SIMPLEs

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OTHER PROVISIONS

Other highlights of the Pension Protection Act include:

- Relaxed hardship withdrawals from 401(k) plans for any named plan beneficiary;
- Direct rollovers from qualified retirement plans, tax-sheltered annuities or governmental plans to Roth IRAs (eliminating the prior two-step approach) beginning in 2008;
- Stricter rules on documentation of cash charitable donations and a "good condition" requirement for non-cash charitable donations;
- Increased deduction limits for qualified conservation easements (up to 50% AGI) so long as the contribution does not prevent farming or ranching of the donated land.

CERTAIN PROVISIONS OF THE ECONOMIC GROWTH AND TAX RELIEF RECONCILIATION ACT OF 2001 (EGTRRA) MADE PERMANENT

Finally, several provisions of EGTRRA were made permanent by the Pension Protection Act, including the Roth 401(k) and 403(b) plans, the Retirement Savings Tax Credit, Section 529 qualified tuition programs, and increased contribution and catch-up contribution limits for IRAs.

*******REMINDER*******

The year is coming to an end. If you have not already done so, now is the time to make your 2006 annual exclusion gifts (up to $12,000 per donee plus direct payments for tuition and medical expenses).

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