



LAMSON, DUGAN AND MURRAY, LLP
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BUSINESS COUNSELING

UPDATE

FALL 2006

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PROHIBITING CONCEALED HANDGUNS IN THE WORKPLACE

The Nebraska Legislature recently passed LB 454, the Nebraska Concealed Handgun Permit ("Act"), effective January 1, 2007. The Act provides for issuance of permits making it lawful to carry a concealed handgun except under certain circumstances. Under the Act, Nebraska businesses must comply with certain requirements if they intend to prohibit the carrying of handguns on their premises. First, employers must provide notice that permit holders are prohibited from carrying concealed handguns into or onto property the employer controls. This property can be open to the public or a place of employment. Second, the Act states a permit holder does not violate the law unless businesses post a conspicuous notice that carrying a concealed handgun on the premises is prohibited.

It is recommended that employers include notices prohibiting concealed handguns in employee handbooks and post the notices in locations used for employment law posters and areas open to the public.

It is also important to note that the Act only applies to concealed handguns; all other weapons may be banned from the workplace without violating the Act.

Brian J. McGrath

TITLE 409A WRITTEN AMENDMENT DEADLINE LIKELY TO BE DELAYED

We have been awaiting final regulations under Internal Revenue Code Section 409A. Section 409A governs "non-qualified deferred compensation." The IRS had previously set a December 31, 2006, deadline to amend documents to comply with 409A.

An official with the Treasury Department has recently stated that the regulations will be issued this Fall. The same official also remarked that the original deadline for amendments of December 31, 2006, will likely be delayed. We understand the final regulations will reflect many changes due to comments made on the proposed regulations.

The likelihood of an extension, however, does not change good faith compliance with 409A which has been required since January 1, 2005. Therefore, it is important to identify all arrangements that might

involve 409A issues. A Lamson, Dugan and Murray attorney is ready to assist you with reviewing any employment agreements, termination agreements, change in control agreements, severance policies or plans and annual cash bonus plans that are commonly overlooked in connection with 409A.

Brian J. McGrath

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QUALIFIED PERSONAL RESIDENCE TRUST

Federal estate tax law provides a method by which families can reduce the tax consequences of transferring the family home to the younger generation. The device for accomplishing this is called a qualified personal residence trust (QPRT).

An individual may create a QPRT by transferring his or her residence to a trust (usually for the benefit of family members), while retaining for a particular period of time the right to live in the residence for free. The tax laws treat the transaction as a gift of the remainder interest in the trust, rather than as an outright gift of the residence itself. There is a tax on that gift, but there is no later tax on the value of the whole residence at the time of the grantor's death, as there otherwise could be but for the use of the QPRT. As a rule, the more a home can be expected to appreciate over the term of a trust, the more beneficial is the use of a QPRT.

A QPRT results in tax savings only if the grantor outlives the period of the retained interest. Even if the grantor does not survive the period established for the trust, the worst that could happen is that the full value of the residence would be taxed. The result is the same as if there had been no QPRT in the first place.

The QPRT has two generally recognized drawbacks. While the grantor, usually a father or mother of a family, can continue to occupy the residence after the period of retained interest has run, he or she must pay rent to avoid inclusion of

the residence in his or her estate. Some individuals may not like the prospect of being their children's rent paying tenants. Second, the QPRT does not provide a "step-up" in the cost basis of the residence as there normally would be if a residence is inherited. If a QPRT is used, the gain on the sale of the residence is measured against the price that the grantor paid for the property originally, rather than against the value of the residence at the time of the grantor's death. The result could be higher income tax liability when the residence is sold.

As with most estate planning issues, the advice and guidance of a qualified professional is recommended before establishing a QPRT.

FINANCIAL PLANNING FOR A DISASTER

When a natural or man-made disaster strikes, be it a hurricane affecting an entire region or a gas leak affecting one house, it is only natural and appropriate to think first of the very basics of life: safety, shelter, food and water. But it also makes sense, in the quiet of normal daily living, to make plans for money matters in the immediate aftermath of a disaster. As the saying goes, the best time to fix a leaky roof is on a sunny day. If you have only minutes to leave your home, advance planning for keeping your head above water financially can pay big dividends. Here are a few pointers:

- Keep the following items in a place that is easily available to you in an emergency, but not so apparent as to invite theft: forms of

identification, such as driver's licenses, insurance cards, Social Security cards, passports and birth certificates; enough checks and deposit slips to last a month, or at least a checking account number; ATM cards, debit cards and credit cards; telephone numbers and account numbers for providers of financial services; the key to your safe-deposit box; and some cash.

- Make copies of your most important documents, ideally on disks, and keep the copies well outside of your home area.
- Use a safe-deposit box for items that you are not likely to need in a hurry, such as birth certificates and originals of contracts. Other items can go in a sturdy safe at home.
- In the same waterproof, portable "evacuation bag" in which you can keep medications, first-aid kits, flashlights and so forth, keep some of the up-to-date financial papers mentioned above. But secure it well, lest you inadvertently provide a treasure trove of your financial information to a thief.
- Choose automated services over dependency on writing and mailing checks and trips to your bank. You can weather a storm financially more easily with direct deposit, automatic bill payments and Internet banking services.

"If you have only minutes to leave your home, advance planning for keeping your head above water financially can pay big dividends"

DEDUCTING THE BUSINESS USE OF YOUR HOME

The federal income tax deduction for the business use of a home has a good dollars-and-cents upside for those who qualify. Some detailed questions must be answered correctly to get to that point, however. Not surprisingly, the IRS publication on the subject makes use of a complex flowchart filled with “yes or no” questions to guide taxpayers to a determination of eligibility for the deduction.

Qualifying for the Deduction

To pass the threshold for use of the home business deduction, a taxpayer must satisfy the following two basic sets of requirements. The first set concerns the nature of the business activities, while the second set relates more to the place itself.

First, the use of the business part of the home must be exclusive (with exceptions to be discussed below), regular and for the business. Second, the business part of the home must be one of the following: the principal place of business; the place where the taxpayer meets or deals with patients, clients or customers in the normal course of business; or a separate, detached structure used for business.

The exclusive use factor means that the area is used *only* for business, not for a mixture of business and personal uses. However, the exclusive use requirement need not be met when a part of the home is used for storage of inventory or product samples, or for a day-care facility. When the IRS says that the use of the home must be for a trade or business, it does not mean any activity that makes money for the

taxpayer. If you use a computer in your den for day-trading of stocks or online gambling, do not count on taking the deduction. As for what constitutes a “regular” use for business, that essentially means business conducted on a continuing basis, not occasionally. Even if a taxpayer has a place in the home used exclusively for business, the deduction is not available if the business activity is only sporadic.

As for the requirements relating to the place itself, the area in the home used for business is a “principal place of business” if it is used exclusively and regularly for the administrative or management activities of the business, and there is no other fixed location where substantial activities of that kind are carried out. If some business is transacted at more than one location, determining whether the home location is the principal place of business requires consideration of the relative importance of the activities at each location. If that does not provide an answer, the time spent at each site should be considered. Remember that the deduction is available either if the home is the place for meeting with patients, clients or customers, or a separate structure on the premises is dedicated for business.

If the taxpayer is an employee using part of a home for business, the deduction is available if all of the requirements described above are met, plus two additional tests. The business use must be for the convenience of the employer (not just appropriate or helpful), and the employee may not rent all or part of the home to the employer while

using the rented portion to perform services as an employee.

What Is Deductible?

Deductible expenses for a business use of the home include items such as the business portion of real estate taxes, deductible mortgage interest, rent, casualty losses, utilities, insurance, depreciation, painting and repairs. This is not likely to be an all-or-nothing proposition, though. Generally, an expense is fully deductible if it is direct, that is, incurred only for the business part of the home. An indirect expense, incurred for running the home as a whole, is deductible based on the percentage of the home used for business. Any reasonable method for determining that percentage is acceptable, such as dividing the square feet used for business by the total square feet, or dividing the number of rooms devoted to business by the total number of rooms. If an expense is unrelated to the business part of the home, it is not deductible at all.

If the taxpayer’s gross income from the business use of the home is lower than the total business expenses, the deduction for certain expenses will be limited. But those expenses that cannot be deducted because of such a limitation can be carried forward for the next year’s home business expenses.



**VALUATION DISCOUNTS
FOR ESTATE AND GIFT
TAXES**

Upon the death of the owner of stock in a closely held corporation, the fair market value ("FMV") of the stock must be determined before an estate tax return can be filed. For gifts of such stock, it is also necessary to ascertain the value of the stock for gift tax purposes. Unlike publicly traded stock, the value of which can be determined easily on the Internet or in a newspaper, stock in a closely held business has a value that is more difficult to nail down. By definition, the shares are held by a much smaller number of people and are not widely traded.

Fair market value means the price at which property would change hands between a willing buyer and a willing seller when neither party is under any compulsion to buy or sell and both parties have a reasonable knowledge of relevant facts. Calculating the FMV of closely held stock generally starts with an estimate of the total value of the closely held company itself. Application of discounts (or premiums) to account for the specific circumstances of the company then reduces (or increases) the FMV of the stock.

The process is highly focused on the particulars of each business. For example, in a recent decision by the United States Tax Court, the starting point in valuation of a decedent's minority interest in a closely held family corporation was easy to figure, because the corporation was a holding company with a portfolio of widely traded securities that had readily ascertainable values. But that market value was discounted by 10% to take into account a buyer's lack of control over the company and by another 15% for lack of marketability of the shares.

The Internal Revenue Service likes to keep an eye on valuation discounts, since they lead directly to a reduction in estate tax liability. Federal statutes, regulations, and Revenue Rulings have shed light on the use of valuation discounts. IRS Revenue Rulings have identified the following list of some primary criteria for determining the valuation discounts for closely held stock: nature and history of the business; outlook for the economy and the specific industry; book value of the stock and financial condition of the business; earning and dividend-paying capacities of the company; goodwill or other intangible value of the enterprise; sales of the stock

and size of the block of stock to be valued; and market price of publicly traded stocks of corporations in the same or similar line of business. With appropriate planning, valuation discounts may lead to substantial estate and gift tax savings.

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