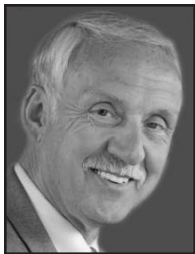


Ohnstad Twichell, P.C., is a full service law firm having a general and trial practice in all state and federal courts and offering services in the fields of probate, real estate, estate planning, corporate, employment law, family law, municipal finance and bonding, personal injury, criminal, negligence, commercial, insurance defense, water rights and automobile law.

THREE OHNSTAD TWICHELL ATTORNEYS NAMED “GREAT PLAINS SUPER LAWYERS”

Ohnstad Twichell is proud to announce that Robert E. Rosenvold, Brian D. Neugebauer, and Robert G. Hoy have earned “Super Lawyer” status. Every year, Super Lawyers magazine conducts surveys of thousands of attorneys to determine the country’s leading attorneys. Only five percent of all attorneys attain “Super Lawyer” recognition from their peers, and we are excited to have three of our own leading the ranks in North Dakota.



Robert E. Rosenvold practices estate planning and probate law. Bob has one of the most respected estate planning and probate practices in North Dakota and Minnesota. He is active in the American College of Trust and Estate Counsel, the National Association of Estate Planners, and the Red River Valley Estate Planning Council.

Bob is proficient with the most complex tax and estate planning issues you might encounter, or in crafting the most basic wills.



Brian D. Neugebauer practices municipal law and municipal bonding and financing. In addition to his designation as a “Super Lawyer,” Brian has also earned the status of Nationally Recognized Bond Counsel. Brian represents several cities, counties, school districts, water resource districts, and other

political subdivisions in North Dakota and Minnesota in tax-exempt bonding and other financing. Brian has a reputation as the leading municipal and bond attorney in the region.



Robert G. Hoy is one of the most respected trial lawyers in the region. Bob has successfully tried hundreds of jury trials at the federal and state level. Bob practices personal injury, business and commercial litigation, construction litigation, and

criminal defense. Bob is an effective trial litigator, but his peers also respect his ability to obtain positive results for his clients in the pre-trial stage.

The “Super Lawyer” designation is a difficult title to earn, and we are proud of Bob, Brian, and Bob for their reputations for excellence amongst their peers. At Ohnstad Twichell, all of our attorneys are committed to providing excellent legal services, and our “Super Lawyers” lead the way.

EMPLOYEE DISCIPLINE



Susan L. Ellison works in the West Fargo office and devotes her practice to employment law, family law, and elder law.

If you are an employer considering discipline against an employee, or termination of an employee, you may wish to consider the following to reduce your liability.

You should approach disciplinary action with the thought that it is meant to educate an employee or correct improper actions. Disciplinary actions should not be meant to punish an employee because such procedures will not create a positive work environment, but encourage legal action against the employer.

An employer should always document poor work performance or misconduct when contemplating discipline or discharge. Such documentation will provide proof of the poor performance and misconduct and will assist in resolving a dispute with an employee.

Documentation should include a detailed account of the date and nature of the incident/ misconduct, including the name of the employee involved and any other employees who may have

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A legal newsletter from Ohnstad Twichell, P.C., with offices in West Fargo, Hillsboro, Mayville, Page, Hope, Finley, and Hatton North Dakota.

*Develop a procedure
for documenting
employee discipline/
termination.*

information relating to the incident/misconduct. The employer should also specify whether a particular workplace rule was violated and whether the employee had previous incidents of poor performance or misconduct. The name of the employee who documents information or disciplines an employee should be noted.

An employer should always follow its own workplace rules set forth in its employee handbook or manual and supervisors should be educated on how to administer discipline under the employer's rules. Periodic educational seminars for supervisors are helpful in accomplishing continuity and consistency of workplace disciplinary procedures.

If an employer's guidelines call for a progressive discipline system, this may include first issuing to an employee a verbal warning and subsequent written warnings preceding termination. All warnings should be documented in detail, including the name of the employee giving the warning, when the warning was given, and the contents of the warning. The warning should necessarily inform the employee of the purpose of the warning, the performance in question and rule that was violated; the employer's expectations to correct conduct; and the consequences, including time line for the consequences, if conduct is not corrected. With a written warning, an employee should be given the opportunity to read and sign, adding any comments he/she may have.

Once a warning has been administered and recorded, the employer has a basis to justify future discipline or termination. An employer may wish to develop a form its supervisors may use for issuing warnings to an employee and documenting information relating to workplace incidents/misconduct.

While an employee may consider discipline as a negative aspect of the workplace, the employer should look upon its disciplinary procedures as preventative and correcting employee conduct and documenting evidence that may avoid legal liability if an employee brings a claim against the employer.

For more information about developing a procedure for documenting employee discipline/termination, contact the Ohnstad Twichell office for a consultation.

TAX TOPICS



John A. Juelson
*works in the Hillsboro and
Page offices and devotes
his practice to estate
planning, probate, real
estate, and taxation.*

As the tax season approaches, I trust that at least some of the following information will be both of interest and helpful to you as you prepare for your 2007 tax planning.

For those of us who read income tax information on a regular basis, I think it is fair to say that in comparison to recent years, this year we are seeing a good deal more being written about taxpayer compliance. Since there are estimates which show that the "tax gap" -- the difference in income tax that would have been paid had income been properly reported and expenses properly deducted -- is now at approximately \$300 billion per year, it should come as no surprise that taxpayer compliance is a hot topic. It is expected that the Internal Revenue Service will use a number of tools to attempt to narrow the tax gap. We can expect that audits will increase, with the IRS auditors focusing on unreported income, undocumented or overstated deductions, and the claiming of tax credits which the taxpayer is not entitled to. It would be my suggestion that when you start organizing your 2007 tax materials for your tax planning sessions, you also take the time to review your 2006 tax return and records to make sure everything is in order. It is expected that the audit increase will start with the 2006 returns and will continue for the year 2007 and possibly 2008.

In looking at some of the specific areas the IRS will target as it conducts its audits, it seems like some things never change. For years the IRS has struggled with, and continues to struggle with, taxpayer compliance in the areas of tip income, gambling winnings, sub-S corporations that are most inventive in their ways and means to avoid paying salaries and payroll taxes, hobby losses, itemized deductions, and then the abovementioned areas of underreporting income and overstating expenses. In recent years we have seen compliance issues in some of the tax credit areas, and we have also recently seen compliance issues in the area of tax-deferred exchanges. It seems there are times when it is too often forgotten that you must qualify for a tax-deferred exchange -- it is like-kind business or investment property that qualifies for the tax-deferred exchange.

As I conclude my comments on the compliance and enforcement section of this article, I do want to mention that the classification of workers as employees or independent contractors continues to be an area where the IRS feels there is a lack of compliance. While there are times when it is difficult to determine whether a worker is an employee or an independent contractor, you can expect the IRS to take a closer look at the classification of workers. I think it is safe to say that if the employer retains significant controls over the worker, the IRS will claim that the worker is an employee -- not an independent contractor -- and then income tax withholding, social security matching/withholding, and filing penalties will be imposed. While the IRS may disagree with you on your classification of a worker as an independent employee, it appears it will become an increasingly important taxpayer protection that you file your 1099s in a timely manner, consistently reporting the payments made to your independent contractors.

If you have an interest in income tax law, I am sure you have read articles and heard commentary on the need for Alternative Minimum Tax (AMT) relief. While an explanation of AMT is beyond the scope of this article, it does appear likely that a fix of the AMT is going to be expensive, politically difficult, and not likely to happen in the upcoming months. It

is expected that Congress will keep the same AMT exemptions in 2007 as existed in 2006. I think we can expect that if the AMT issue is fixed, the price will be higher income tax rates, but at what income level those higher levels will apply is far from determined at this time. I will conclude my comments on AMT by saying that you should be aware of the effects of Alternative Minimum Tax both when you do your tax planning and when you have your income tax return prepared. While there are many examples of the ways in which AMT can affect you, a word to the wise is that if you are doing your tax planning counting on the \$2,100 credit for your Honda Civic hybrid vehicle bought in 2007, you will want to do your AMT computation to make sure the entire credit is something you can use on your tax return.

I will expand my article by commenting on three tax matters which will likely be the subject of debate and change in upcoming years. Many of us have become familiar with the Hope and Lifetime Learning Education credits, as well as the above the line deduction for college tuition where taxpayers do not qualify for the Hope and Lifetime credits because of their income levels. There is some thought that it is appropriate to simplify the present credits and deduction through the adoption of a single education credit which will likely have a higher per year credit available and a lifetime maximum. Time will tell how this proposal will fare, but you will want to keep an eye on the education credit changes if you have students who can benefit from the credits.

The Pension Protection Act of 2006 contained provisions allowing IRA distributions for the two-year period from January 1, 2006, through December 31, 2007, to be made to a qualifying charity in an amount up to \$100,000 per year if the owner of the IRA was at least 70½. Under the act, the distribution to the qualifying charity was excluded from the income of the IRA owner, thus eliminating the prior requirement that the IRA distribution would have been reported as taxable income and the charitable contribution would have been claimed on Schedule A -- your itemizing schedule. While I have read that there have been discussions regarding extending the provisions of the Pension Protection Act of 2006 as they relate to tax-free distributions from IRAs, you may wish to take advantage of this charitable giving opportunity in 2007 when we know the Pension Protection Act of 2006 is in effect.

While the above information has focused on income tax, I will conclude my article with a few comments on another tax -- estate tax. If you have done any estate planning of late, you know that the \$2,000,000 exemption presently in effect this year also remains in effect for 2008. In 2009, the exemption jumps to \$3.5 million, in 2010 there is no estate tax, and in 2011 the exemption decreases to \$1,000,000. For some years now we have been reading about the likelihood of legislation to change the estate tax laws with the changes ranging from the repeal of the estate tax to an increase in the exemption and a reduction of the estate tax rates. It appears unlikely that there will be a new estate tax law enacted until 2009 -- the year before the estate tax is repealed for the year 2010. While estate planning is made difficult with the uncertainty of the estate tax exemptions, the prospect of carryover basis on inherited assets, and the difficult

political issues involved, it seems that in the relatively near future we will have the answers to the questions of what the new estate tax exemption amount will be and what will be the new estate tax rates.

AVOIDANCE OF PROBATE MAY RESULT IN LOST TAX ADVANTAGES



Robert E. Rosenvold
works in the West Fargo and Page offices and devotes his practice to estate planning and probate.

Married people are often encouraged to place all of their property into joint tenancy ownership. By doing this, they correctly assume that, if one of them were to die, ownership of this property will automatically transfer to the other by right of survivorship. It also is not unusual for the same married couple to each have a Last Will and Testament transferring their entire estate to the surviving spouse upon their death. Such Wills are signed only as a precautionary measure so as to make sure that any solely owned assets by the decedent will pass to the surviving spouse under the decedent's Will. Oftentimes, such a Will is ultimately determined to be unnecessary because after the first spouse died, the decedent owned no assets in his name alone. As a consequence, very seldom is an attorney even contacted by the surviving spouse because no legal assistance is needed to transfer the joint tenancy property out of joint tenancy and into the name of the surviving spouse.

Failure by the surviving spouse to contact an attorney specializing in estate administration and estate planning can result in the loss of a potentially important tax advantage. For example, assume a husband and wife own, for simplicity purposes, two assets. One is a stock account having a fair market value of \$400,000 and a home having a value of \$200,000. Both of these assets are in joint tenancy. The stock was acquired solely through the husband's earnings over a period of years and, at the time of the husband's death, a total of \$200,000 had been invested in the stock. In other words, assuming the couple had sold the stock one day prior to the husband's death, \$200,000 in capital gains would have resulted and, assuming a 15% capital gains tax rate, \$30,000 in federal income taxes would have been paid.

When a person dies, a capital asset (such as stock, bonds, real estate, etc.) receives a new cost basis for capital gains tax purposes equal to the date of death value. In other words, the original purchase price of the asset is disregarded for capital gains tax purposes and, instead, the cost basis is its fair market value at the time of the person's death. In regard to joint tenancy property only the decedent's one-half (½) interest acquires the new cost basis. Therefore, this same stock, if sold immediately after the husband's death by the surviving wife, would result in \$100,000

Do not lose out on potentially important tax advantages.



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in capital gains, or \$15,000 in actual federal tax. This is because the husband's one-half (½) interest in the stock account (one-half of \$400,000, or \$200,000), would be "stepped up" to the date of death value of the husband. The wife's one-half (½) interest would not.

Although the Internal Revenue Service, as well as Congress, has been silent on this, it may be possible to receive a full step up in basis on the stock under the above example. If the decedent (in this case the husband) furnished all of the consideration for the stock, the surviving wife may be able to disclaim the entire stock account causing it to pass through the probate estate and then to the wife under the husband's Will. In order to do this, however, the Will must be admitted to probate. Court documents and the Will are filed with the local County Court and the Court issues a document called Letters Testamentary allowing the wife to serve as the Personal Representative. A Disclaimer is then prepared by the attorney and filed both with the Court and to the holder of the stock account. This will result in the full inclusion of the stock in the estate of the husband and the surviving spouse will obtain a complete step up basis. In other words, upon the subsequent sale of the stock for \$400,000, no capital gains tax would be realized by the surviving spouse, thereby saving \$15,000 in federal income tax.

The moral of the story is this. If your spouse dies, even though all of your assets and investments are in joint tenancy, you still may want to contact your attorney to see if this technique is feasible. It could result in thousands of dollars in income tax savings.

BUSINESS CORNER!! MINIMUM WAGE NOTICE

The federal minimum wage for nonexempt employees was raised to \$5.85 per hour effective July 24. Employers subject to the Fair Labor Standards Act, must post in a conspicuous place a notice explaining the Act. If an employer has not yet posted the new minimum wage requirement, it should do so immediately. The Labor Departments of North Dakota and Minnesota provide information on obtaining FLSA minimum wage posters. See www.doli.state.mn.us; and www.nd.gov/labor. The U.S. Department of Labor also has information at www.dol.gov.



The information provided in this letter is of a general nature and should not be acted upon without prior discussion with your Ohnstad Twichell, P.C., attorney.

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