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on the Subject

November 2006

What About My "Stuff"

By Clifford S. Brown

Americans like "stuff," be it trash or treasure, and we surround ourselves and fill our homes and lives with it. Many of these items are "family heirlooms" which carry a bit of family history and for which we have strong emotional ties. In a way, "our stuff" defines who we are, and it is important to us.

Recently, a nationwide survey was conducted among estate planning attorneys and their clients. Each participant was asked to list, in order, the ten most important matters to be discussed and resolved in developing an estate plan for a client. Most of the attorneys, over 75%, listed tax planning as the most important. An almost identical percentage of clients, however, listed the number one priority as "who gets what, and when," and relegated tax matters to number seven on the top ten.

This survey clearly reveals two important points. First, clients are deeply concerned with the transfer of their property, and particularly their "stuff." Second, in the words of Cool Hand Luke, "what we have here is a failure to communicate."

Clearly, estate planning attorneys, or at least 75% of them, need to listen better. The most important aspect of estate planning is insuring the client's desires are carried forward in the most efficient and effective manner. To achieve that result, the attorney must have knowledge of what the client has and what he or she wants done with it, particularly the important "stuff," and only the client can provide this information.

Just as clearly, and of greater importance, the client must develop a clear idea of how the client wants his or her "stuff" to be transferred, to whom and when. This requires an honest, perhaps even brutal, assessment of the family members and dynamics, and sharing of this information with the attorney. Failure to provide full information, however embarrassing, to the attorney almost guarantees that the family dissension the client wanted to avoid will occur.

The problem with "our stuff" is that many of the items are one of a kind and cannot be divided. The grandfather clock that has been in the family for generations cannot be divided among three children. Likewise, the china service "brought over on the Mayflower" may be divisible, but that destroys its integrity. So, decisions must be made, and then there are several options for transfer of the "stuff."

Before considering the options available to secure transfer of the "stuff," the client needs to analyze the "stuff" carefully. There will be items that are unique and cannot be divided; these must be dealt with individually. There will be items that are easily divisible. And, there will be items that, frankly, the kids do not want, which can be sold.

Then the client needs to determine if he or she wants to achieve equality by value among the recipients. For example, if everything is to be divided among three children and one child is to receive a very valuable item or portion, will there be enough "stuff" remaining to provide equal value to the other

Continued on Page 4

Americans Like "Stuff"

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in this issue

What About My "Stuff" ➤ 1

Pension, Ira & Charitable Reform ➤ 2

Year End Tax Planning ➤ 3

Page 1-2-3 Articles Continued ➤ 4

Missouri-Kansas Super Lawyers ➤ 5

Pension, IRA & Charitable Reform:

The Pension Protection Act Of 2006

Overview of new provisions

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By Jennifer K. Huckfeldt

The Pension Protection Act of 2006 was signed by the President on August 17, 2006. Although the Act does, as its name implies, provide many new provisions "protecting pensions," it also contains many other provisions affecting individuals and charities. Following is a brief overview of a few of the new provisions that will effect many taxpayers and charities.

Rollover of Eligible Retirement Plan Distributions to Roth IRA. Beginning in 2008, qualified rollover distributions from a qualified retirement plan, tax sheltered annuity, or governmental 457 plan can be made directly to a Roth IRA. The rollover requirements of the specific plan must be satisfied, and the taxpayer's adjusted gross income may not exceed $100,000 in years before 2010. Before this change, a two-step process was required. The taxpayer would first be required to rollover the distribution to a traditional IRA and then elect Roth treatment for the traditional IRA. *Note, beginning in 2010, all taxpayers are eligible to convert a traditional IRA to a Roth IRA. Prior to 2010, only taxpayers with adjusted gross income below $100,000 are eligible. This change was enacted by the Tax Increase Prevention and Reconciliation Act of 2005.*

Rollover of Qualified Plan Distributions by a Non-Spouse Beneficiary to an IRA. Many employer sponsored plans require the immediate distribution of the account balance in a lump sum after the employee or former employee's death. Prior law only allowed a surviving spouse beneficiary to rollover such a distribution to an IRA and take distributions over time under the minimum distribution rules. Beginning in 2007, the Pension Protection Act will allow non-spouse beneficiaries (including trusts) to rollover a qualified plan distribution to an IRA established in the decedent's name. Distributions from the rollover IRA are then permitted to be made as slowly as permitted under the minimum distribution rules.

IRA distributions to Charities. For the remainder of 2006 and for calendar year 2007, individuals who have attained the age 70½ may distribute a maximum of $100,000 from an IRA (including a Roth IRA) to a charity without the distribution being included in the taxpayer's income. A charitable deduction is not allowed, since the distribution is not included in the taxpayer's income. Even though the distribution is excluded from the taxpayer's income, the distribution counts toward the minimum distribution required for the taxpayer. This treatment will be preferred for many taxpayers who can take advantage of it, because normally a distribution from an IRA must be included in income, and then an itemized deduction may be permitted for the contribution to charity. However, due to the phase-out of itemized deductions and the adjusted gross income limitation on charitable deductions, a deduction often does not place the taxpayer in the same position as excluding the distribution from income.

Contributions of Clothing and Household Items to Charities. Deducting contributions of clothing and household items to charities will now be more limited. For contributions made after August 17, 2006, a deduction is allowed only for contributions of clothing or household items if the items are in "good used condition or better." There is an exception for any item that is valued at more than $500 if a qualified appraisal is obtained and filed with the tax return on which the deduction is claimed.

Contributions of Cash to Charities: New Record Keeping Requirements. Effective for tax years beginning after August 17, 2006, in order for a deduction to be allowed for a contribution of any amount to a charity of cash, a check, or other monetary gift, it must be evidenced by a bank record or a receipt, letter or other written communication from the donee (indicating the name of the donee organization, the date the contribution was made, and the amount of the contribution). This is a substantial change from the prior law which had a "de minimus" exception that did not require the taxpayer to obtain a bank record or receipt for any contribution of cash to a charity that did not exceed $250.

Pension and IRA Provisions of EGTRRA Made Permanent. The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) contained numerous provisions relating to

Continued on Page 4

2006 Year End Tax Planning

Keep Good Records and Ask Questions

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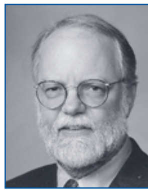

By Frank C. Carnahan

You can use acceleration or deferral techniques to maximize your overall tax savings between 2006 and 2007, take advantage of 2006 only tax laws before they expire, and prepare for new 2007 tax breaks.

Several ways in which you can shift income or expenses into 2006 or 2007 to save the most overall in taxes are:

- Accelerate/postpone transactions that produce income or yield deductible expenses;
- Match long and short-term capital gains with capital losses to decrease capitals gains tax and maximize the $3,000 limit on capital losses that can offset other income;
- Bunch deductible expenses into one or the other year if the standard deduction may be taken in one of the years, and/or to meet the adjusted gross income limits for medical (7.5%) or miscellaneous itemized deductions (2%);
- Maximize retirement plan accounts annual contributions, since annual limits cannot be carried forward;
- Businesses can take advantage of the full expensing deduction of $108,000 in 2006 and $112,000 in 2007; and
- S corporation shareholders can make certain their stock basis is high enough to entitle them to any available loss deductions.

2006 does have its share of opportunities and pitfalls:

- The “kiddie tax” taxes income of a child under 18 (up from age 14) at a parent's tax rate retroactively from January 1, 2006;
- The hybrid vehicle credit available to purchasers is reduced once a manufacturer sells more than 60,000 units (already the case for Toyota hybrids starting October 1, 2006);
- The residential energy credits of $500 for residential energy improvements, $2,000 for solar equipment, and $500 for fuel cells per half kilowatt capacity, are only available in 2006 and 2007;
- Strict limitations will be placed on the quality of clothing and household items entitled to a charitable deduction beginning August 17, 2006;
- New (and generally unfavorable) limitations on the housing allowance for those working abroad are retroactive to January 1, 2006; and
- Direct, tax-free charitable contributions from IRAs for those 70 1/2 and older are available for 2006 and 2007 only.

And of course, 2007 will also have its share of opportunities and pitfalls, as well:

- Cash donations of ANY size must be substantiated by paperwork, including either a cancelled check or a written note from the charity indicating amount, date and charity name;
- Businesses have a more generous, but stricter, domestic production activities deduction with the deduction cap increasing from 3% to 6%, and a restriction of the W-2 wage limitation to manufacturing activities only;
- Fixed individual retirement account contribution limitations will be adjusted for inflation, including Roth IRA income limits of $156,000 (up from $150,000) for married filing jointly, and $99,000 (up from $95,000) for most others; and
- The Saver's Credit for lower income taxpayers will be adjusted for inflation, with joint filers getting a 50% credit with income up to $31,000 (20% up to $34,000 and 10% up to $52,000).
- Beginning in 2010, there will be no maximum income level to restrict conversion of regular IRAs into Roth IRAs. Taxpayers who are presently over the current limit can make annual contributions to a nondeductible IRA that can be converted into a Roth IRA in 2010 when the income cap is lifted.

Furthermore, Congress has passed two major tax bills, the Tax Increase Protection and Reconciliation Act and the Pension Protection Act, which include:

- An estate and gift tax repeal or raising the exemption to $5 million;
- Retroactive extension of the state and local sales tax itemized deduction option to January 1, 2006;

Continued on Page 4

What about my "Stuff"
Continued from Page 1

two children? How is value to be determined, and by whom?

Next, consider those highly unlikely, but they do happen, events. What is to be done if a child, for instance, does not survive? Does that child's portion go to his or her children, or to others? Are there minors involved, making a transfer of title difficult? Or, unsuitable?

Further, consider problems, current or potential, the family members might have. For example, is a child experiencing financial problems, which could lead to creditors or bankruptcy and loss of some of the "stuff"? If so, should provisions be made to defer transfer to the child? On what terms and under whose control?

When the client has considered all of the variables, then the information can be conveyed to the attorney, options discussed and a suitable estate plan developed. As noted above, it is the attorney's duty to carry forward the client's plan. But, it is the client's plan, which the client must develop.

"Our stuff" is enjoyable and a great part of our life. Each of us wants this passed on to family or chosen individuals. Each of us, and our family, is unique, however, and our desires for transfer of our "stuff" is equally unique. This uniqueness, and the plan to preserve it, must be carefully thought out and fully explained to the attorney. And, if the attorney is not listening, try the 25% who will. Gladly. ■

Pension, IRA and Charitable Reform
Continued from Page 2

pension plans and IRAs benefiting taxpayers that were set to expire or "sunset" on December 31, 2010. The Pension Protection Act of 2006 removed the sunset provisions for the pension and IRA provision of EGTRRA including making permanent the following provisions:

Defined Contribution Plan Contribution Limits: The maximum contribution on behalf of a participant in a Defined Contribution Plan (that includes Profit Sharing and Money Purchase Pension Plans) is $44,000 for 2006 and is indexed for inflation.

Defined Contribution Plan "Compensation": In 2006, the maximum compensation that can be utilized to determine a person's benefits is $220,000. This amount is also indexed for inflation.

Maximum deferral for 401(k), 403(b), 457(b) and 408(k) SEP Plans: The maximum amount of compensation that can be deferred under these plans is $15,000. This maximum is indexed for inflation.

Maximum deferral for SIMPLE Accounts: For 2006, the maximum deferral is $10,000 which is indexed for inflation in future years.

"Catch Up" Contributions for Individuals age 50 or over: Individuals who have attained age 50 are allowed to make an additional contribution of up to $5,000 to 401(k), 403(b), 457(b) and SEP Plans. An additional contribution of up to $2,500 is allowed to SIMPLE Plans. Both amounts are indexed for inflation.

IRA Contribution Limits: For 2006 and 2007, the maximum contribution to an IRA that is deductible is $4,000.00. The deductible amount is $5,000 for 2008 and is adjusted for inflation for years after 2008. A catch up distribution of $1,000 is allowed to be made to IRAs for individuals who have attained the age of 50. This catch up distribution is ***not*** indexed for inflation.

Section 529 Plans – Qualified Tuition Programs: The Pension Protection Act permanently extends the favorable changes to Section 529 Plans made by the Economic Growth and Tax Relief Reconciliation Act of 2001. The major advantage made by EGTRRA was to exclude distributions from federal income to the extent used to pay the qualified higher education expenses of the beneficiary. These modifications were to expire on December 31, 2010. The Pension Protection Act permanently extends the favorable provisions, but also grants the IRS the authority to enact regulations necessary to carry out the purposes of Section 529 Plans (i.e., save for the higher education expenses of the beneficiary) and prevent abuses. Thus, more rules regarding the plans may be imposed in the future. ■

Year End Tax Planning
Continued from Page 3

- Retroactive extension of the above-the-line higher education tuition deduction and the teacher's classroom expense deduction to January 1, 2006;
- Extension and/or modification of a host of tax breaks for business, including the Work Opportunity and Welfare-to-Work tax credits, Archer Medical Savings Accounts; the research tax credit; and
- Further closing of the SUV purchase loophole that has continued to allow up to a $25,000 expensing deduction in the first year of business use.

Congress has also passed a few legislative "patches" to keep the alternative minimum tax (AMT, designed to ensure that wealthy taxpayers were not able to escape taxation by exploiting deductions) from hitting too many people, but the AMT has not been indexed for inflation so it will affect a growing number of taxpayers every year. You can plan to avoid AMT by reviewing items that trigger AMT, such as:

- State and local taxes;
- Home equity loans and other mortgage interest not incurred in buying, building or improving your principal residence;
- Incentive stock options which can generate AMT income even when sold at a loss;
- Private activity bonds; and
- Other itemized deductions.
- Give our office a call

The two most important pieces of tax advice to keep for any year are to keep good records and ask questions. ■

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Meet our Super Lawyers® for 2006:

Each year, ***Law & Politics Magazine*** mails over 23,000 ballots to Missouri and Kansas lawyers, asking them to nominate the best lawyers they've personally observed in action. Research is then conducted on each candidate, dividing them into more than 60 practice areas. A panel of preeminent peers in each practice area then evaluates each candidate. From the original pool of candidates, only 5% of Missouri and Kansas attorneys are selected as Super Lawyers®. While we feel all of our attorneys at CECB are ***super lawyers***, here are the six named by ***Law & Politics*** as Super Lawyers® for 2006:

Clifford S. Brown

Cliff Brown is a member of the Estate Planning Practice Group and concentrates his practice in the areas of estate planning, probate, and trust litigation.

Cliff is currently serving as the 84th President of the Springfield Metropolitan Bar Association. The Supreme Court appointed Cliff to the Board of Law Examiners in 2003. As a Board member, Cliff's role involves the investigation and determination of the character and fitness of individuals seeking admission to the bar, determining the qualifications of practicing attorneys from other states seeking to be admitted to the Missouri Bar, and in developing, administering, and grading the examinations of new applicants seeking admission to the bar.

A graduate of the University of Missouri-Columbia (B.S., with honors, in 1965 and J.D. in 1968), Cliff has served as an educator and speaker on behalf of the Supreme Court of the State of Missouri, the Missouri Bar Association, the University of Missouri – Columbia School of Law, and other organizations to provide continuing legal education to members of the legal profession.

Cliff's community involvement includes being a Member of the Ethics Committee of Cox Health Systems, and he has served as a Member of the Developmental Center of the Ozarks as well as the Burrell Center.

C. Bradford Cantwell

Brad Cantwell is a member of the Transactional Practice Group and practices in the areas of employee benefits, taxation, and corporate law.

With over 20 years of experience in the area of employee benefits, including nonqualified plans, ESOPs, pension and 401(k) profit sharing plans, cafeteria plans, HIPAA and trouble-shooting complex ERISA issues, Brad has been a lecturer at numerous seminars during his career.

Brad received both his undergraduate and law degree from the University of Missouri at Columbia in 1978 and 1981, respectively, and received his LL.M. in Taxation from the University of Miami in 1984.

Brad has also devoted time to civic and charitable organizations, recently serving as president of the Developmental Center of the Ozarks.

John M. Carnahan III

John Carnahan is a member of both the Transactional and Estate Planning Practice Groups of CECB. He concentrates his practice in the areas of tax planning, corporate transactions, estate planning, and business succession planning for family-owned businesses, which has also included providing advice and assistance in real estate acquisitions and development, financial institution organization and compliance, business and estate planning, and the acquisition and sale of businesses.

In 2005, John was appointed by Governor Matt Blunt to serve on the University of Missouri Board of Curators, a nine-person governing body of a four-campus system, which includes the University of Missouri-Columbia, the University of Missouri-Kansas City, the University of Missouri-Rolla, and the University of Missouri-St. Louis.

John received his bachelor's degree from Missouri State University in 1971 and his law degree, cum laude, in 1974 from the University of Missouri. In 1975, John received his LL.M. in Taxation from the University of Miami.

William E. Evans

As a member of the Transactional Practice Group, Bill concentrates his practice in the areas of taxation, corporations, real estate, and employer/employee law. His vast experience, which includes mergers and acquisitions, tax-free like-kind exchanges of real estate, and the formation and planning of limited partnerships, limited liability companies, and corporations, has made Bill a highly sought-after continuing legal education instructor for more than 20 years.

In 2003, Bill was appointed as the Legal Advisor to the International Brotherhood of Magicians, a not-for-profit organization consisting of over 14,000 amateur and professional magicians worldwide. Bill has also served the organization as a member of the Endowment Committee as well as the Business Systems Committee.

A Fellow in the American College of Tax Counsel, Bill's educational background includes a bachelor's degree from Southern Methodist University in 1974, a law degree in 1977 from the University of Missouri, and an LL.M. in Taxation from Southern Methodist University in 1980.

Thomas D. Peebles, Jr.

Thomas D. Peebles, Jr. is a member of the firm's Estate Planning Practice Group. Tom has over 26 years of private practice experience in estate planning and estate and trust administration matters, and has concentrated his practice in those areas since 1980.

Tom's experience includes the preparation of basic and sophisticated estate planning documents, as well as wealth transfer planning for high net worth clients, closely held business owners and their families. The author of several publications and a frequent lecturer on estate planning topics, Tom was elected a Fellow of The American College of Trust and Estate Counsel in 2004.

Over the years, Tom has devoted a substantial amount of his time towards civic and charitable activities including the Community Foundation of the Ozarks, the Springfield Public Schools Foundation, the Springfield-Greene County Library Foundation, the History Museum of the Ozarks, the Hospice Foundation of Southwest Missouri, and the Child Advocacy Council. Tom was recognized as one of ten "Volunteers of the Year" as part of the 2004 Gift of Time Awards sponsored by the Council of Churches of the Ozarks.

Tom received his bachelor's degree from Missouri State University, cum laude, in 1977, and his law degree from the University of Missouri at Kansas City in 1980.

Joseph Dow Sheppard

Joseph Dow ("Chip") Sheppard III is a member of both the Litigation and Dispute Resolution Practice Group and the Transactional Practice Group, concentrating his practice in the areas of real estate, business, securities and intellectual property litigation, dispute resolution and transactions. A substantial portion of Chip's practice includes securities and other fraud and fiduciary duty related claims, both as an arbitrator and as counsel for the parties.

Throughout his illustrious career, Chip has tried a combined total of more than 50 arbitrations, state and federal trials, both jury and non-jury, in his areas of concentration. Other areas of Chip's practice include a variety of business transactions, real estate development and related litigation and probate litigation.

A former arbitrator for the American Arbitration Association, New York Stock Exchange, and a present arbitrator for the National Association of Securities Dealers, Chip was elected as a Fellow of the American Bar Association in 2005.

Chip's community involvement includes serving as a director of Hickory Hills Country Club since 2003, as well as serving as a member of the Chamber of Commerce Governmental Relations Committee (1995-present). He has also served as an Elder at the First and Calvary Presbyterian Church and on the Board of Directors for Leadership Springfield and the Housing Authority of Springfield.

His educational background includes a bachelor's degree from Missouri State University in 1980, and law degree, as an E. Eugene Mason Endowed Scholar, in 1983 from Southern Methodist University School of Law.

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