



Legal Perspectives

from Abrahams Kaslow & Cassman LLP

Continuing Uncertainty for the Federal Estate Tax

by James A. Tews

President Obama signed the "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010" (the "Act") on December 17, 2010. The Act changed several laws, including those related to federal estate, gift, and generation skipping transfer taxes. The Act generally lessened tax burdens for taxpayers, however, particularly with regard to the federal estate tax, Congress did not do much more than kick the can down the road for two more years.

First, before discussing the Act, here is a bit of background on the federal estate tax. Generally speaking, a person can die leaving wealth to family and friends free of federal estate tax so long as the total value does not exceed a threshold dollar amount, which I will refer to as the "Exempt Amount". The value of assets exceeding the Exempt Amount is subject to federal estate tax. Note that assets passing to a surviving spouse generally do not result in federal estate tax being owed, regardless of value.

Our estate tax roller coaster ride began in 2001 when President Bush signed the Economic Growth and Tax Relief Reconciliation Act. This law increased the Exempt Amount from \$1,000,000 in 2002, to \$3,500,000 in 2009, and temporarily repealed the federal estate tax for those who died in 2010. A "sunset" provision in this law would have permanently returned the Exempt Amount to \$1,000,000, beginning in 2011.

So what did the 2010 law change? Among other things the Act set the Exempt Amount at \$5,000,000 for those who die after 2010 and before the end of 2012. For those who die during 2010, an estate can choose either: (1) to have an Exempt Amount of

\$5,000,000 apply, coupled with a stepped-up tax basis for estate assets, or (2) to pay no federal estate tax, regardless of the total value of the estate assets, but have a "carry-over" tax basis for estate assets. The maximum estate tax rate is now 35% (the maximum rate recently ranged from 45% to 55%).

The Act also included a new concept that may help married couples. Under the previous rules, if the first spouse to die did not fully use his or her Exempt Amount at death, the unused Exempt Amount was forever lost and could no longer be used to shelter assets from federal estate tax. The Act changed the law so that when the second spouse dies, both his or her Exempt Amount (\$5,000,000) and the unused Exempt Amount of the first deceased spouse (up to \$5,000,000) would be available to protect assets from federal estate tax. Note that the estate of the first spouse to die must file certain documentation with the IRS to preserve this option. Unfortunately, this new tool may be of limited use (see below).

The Act generally includes beneficial tax measures for clients. However, due to a "sunset" provision in the Act, at the end of 2012 the Exempt Amount is set to automatically return to \$1,000,000 and the new planning tool explained in the preceding paragraph will end. Debates about the federal estate tax will be renewed in the next several years, only this time they will take place in the context of presidential campaigning. Be sure to visit with one of our estate planning attorneys to discuss how the Act may affect your estate planning and to keep abreast of changes to the federal death tax laws.



Frederick S. Cassman
Of Counsel

Howard J. Kaslow

Frank F. Pospishil
(1942-2009)

John W. Herdzina

Harvey B. Cooper

Randall C. Hanson

R. Craig Fry

Timothy M. Kenny

Eric H. Lindquist

Thomas J. Malicki

Aaron D. Weiner

Jeffrey J. Blumel

Nicholas T. Dafney

James A. Tews

Robert M. Schartz

Nicole Seckman Jilek

Jennifer L. Rattner

Nathaniel J. Warnock

Laura K. Woods

Milton R. Abrahams
1905-2000

Ben E. Kaslow
1907-1993

2011 Means A New Limited Liability Company Act In Nebraska

by Nathaniel J. Warnock

The Nebraska Legislature has adopted the Nebraska Uniform Limited Liability Company Act (the "New LLC Act"), which governs all LLCs formed in Nebraska on and after January 1, 2011. LLCs formed prior to January 1st of this year are not governed by the New LLC Act until January 1, 2013 unless an LLC makes an election to be governed by the New LLC Act prior to such date.

The New LLC Act has changed the process for forming LLCs in Nebraska. Under the New LLC Act, LLC members must first prepare and sign an LLC's operating agreement and then proceed with filing a Certificate of Organization with the Nebraska Secretary of State. Because the New LLC Act also contains default rules that govern an LLC when certain matters are not specifically addressed in the operating agreement,

LLC members should carefully consider the default provisions of the New LLC Act.

The New LLC Act has also expanded the fiduciary duties owed by an LLC's members to one another (in member-managed LLCs) and by managers to an LLC's members (in manager-managed LLCs). These duties include the duty of loyalty and the duty of care.

The New LLC Act defines these duties in much greater detail than the previous LLC Act and holds the members and managers to higher standards of conduct that may or may not be desirable to an LLC's members. While these duties may not be altogether eliminated by an LLC's operating agreement, they can be limited or tailored to fit the circumstances and conditions under which an LLC and its

members and managers anticipate operating.

The New LLC Act places renewed emphasis on the importance of an LLC's operating agreement, providing LLC members with a much greater degree of certainty as to what rules will apply if an LLC's operating agreement is silent as to certain governance matters. However, the New LLC Act also gives an LLC's members the flexibility to modify those rules in the LLC's operating agreement.

If you are interested in forming an LLC or if you are currently a member or manager of an LLC and would like to discuss the effect of the New LLC Act on your LLC or your current operating agreement, the attorneys at Abrahams Kaslow & Cassman LLP are available to answer any questions that you may have.

AK&C Welcomes Two New Associates



Laura K. Woods

AK&C is pleased to welcome two new associates to the firm, Laura K. Woods and Jennifer L. Rattner.

Ms. Woods received her Bachelor of Arts degree in Government and International Affairs from Augustana College in South Dakota in 2005. She received her Juris Doctor, *cum laude*, from Creighton University School of Law in 2009. In law school, Ms. Woods was a law clerk for the Douglas County Public Defenders office. Ms. Woods worked at another Omaha law firm doing civil litigation before joining our firm. She will focus her practice on litigation and is admitted to practice in Nebraska and Iowa.



Jennifer L. Rattner

Ms. Rattner received her Bachelor of Science degree in Psychology, *cum laude*, from Drake University in Des Moines, Iowa in 2003. She received her Juris Doctor, with *high honors*, from Drake University Law School in 2008. In law school, Ms. Rattner was a member of the Drake University Law Review for two years. Prior to joining our firm, Ms. Rattner was an associate at another Omaha law firm.

Ms. Rattner will focus her practice on corporate law, commercial transactions, energy law, intellectual property and securities. Ms. Rattner is admitted to practice in Nebraska and Iowa.

Employment Law

Do You Have Female Employees? Take Notice: Nursing Moms Now Get a Break

by: *Harvey B. Cooper and Kathryn A. Kotlik*

The Fair Labor Standards Act now requires employers of covered non-exempt employees to give nursing mothers a reasonable break time and place to express breast milk for one year after her child's birth. Covered employees include (i) employees working for a business with at least two employees and \$500,000 in business per year, (ii) employees who work for a school, government agency, hospital, or business providing medical or nursing care for residents, (iii) employees regularly involved in interstate transactions, including those who make or send products to other states, call persons in other states, or travel to other states on business, and (iv) domestic service workers, including cooks, full-time babysitters, and housekeepers.

If your employees are covered, you must:

1. Give nursing employees break time to express breast milk. Mothers will likely need two or three breaks during an eight hour shift. To determine the length of the break, employers should consider the time it takes a woman to express breast milk (typically, fifteen to twenty minutes), the distance from the employee's work area to the designated break space, access to a sink, refrigerator, pump or

place to store a personal pump, and the speed of the pump.

2. Provide a private space other than a bathroom for expressing breast milk. A lounge or locker room shielded from view and separated from a bathroom may be sufficient. Employers may create a temporary space for expressing milk as long as it is private. The space must have a place for the nursing mother to sit, a flat surface other than the floor for the pump, and, ideally, an electrical outlet.

3. Allow nursing employees to safely store a pump either near their work spaces or in a separate locker, closet, or cabinet.

4. Allow nursing employees to safely store the milk by providing a refrigerator or allow the employees to bring an insulated food container bag.

5. Arrange a private off-site space to express milk if the nursing employee is working off-site.

Employers do not need to pay nursing mothers for breaks to express milk unless the employee is not completely off-duty or the employer already gives paid breaks and the employee uses the paid break to express milk.

Employers with fewer than fifty employees do not have to give nursing employees break time to express milk if doing so causes the employer undue hardship. The Department of Labor (DOL) will compare the difficulty and expense of providing breaks to the employer's size, financial resources, nature, and business structure to determine if undue hardship results. The DOL cautions that an employer may only refuse to provide break time to nursing mothers in very limited circumstances.

Nursing employees should tell their supervisor in advance that they will need break time to express milk. Employers should communicate with nursing employees to determine a reasonable break time and space for expressing milk.

If an employer fires an employee for taking breaks to express milk or treats a nursing employee differently than other employees, the DOL may seek reinstatement and lost wages on behalf of the employee and the employee may file a lawsuit against the employer.

If you would like more information regarding break time requirements for nursing mothers, please contact one of our Employment Law Attorneys at 402-392-1250.



Robert M. Scharz

Robert Scharz Becomes a Partner

Abrahams Kaslow & Cassman LLP is pleased to announce that Robert M. Scharz has become a partner in the firm. Mr. Scharz will focus his practice on Medical Malpractice Defense, Insurance Defense and Commercial Litigation.

Mr. Scharz obtained his Bachelor of Science in Business Administration from the University of Nebraska at Omaha in 1990 with an emphasis in accounting. After obtaining his Juris Doctor from Creighton University School of Law in 1993, he became an Assistant Douglas County Public Defender where, over the next five years, he gained significant trial experience. In 1998, Mr. Scharz entered private practice where he has continued as a litigator. He is currently a member of the Omaha and Nebraska State Bar Associations, Iowa State Bar Association, the American Bar Association, the Medical Liability Section of the Defense Research Institute, the Nebraska Defense Counsel Association and the Nebraska Criminal Defense Attorneys Association.

Mr. Scharz is admitted to practice in Nebraska and Iowa as well as the U.S. District Court District of Nebraska and the U.S. District Court of the Northern District of Iowa.

Attorney Spotlight



James A. Tews has joined the Easter Seals of Nebraska Board.

Nathan J. Warnock joined the Hope Center for Kids Leadership Council.

Nicole Seckman Jilek was the Director of the Omaha Jaycees 2010 Ten Outstanding Young Omahans award.

Aaron D. Weiner graduated from Jewish Omaha Leadership Training.

AK&C is on Facebook! Keep up-to-date on what is happening at the firm by becoming a FAN of AK&C on Facebook! You will find events, news about attorneys, law updates, seminar information and more!



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Exciting news for AK&C. We have been voted one of "Omaha's Best Law Firms" by the B2B Omaha Magazine.

Businesses and citizens of Omaha and surrounding areas completed a ballot provided in the winter issue of B2B Omaha Magazine. In those ballots they count and honor the top two companies with the most votes. Thank you Omaha for voting us one of "Omaha's Best Law Firms!"



Howard J. Kaslow, John W. Herdzina and Thomas J. Malicki have been recognized as "Leaders in their Field" by Chambers USA in the practice area of Corporate/Commercial Law for 2011.



8712 West Dodge Road, Suite 300
Omaha, Nebraska 68114

This newsletter is published by the law firm of Abrahams Kaslow & Cassman LLP to inform our clients and friends about various legal developments and to provide news about our firm. This newsletter is not intended to provide legal advice on specific matters but rather to provide insight into legal topics and issues of current interest. Please consult with legal counsel before taking action on matters covered in this newsletter. If you would like further information or would like to be added to our mailing list, please contact Debbie Watson at 402-392-1250 or via email at dwatson@akclaw.com.

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