

Seminar

Changes in Retirement Planning for Corporations

Abrahams Kaslow & Cassman LLP and Swartzbaugh-Farber & Associates invite you to a FREE seminar to discuss corporate retirement planning affected by the Pension Reform Act and §409(A):

Qualified Plans:

- 401(k)s
- Simple IRAs
- SEP

Non-Qualified Plans:

- Non-qualified deferred compensation
- 401(k) overlay plans
- Supplementary Executive Retirement Plans (SERPs)



Thursday, November 2, 2006

8:00 - 9:30 a.m.

Sign in: 7:45 a.m.

Happy Hollow Club

1701 S. 105th Street

To register call Debbie Watson at
392-1250 or email
dwatson@akclaw.com

This newsletter is published by the law firm of Abrahams Kaslow & Cassman LLP to inform our clients and friends about both legal developments and news about our firm. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. 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 email dwatson@akclaw.com.

8712 West Dodge Road, Suite 300
Omaha, Nebraska 68114

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NEW LEGISLATION AFFECTS CERTAIN CHARITABLE GIFTS

by Howard J. Kaslow

The recently enacted Pension Protection Act of 2006 ("PPA 2006") contains several important provisions dealing with certain types of charitable contributions:

1. Substantiation for Cash Gifts. For many years, taxpayers have been required to have a contemporaneous written acknowledgment (typically a receipt) from a donee charity as a condition of claiming a deduction for a charitable gift of \$250 or more. PPA 2006 provides that any cash gift to charity (including a gift by check) is deductible only if the taxpayer has a reliable written record of the contribution (either a bank record or a receipt or other written communication from the charity) showing the name of the charity and specifying the amount and date of the contribution. Presumably a cancelled check will satisfy such requirements; however, taxpayers can no longer claim deductions for cash contributions (not contributions made by check) to, for example, Salvation Army kettles, collection baskets at religious services, or other charitable recipients without the required written record. This provision of PPA 2006 will become effective for calendar year taxpayers in 2007.

2. Donations of Clothing and Household Items. Used clothing and household items often are given to

charities, and taxpayers claim the donations as charitable deductions. PPA 2006 generally will permit a charitable deduction for such donations only if the clothing or household item is in good used condition or better. Worn out and torn clothing and broken appliances or other household items no longer qualify for a deduction, and the IRS also may deny a deduction for any item with minimal monetary value. This provision of PPA 2006 became effective in August 2006.

3. IRA Charitable Rollover. During 2006 and 2007, PPA 2006 allows persons age 70½ or older to make a charitable contribution through a direct transfer from an individual retirement account ("IRA") trustee or custodian to one or more qualifying charities, up to an aggregate amount of \$100,000 during each of such two calendar years. The transfer must be made to a public charity, and certain charitable gifts (for example, to a donor advised fund) are not eligible for this special treatment. Besides being a simple way to make a charitable gift, such direct transfers have several potentially beneficial income tax effects for a donor: (1) while the amount of the charitable contribution from an IRA is not itself deductible, neither is such amount included in the donor's income; and this means that the IRA transfer will not increase a

taxpayer's adjusted gross income ("AGI") and possibly cause the reduction of other itemized deductions such as but not limited to medical expenses, (2) the transfer from the IRA can be applied against an IRA owner's required minimum distribution from the donor's IRA for the year of the transfer, (3) since the amount of a direct transfer from an IRA to a charity is not included in the donor's income, the donor may be able to make the gift without increasing the rate of tax on his or her social security benefits, (4) a particularly generous donor may be able to make charitable contributions in excess of the normal 50% of AGI limitation on current year deductions, and (5) a taxpayer may be able to make a charitable transfer from his or her IRA and still claim the standard deduction on his or her income tax return, while avoiding income tax on the amount of the IRA transfer. Since an IRA transfer to charity must meet the applicable requirements of PPA 2006 to qualify for the special treatment described above and the requirements are somewhat technical, we suggest that you discuss with us any proposed IRA transfer to charity before you request your IRA custodian or trustee to make the transfer.

If you have any questions regarding the new legislative changes, please contact our office at 392-1250.

Hiring to Retiring: And Other Employment Issues

Abrahams Kaslow & Cassman LLP and Lutz & Company, P.C. are pleased to join together in presenting an informative and timely seminar on issues which affect all business owners.

Tuesday, November 14, 2006
7:30 a.m. - 10:30 a.m. (sign in at 7:15 a.m.)

Happy Hollow Club
1701 S. 105th Street

Topics:

New Employee Practices
Year End Issues
Independent Contractors
Employee Retirement Benefits

To register call Debbie Watson at
392-1250 or email dwatson@akclaw.com.

Health Care Corner

The Centers for Medicare and Medicaid Services (CMS) and the Department of Health and Human Services (DHHS) Office of the Inspector General (OIG) released final rules on August 1 to speed the adoption of electronic prescribing and electronic health records. The CMS rule creates two new exceptions under the physician self-referral law, or Stark. 71 Fed.Reg. 45140. The OIG rule establishes two new safe harbors under the Anti-Kickback Statute. 71 Fed.Reg. 45110.

Also on August 1, CMS issued the long-awaited inpatient prospective payment system (IPPS) final rule for 2007. 71 Fed.Reg. 48354. The rule seeks to improve the accuracy of hospital payments by implementing a cost-based system, rather than a charge-based system, and by accounting more fully for patient severity. The change will be phased in over a three-year period, and CMS expects that hospitals that report quality data will



Attorney Spotlight

Easter Seals Nebraska Names Attorney John Herdzina Chairman of the Board

Easter Seals Nebraska, whose main focus is helping individuals with disabilities gain greater independence in their everyday lives and workplaces, has named Omaha Attorney John Herdzina to its highest board post.

Herdzina, a partner with the law firm of Abrahams Kaslow and Cassman LLP, took the reigns September 1, 2006 from immediate Past Board Chair Steve Robinson, President of First Westroads Bank.

As Chairman of the Board, Herdzina will oversee a 16-member Board of Directors, and work with Easter Seals Nebraska President and CEO, Karen Carlson, to continue the organization's growth and expansion of programs and services. "Each Chairman brings a different set of strengths and skills to the position," says Carlson, "and I'm confident John Herdzina will be a strong leader for Easter Seals Nebraska as we move forward."

Herdzina's law practice focuses on corporate law, energy law, complex commercial transactions, drafting of contracts, administrative law and special needs trusts. He is probably best known publicly as the City Attorney for Bellevue, Nebraska.

For more information on Easter Seals Nebraska's programs and services, access www.ne.easterseals.com or call 800-650-9880.

Employment Law Report

Concealed Handgun Permit Act

Nebraska became the 48th state to pass a concealed carry law when Governor Heineman signed the Concealed Handgun Permit Act into law in April of 2006. There are now only two states, Illinois and Wisconsin, that still have laws that bar private citizens from carrying concealed weapons.

Nebraska's new law permits an individual without a criminal background who passes a gun-safety course to obtain a permit from the Nebraska Highway Patrol to carry a handgun "totally hidden from view." Unlike other states, Nebraska's law protects an employer's right to maintain a weapon-free workplace. The law provides that an individual with a permit to carry a concealed handgun may not carry his or her concealed weapon onto "a place or premises where the person, persons, entity, or entities in control of the property or employer in control of the property has prohibited permitholders from carrying concealed handguns into or onto the place or premises."

With the passage of this law employers must anticipate that it is increasingly likely that their employees are carrying concealed weapons on their person or in their vehicle. Thus, it is imperative that employers be proactive to create and maintain a safe and secure workplace. If you have not already done so, all companies should have firearm policies that prohibit the possession of firearms or other dangerous weapons in the workplace. Some policies are going so far as to define the workplace to include employer-owned private parking lots so that employees are not permitted to bring firearms or dangerous weapons onto company property in their vehicles. If you fail to establish such policies employees will be able to bring their guns

"hidden from view" legally into your workplace.

Furthermore, all businesses should take the necessary steps to have the proper signage in place on all of their facilities prohibiting the carry of concealed guns on their property.

If you need any assistance in evaluating and updating your current policies or you need a policy, please contact any one of our attorneys in the Employment Department.

Commissions Due to Salespersons Upon Termination

The Nebraska Court of Appeals recently addressed the issue of what commissions an employer must pay to a salesperson upon termination under the Nebraska Wage Payment Act ("Act"). In *Sanford v Clear Channel Broadcasting*, Sanford sued her former employer, Clear Channel Broadcasting ("Clear Channel"), to collect unpaid commissions she claimed were due for advertising spots she sold while employed by Clear Channel, but didn't run on the air until after he was terminated. The Court of Appeals found in favor of Sanford concluding that Clear Channel's policy regarding payment of commissions to salespersons was contrary to the Act and, therefore, void.

Clear Channel compensated Sanford on a 100% commission basis for all advertising that she sold. Clear Channel's policy provided that a salesperson, such as Sanford, would not be paid a commission on advertising sold unless the salesperson was employed at the time the advertising aired. Sanford testified that her job was essentially to secure advertising orders. Once an order was secured, however, the customer could, with no penalty, change the order at any time before the

advertisement was aired. Clear Channel's business manager testified that the business office did not book orders for revenue until the advertisement was aired. The business manager also testified that salespersons were not paid until the advertisement aired and, if the station reduced a client bill downward because of errors, the salesperson's commission was reduced for the mistake. Similarly, commissions were reduced if a customer failed to pay for advertisements that were aired.

The Court of Appeals noted that the term "wages" under the Act includes "commissions on all orders delivered and all orders on file with the employer at the time of termination of employment less any orders returned or canceled at the time suit is filed." The Court of Appeals held that an employment agreement or policy that defines wages contrary to the Act's statutory definition is void because an employer cannot circumvent the Act through its employment agreement. Thus, Clear Channel's policy requiring an employee to be employed with the station at the time an advertisement is run in order to be paid a commission, even if the policy is common within the industry, was void because it was prohibited by the Act. As a result, the commissions resulting from orders on file with Clear Channel as of the final day of Sanford's employment were due her, provided the orders had not been canceled at the time the lawsuit was filed. The Court of Appeals, however, ultimately dismissed Sanford's case because she failed to produce evidence at trial to establish that the advertising ran as projected when sold and that the customers were billed as projected, and paid the projected amounts.

If you have any questions about these employment issues, please call 392-1250 and speak to one of our employment attorneys.