

## MINUTES

### MSBA PROBATE & TRUST LAW SECTION COUNCIL MEETING

May 14, 2009

Meeting held at MSBA Offices  
Minneapolis, MN

#### **Section Council Meeting**

Members Present: Dale Schoonover, Bob McLeod, Tom Woessner, Susan Link, Peter Hatinen, Scott Nelson, Mary Shearen, Melinda Greer, Jane Kiker, (and by phone: Todd Andrews, and Michael Cowles).

Others Present: Meaghan Harper, Richard Hawke, (and by phone: Bridget Logstrom Koci).

1. Meeting called to order: 3:37 p.m.
2. Minutes of the April 19, 2009 meeting were approved.
3. **Treasurer's Report.** Period ending March 31, 2009 approved.
4. **Education Committee.** Tom Woessner reports that:
  - The Section Conference will be on June 8 and 9, at the River Center in St. Paul. We are still on pace with sign ups for last year.
  - A breakfast meeting is scheduled for the Probate and Trust Section Council on the second morning of the conference. The breakfast meeting will be start at 7:30am this year (instead of 7:00am).
  - Dale Schoonover suggested that we have the fall luncheon Seminar planned by the end of the June meeting.
5. **Legislation Committee.** Scott Nelson and Mavis VanSambeek report that:
  - Uniform Disclaimer Act was passed by both houses and signed by the Governor.
  - Multi Jurisdiction Act passed and signed.
  - The Uniform Adult Guardianship and Protective Proceedings Act appears to also be heading for a floor vote after committee hearings in both chambers, while the committee continues to work on the modifications to the guardian/conservatorship

statute that will incorporate a new Ward Bill of Rights. The next hearing is scheduled on Monday, April 20 at 4:30 in House Judiciary. Will go to conference committee since the house and Senate versions are now different.

- Sales Tax on legal services appears to be dead.
- Anatomical Gift Act had to be pulled because uniform laws and life source had questions. Because the questions could not be addressed, the bill had to be pulled. We don't want that to happen again, so there will be a meeting with Jack Davies and members of our Section. What happened with the Disclaimer Act should not happen again.
- Dale commended Scott for his quick generation of a summary of the Disclaimer Act to respond to a very late request by Jack Davies for such a summary.

#### 6. Newsletter Committee. No Report

#### 7. Federal Taxation Committee. Richard Hawke reports that:

- **2010 Budget Resolution.** The Senate and House passed their 2010 budget resolution on April 29. Bypassing pay-as-you-go requirements, it continues many of the income tax provisions from the 2001 and 2003 tax bills for families making under \$250,000, would provide three years of AMT relief and continues the 2009 Federal estate tax exemption of \$3.5 Million, among other things. The budget resolution is non-binding but sets the course that Congress is expected to follow in the upcoming budget season.
- **Appraiser's work file protected under attorney-client privilege and work product doctrine.** The Idaho US District Court quashed an IRS Summons seeking the appraisal work file of an appraiser who submitted valuation of a conservation easement. The court found that the work file was protected under both the attorney-client and work product doctrine as the file was prepared at the direction of the taxpayer's law firm in an anticipation of future litigation regarding the value of the easement and to aid in providing legal advice to the taxpayers. Filing the final appraisal report with their tax returns did not open the work file to discovery by the IRS. The court additionally found that the IRS was not acting in good faith. M Richey, District Court, Idaho, 2009-1 USTC 50,274.
- **IRS Gets Second Chance re Work Paper Privilege in a different court.** The pro-taxpayer three judge panel decision in *Textron, Inc.* (CA-1 2009-1, USTC Para 50,167) was vacated pending rehearing. The First Circuit Court of Appeals has decided to re-hear the case en banc.

- **IRS Sets Sight on Off-Shore Account Holders - 6 month period for voluntary disclosure.** The IRS on March 26 announced a 6 month program for US taxpayers with undisclosed foreign bank accounts to voluntarily come clean. In exchange for coming clean, paying back taxes for the last six years plus interest and penalties, the IRS promises to waive the 75% fraud penalty and criminal charges.
- **Obama announces overseas enforcement proposals.** President Obama announced a series of proposals to strengthen enforcement of U.S. tax laws for citizens with off-shore accounts on May 4th.
- **Baucus proposes wide-ranging tax legislation.** Senator Baucus proposed wide-ranging tax legislation which would make permanent most of the middle class tax cuts from 2001 and 2003, the AMT “Patch,” the \$3.5 Million federal estate tax exemption and the 45% estate tax rate. Baucus is the Senate Finance Committee Chairman. Senate File 722.
- **Method provided to determine taxable portion of Grantor retained interest Trusts and CRTs.** IRS Proposed Reg. 20.2036-1 has been amended/supplemented by the IRS to provide the methodology for calculating the amount of corpus required to satisfy a grantor retained interest which must be included in the grantor’s taxable estate. The existing reg. would be amended to include the six steps required to calculate the amount included in the decedent’s estate where the decedent retained a right to receive an annuity or other payment that was not income after the death of the current recipient. Reg – 119532-08 adding to proposed Reg. 20.2036-1.
- **Amount and type of income recognized upon surrender of life insurance policy.** In Revenue Ruling 2009-13 the IRS clarified the character and amount of income recognized upon the surrender of a life insurance policy.

The IRS ruled that the surrender of a policy for the cash surrender value generates ordinary income to the extent the amount realized exceeds the basis in the policy (the aggregate premium paid on the contract). However, if a policy is sold to a third-party, the inside build up value would be ordinary income and the excess would be treated as long-term capital gain.

- **IRS Updated Section 7520 Actuarial Tables.** Pursuant to the mandate of Internal Revenue Code Section 7520(c)(3), the IRS revised the actuarial tables (Tables S and U(1)) to reflect data compiled from the 2000 Census. IRS Pub. 1457, 1458 and 1459 which contain the complete sets of tables are updated. The

new tables are effective on and after May 1, 2009, however, for gift tax purposes and decedents dying after April 30, 2009 and before July 1, 2009, either the old or the new table may be used. The full texts of these publications are available on the IRS website at [www.irs.gov](http://www.irs.gov). Reg – 107845-08.

- **IRS reminds small tax-exempt organizations to file e-Postcards.** The IRS released a news release to remind small tax-exempt organizations (gross annual receipt of \$25,000 or less) to file Form 990-N, commonly known as e-Postcard. May 15, 2009 is the second annual deadline for filing this newly required simple report for small tax-exempt organizations after its introduction by the IRS. IR – 2009-49.
- **IRA distribution for Higher Education Expenses does not violate Section 72(t) election.** The Tax Court ruled that a distribution for higher education expenses from taxpayer's IRA was not an impermissible modification of taxpayer's election to receive a series of substantially equal periodic payments under IRC Section 72(t)(4) so as to defeat the latter exception to the early withdrawal penalty. G.T. Benz, 132 TC 15 (Dec. 57,810).

- **On the Watch List**

- H.F. 436 – nothing new reported. Referred to House Ways & Means Committee.
  - H.R. 498 – nothing new reported. Referred to House Ways & Means Committee.
  - S.F. 722 – Read twice and referred to Senate Finance Committee.
- Richard would like to find someone to help him next year, during tax season, to compile cases and updates. If you know of anyone that would like to assist Richard, they should contact him.
  - The Council had a brief discussion about the new Obama Tax Proposals about GRATS.

**8. Professional Responsibility/Consumer Protection Committee.** Jane Kiker reports that:

- Jane talked about a possible topic for a lunch seminar – nuts and bolts basics regarding Medical Assistance so that we practitioners that do not normally practice in this area could be aware of these issues. Jane thought it might even qualify for Elimination of Bias credits, and get a practitioner in elder law and someone who works with reverse mortgages.

**9. Greater Minnesota Committee.** No Report.

**10. Technology Committee.** No Report.

**11. Gene Daly Award.** Mary Shearen reports that:

A decision was made as to who would receive the award this year.

**12. Litigation Committee.** Bridget Logstrom Koci reports that:

- They are working on a Legislation luncheon in the fall and a judge's panel in November or early December.

**13. Wills for Heroes Committee.** Susan Link reports that:

We have prepared 1,735 wills to date and we continue to train additional volunteers. Our SE Minnesota Chapter is now up and running.

**14. Old Business.**

The nominating committee will be issuing its report for who would be filling the council seats at the Section's annual meeting on June 9, 2009.

General Meeting adjourned at 4:53 p.m.