

MINUTES

MSBA PROBATE & TRUST LAW SECTION COUNCIL MEETING

November 15, 2007

Meeting held at Dorsey & Whitney, LLP
50 So. 6th St.; Suite 1500
Minneapolis, MN

Members Present: Melinda Greer, Mary Shearen, Joyce James, Susan Link, Derrick Doerr, Peter Hatinen, Drew Baese, Tom Rauenhorst, Jane Kiker, Dale Schoonover, Jennifer Anderson, Julie Haseman, Rick Bunin, Brad Hanson, Bob McLeod.

Others Present: Jennifer Lewis Kannegieter, New Lawyer Section liaison.

1. Meeting called to order; 3:30 p.m.
2. Minutes of October 25, 2007 meeting were approved as corrected.
3. **Treasurer's Report.** Tom Woessner filed a report through the period ended September 30, 2007 and said report was approved.
4. **Education Committee.** A meeting is set for November 16, 2007 to discuss planning and topics for the annual conference. Peter Hatinen reports that a seminar has been scheduled for November 30, 2007 to discuss the Margolis case and early indications are that it will be well attended. Rick Bunin and Derrick Doerr discussed the technology seminar that is being put together. Vendors are not showing much interest so the focus may change to lawyers and paralegals who use various softwares as speakers. The target date for the technology seminar is sometime in January, 2008.
5. **Legislation Committee.** Mary Shearen and Joyce James provided an update on legislation matters. The Real Property Section, Business Law Section and Family Law Section have circulated legislation including a new real estate TOD deed statute, 2 assisted reproduction statutes, and a trust for pets is also being introduced again. The Family Law group also has introduced legislation related to life insurance trusts for minors in a divorce context. The legislation committee will continue to monitor these and other legislative proposals as they come up. The next step is all legislation is presented to the MSBA legislation committee and then if it passes there it is voted on at the MSBA meeting in December, 2007.
6. **Newsletter Committee.** Peter Hatinen report no new changes.

7. **Federal Taxation Committee.** Scott Nelson was absent but submitted his report before the meeting as follows:

Installment Payments of Estate Tax. § 6166 allows eligible estates to pay the estate tax attributable to the decedent's interest in a closely-held business in up to 10 equal installments, with the first principal payment due by the 5th anniversary of the due date of the estate tax. Interest is payable annually at a reduced rate. Under § 6324(a), a general federal estate tax lien attaches for 10 years to all assets of the gross estate, leaving the government unsecured for the last 4 years and 9 months. IRS has traditionally required a bond or extension of the security interest, but in Estate of Roski v. Commissioner, 128 T.C. 113 (2007), the tax court found that this policy is inconsistent with the statute. The IRS has issued Notice 2007-90 in response, stating it will look at each case to determine whether additional security is needed. The factors they will consider include: (1) Duration and stability of the business; (2) Ability to pay the installments; and (3) Compliance history.

WI Estate Tax. The Wisconsin estate tax was not addressed in the recent budget bill and will therefore sunset on January 1, 2008 for deaths occurring after December 31, 2007.

IRD. IRS has privately ruled that any gain realized on a sale of property by an individual's revocable trust that was begun while he was living and completed after his death did not generate income in respect of a decedent (IRD). IRS reached this result because various unforeseeable uncertainties caused a delay of the closing of the sale, as explained below. (PLR 200744001) This ruling was very favorable for the trust because it got to use a stepped up basis, i.e., a basis equal to the fair market value of the property at the date of the decedent's date. As a result, the trust was not taxed on any pre-death appreciation in the value of the property.

Qualified terminable interest property elections-extensions. Decedent's estate was granted 60-day extension from date this letter was issued to make QTIP election under Code Sec. 2056(b)(7) for stated trust where taxpayer acted reasonably and in good faith. (PLR 200743018)

Qualifying family owned business interest-extensions. Co-administrators were granted 60-day extension from date this letter was issued to elect to include building as qualifying family owned business interest under Code Sec. 2057 where co-administrators acted reasonably and in good faith. (PLR 200743027)

Qualified family-owned business interests-extensions. Executor of decedent's estate was granted 60-day extension from date of letter to include building as qualified family-owned business interest under Code Sec. 2057, where executor acted reasonably and in good faith. (PLR 200743031)

Generation-skipping transfer taxes-proposed creation of new trusts and merger of trust assets-exempt status. Proposed creation of new trusts and merger of original trust assets won't affect original trusts' exempt status, won't constitute constructive addition, and

won't cause distribution from, or termination of any interest in, original or new trusts to be subject to GST tax where transaction won't shift beneficial interest to any beneficiary who occupies lower generation than person(s) who hold beneficial interest prior to modification or extend time for vesting of any beneficial interest in trust beyond period provided in original trust. (PLR 200743019)

Generation-skipping transfer taxes-proposed creation of new trusts and merger of trust assets-exempt status. Proposed creation of new trusts and merger of original trust assets won't affect original trusts' exempt status, won't constitute constructive addition, and won't cause distribution from, or termination of any interest in, original or new trusts to be subject to GST tax where transaction won't shift beneficial interest to any beneficiary who occupies lower generation than person(s) who hold beneficial interest prior to modification or extend time for vesting of any beneficial interest in trust beyond period provided in original trust. (PLR 200743020)

Generation-skipping transfer tax-exempt status-gain or loss. Proposed modification won't cause original remaining trust share or 4 separate subtrusts to lose their GSTT-exempt status, and won't cause distributions from those trusts to be subject to GSTT under Code Sec. 2601. Also, modification won't cause any trust or beneficiary thereof to recognize gain or loss from sale or disposition of property under Code Sec. 61 or Code Sec. 1001. (PLR 200743017)

Generation-skipping transfer taxes-exemption allocations-extensions. Grantor and spouse were each granted 60-day extension from date this letter was issued to make allocations of their respective GSTT exemptions to transfers to trust on stated dates where taxpayers acted reasonably and in good faith. (PLR 200743028)

Generation-skipping transfer tax-exemption allocations-extensions. Grantor and spouse were each granted 60-day extension from date this letter was issued to make allocations of their respective GSTT exemptions to stated transfers to trusts where taxpayers acted reasonably and in good faith. (PLR 200743025)

Generation-skipping transfer tax-exemption allocations-extensions. Grantor and spouse were each granted 60-day extension from date this letter was issued to make allocations of their respective GSTT exemptions to stated transfers to trusts where taxpayers acted reasonably and in good faith. (PLR 200743026)

Reverse QTIP elections-generation-skipping transfer tax. Decedent's estate was granted 60 day extension from date this letter was issued to sever trust into GST exempt and non-exempt trusts, make reverse QTIP election with respect to exempt trust, and to allocate decedent's available GST exemption to exempt trust. (PLR 200743029)

Exempt Orgs - Transactions of Interest. IRS is issuing letters and questionnaires to organizations that may have received certain interests in real property (known as "successor member interests") in a type of reportable transaction described as a transaction of interest. *Background.* In final regs issued in August of 2007, IRS added a

new category of reportable transactions consisting of "transactions of interest" – to be identified in later published guidance – that are subject to the tax shelter disclosure requirements of Code Sec. 6011, Code Sec. 6111, and Code Sec. 6112. (Reg. § 1.6011-4(b)(6)) These are transactions that IRS believes have potential for tax avoidance or evasion, but for which it lacks enough information to determine whether they should be identified specifically as tax avoidance transactions. In this particular case, the taxpayer acquires a successor member interest in real property, transfers the interest more than one year after acquiring it to an organization qualified to receive charitable contributions, and then claims a charitable contribution deduction that is significantly greater than the amount the taxpayer paid to acquire the interest.

S corps.-inadvertent termination-failure to file ESBT elections for trusts. Corp. will be treated as continuing to be S corp. from stated date and thereafter, and trustees of 2 trusts will be treated as having timely filed ESBT elections for trusts effective stated date, where termination of its S status was inadvertent due to trustees' failure to make ESBT election, provided that corp's S corp. election wasn't otherwise terminated under Code Sec. 1362(d) and that trustees file ESBT elections for trusts, effective stated date, within 60 days from date this letter was issued. (PLR 200743009)

Qualified Disclaimers - Trusts. The IRS determined that the taxpayer's disclaimer of stated trust property will be a qualified disclaimer under §2518 provided that the disclaimer is executed and delivered to the appropriate party within 9 months of decedent's death; and, distribution of disclaimed property to foundation/exempt org. will qualify for the estate tax charitable deduction under §2055. (PLR 200744005).

All federal tax updates are posted on Practicelaw.org.

8. **Consumer Protection Committee.** Robert McLeod reported no new developments.
9. **Ethics Committee.** Jane Kiker reported no new developments.
10. **Greater Minnesota Committee.** Brad Hanson reported that the Wills for Heroes program has another training meeting scheduled for November 16, 2007 in Greater Minnesota and the hope is to draft more wills in early 2008.
11. **Technology Committee.** The probate forms are moving along toward being completed and useable in a HotDocs program. The technology seminar was also discussed when the education committee reported, above.
12. **Gene Daly Award.** No report.
13. **Litigation Committee.** No report.
14. **Wills for Heroes Committee.** Susan Link reports that the next drafting session will be in Rosemount, Minnesota and training continues once a month. Susan will be asking the MSBA Foundation for money for additional technology support.

15. **Old Business.**

- a. The Bar Task Force on Foreign Language Translations is still building the committee.
- b. The Minnesota Justice Foundation 25th Anniversary Celebration is November 15, 2007.

16. **New Business.**

- a. The next meeting is scheduled for December 20, 2007 and the January meeting is scheduled for January 10, 2008.

There being no further business, the meeting adjourned at 4:23 p

