

MINUTES

MSBA PROBATE & TRUST LAW SECTION COUNCIL MEETING

April 17, 2008

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

Members Present: Melinda Greer, Peter Hatinen, Tom Rauenhorst, Dale Schoonover, Julie Haseman, Richard Bunin, Derrick Doerr, Brad Hanson, Bob McLeod, Drew Baese, Michael Cowles, Tom Woessner, Todd Andrews, Susan Link, Scott Nelson, Jane Kiker and Mary Shearen.

Others Present: N/A.

1. Meeting called to order; 3:33 p.m.
2. Minutes of March 20, 2008 meeting were approved.
3. **Treasurer's Report.** No Report.
4. **Education Committee.** Tom Woessner reported that sign-ups for the summer conference are ahead of schedule and we have 7 sponsors for the seminar which is 1 more than last year. The flyer for the seminar scheduled for May 19, 2008 will go out soon and the seminar includes the Anoka County Probate Registrar, Peggy Zdon, and the Hennepin County Probate Registrar, Julie Peterson, and Ramsey County Probate Manager and Referee, Dean Maus. The seminar will be held at Dorsey & Whitney. Notice of the Tax Section's Judge's Conference was also sent to probate members.
5. **Legislation Committee.** Mary Shearen provided an update on legislation matters. The probate bill H.F. 3125 has not yet passed but there is hope it will still be passed before the session ends.
6. **Newsletter Committee.** Peter Hatinen reports that the next newsletter will be published after the current legislative session.
7. **Federal Taxation Committee.** Scott Nelson's report will continue to be published on the practicelaw.org page at the MSBA website. The details are attached at the end of these minutes.
8. **Consumer Protection Committee.** No Report, but see Ethics Report, below.

9. **Ethics Committee.** Jane Kiker reports that Attorney General Lori Swanson may give a speech on Elder Abuse and the American Equity settlement. Jane will try to determine the details for the speech and will inform us if this develops.
10. **Greater Minnesota Committee.** Brad Hanson reported that the Wills for Heroes program had a drafting session in Cold Spring and that the St. Cloud paper did an in-depth article on the program that might get picked up for national publication. (After this Section Council meeting was held the St. Cloud article was picked up and published in USA Today, http://www.usatoday.com/news/nation/2008-04-21-wills-for-heroes_N.htm?POE=click-refer.)
11. **Technology Committee.** Richard Bunin reports that we are seeking input regarding the probate forms and the new HotDocs program. Also, if there are any favorable websites for probate users to let him know so they can be posted for others to use.
12. **Gene Daly Award.** There are no plans to give the award this year.
13. **Litigation Committee.** No report.
14. **Wills for Heroes Committee.** Susan Link reports that over 511 wills have been written and drafting sessions are scheduled in the near future for Albert Lea, St. Cloud and Rochester. Donations are still needed to help cover the travel costs for this program. Jennine Bengston from the paralegal group will see if their group wants to get involved with this program.
15. **Old Business.**
 - a. The Foreign Translation Committee will be examining whether the Bar should be providing translation services or resources or other forms of support for non-english speaking residents of this State. The committee is continuing to meet.
16. **New Business.**
 - a. The consensus of the Council is to not raise the probate membership dues at this time.
 - b. The MSBA is asking each Section to review their By-Laws to be sure they conform to some of the MSBA required provisions. Tom Rauenhorst will review our By-Laws for compliance.
 - c. If anyone is interested in becoming an officer for the Section or wants to become a Section Council Member please contact Brad Hanson at bhanson@quinlivan.com or 320-251-1414.

The next meeting is scheduled for May 15, 2008.

There being no further business, the meeting adjourned at 3:58 p.m.

Federal Tax Update

Transfer Tax Reform. The staff of the Joint Committee on Taxation has released JCX-23-08, *Taxation of Wealth Transfers Within A Family: A Discussion of Selected Areas for Possible Reform*. The document was prepared in conjunction with a Senate Finance Committee hearing on April 3, 2008, explaining the estate and gift tax system's current state of flux and ways to reform it. The report can be found at <http://www.house.gov/jct/x-23-08.pdf>.

Charitable Remainder Trust discretion. In PLR 200813023 and 200813006, the IRS has ruled that a special independent CRT trustee can have discretion to allocate a portion of the annual unitrust amount to the income recipients or to qualified charities. In addition, the trustor can retain the power to substitute the charitable remainderpersons, provided that at least one-third of the remainder interest is distributed to public charities, and can retain the power to substitute the special independent trustee.

Tax-exempt status. The IRS has issued final regulations, Treas. Reg. §1.501(ac)(3)-1, clarifying the substantive requirements for tax exemption under IRC §501(c)(3) and the relationship between those requirements and the imposition of IRC §4958 excise taxes. The final regulations add several examples to illustrate the requirement that an organization serve a public rather than a private interest.

Federal Estate Tax liens. IRC §6324(a)(1) creates a special estate tax lien that attaches to the gross estate of a decedent for ten years from the date of death. The gross estate is divested of the special estate tax lien to the extent that the gross estate is "used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof." IRC §6324(a)(1). In First American Title Insurance Co v U.S., 101 AFTR 2d ¶2008-622 (CA 9, 03/27/08), the 9th Circuit ruled that the liens survived the sale of the real estate to third parties, although the additional estate tax was not assessed until a later audit of the estate tax return. The plaintiffs also conceded that the personal representative did not obtain a discharge of liability under IRC §2204 before selling the properties.

Public Inspection of 501(c)(3) Form 990-T. IRS Announcement 2008-21 explains the procedures the public may use to request the inspection and copying of a 501(c)(3)'s annual return reporting §511 unrelated business taxable income (Form 990-t). This provision is effective for returns filed after August 17, 2006. Form 4506-A is currently used to request a copy of an exempt or political organization's return, report, or notice under §6104(b), and the form will be revised to allow a request for the Form 990-T. In the meantime, the Form 4506-A should still be filed to get a copy of the Form 990-t by writing "Form 990-T" on line 7. The charges for copies are listed on the Form.

Extension of Time for GST elections. New proposed regulations would provide guidance on how to obtain more time under §2642(g)(1) to make various generation-skipping transfer (GST) tax elections. Prop. Reg. §26.2642-7.

Charitable Contributions of Intellectual Property. The IRS has issued final regulations explaining the information reporting requirements for donees (charitable organizations) receiving net income from qualified intellectual property contributions made after June 3, 2004. If the

charitable organization receives income from the intellectual property during the year ("Qualified Donee Income"), the charity is required to file Form 8899, and the donor may receive additional charitable deductions for QDI in excess of basis for 10 years after the gift. The deduction in the year of initial donation is limited to fair market value or basis, whichever is lower (usually a very low basis).

Intentionally Defective Trusts. Such trusts are typically structured so that the grantor pays the income tax on the trust's income, but the trust assets are not included in the grantor's taxable estate upon death. One method for doing this is giving the grantor, in a nonfiduciary capacity, the right to acquire property held by the trust by substituting other property of equivalent value. In Rev. Rul. 2008-22, the IRS ruled that this power retained by the grantor did not cause the trust property to be included in the grantor's taxable estate under IRC §§2036 or 2038.