

Good News on Federal Taxes!

Reductions in the federal estate tax will begin this year and continue through 2009, under the new Economic Growth and Tax Relief Reconciliation Act of

2001 (2001 Tax Act).

From 2002 through 2009 the exemptions increase and the tax rates decrease, as follows:

Federal Estate and Gift Tax Exemptions and Rates Under 2001 Tax Act				
Calendar Year	Estate Tax Exemption Equivalent	Gift Tax Exemption Equivalent	GST Tax Exemption	Highest Estate, Gift and GST Tax Rate
2002	\$1 million	\$1 million	\$1,060,000 + infl.	50%
2003	\$1 million	\$1 million	\$1,060,000 + infl.	49%
2004	\$1.5 million	\$1 million	\$1.5 million	48%
2005	\$1.5 million	\$1 million	\$1.5 million	47%
2006	\$2 million	\$1 million	\$2 million	46%
2007	\$2 million	\$1 million	\$2 million	45%
2008	\$2 million	\$1 million	\$2 million	45%
2009	\$3.5 million	\$1 million	\$3.5 million	45%
2010	Taxes Repealed	\$1 million	Taxes repealed	45%
2011	\$1 million	\$1 million	\$1,060,000 + infl.	50%

In 2010, there is no federal estate tax, but Congress eliminated one benefit of the present law — the “step up” in tax basis. Through 2009, the tax basis for inherited assets is “stepped up” to the value on the date of death: The appreciation in value during the decedent’s lifetime escapes the capital gains tax. In 2010, however, the tax basis in an asset will carry over to the beneficiary who inherits the asset. On the sale of the asset, the beneficiary will pay tax on the capital gain — the difference between the sale price and the tax basis.

An executor can elect to increase the heirs’ basis by \$1.3 million, and by \$4.3 million for spouses.

Because of a congressional “sunset clause,” in 2011 the law reinstates the federal estate taxes and exemptions that were in effect before the 2001 Tax Act. Congress must take further action to prevent this reversal.

These tax changes are welcome, but the specter of repeal and reinstatement in 2011 requires that estate plans be monitored carefully so that the full

advantage of the changes is ensured. The Tax Act also phases in significant income tax rate reductions, credits, savings incentives and modifies pension and IRA provisions.

Other important developments:

• IRAs and Pension Plan Distributions

Last year, the IRS published proposed regulations that relax and modify the minimum distribution requirements for IRAs and qualified plans and provide expanded options for beneficiary designations, much to the benefit of citizens.

• Annual Gift Tax Exclusion

The annual gift tax exclusion has been increased to \$11,000 from \$10,000 per year per person. This is the amount of a gift that escapes the gift tax “radar” and remains a valuable wealth transfer technique.

• Opportunities

These changes create opportunities (and some pitfalls) and highlight the benefits of good tax planning. Delivery of sound estate and tax planning guidance to our clients is a high priority in our firm.

Alimony: It's Not a Reward

There is a popular misconception that an alimony award is designed to reward one spouse and punish the other. The true reason for alimony is to ensure there is “economic justice” between the parties.

In fact, an alimony award is only appropriate when economic justice cannot be achieved through the equitable distribution of the marital estate. Alimony is awarded when one spouse lacks the means to meet his or her reasonable needs and is unable to be self-supporting even if he or she has a job.

Before a court determines whether alimony is necessary, and, if so, the proper amount, the duration of the award and the manner of payment, several factors must be considered including the following:

- The earnings and earning capacities of the parties. If a court determines that a party is not actually earning what he or she is capable of earning, it may set an appropriate earning capacity for that party.
- The ages and physical, mental and emotional conditions of the parties.
- The sources of income of both parties, including medical, retirement and insurance benefits.
- The expectancies and inheritances of the parties.
- The duration of the marriage.
- The standard of living of the parties.
- The assets and liabilities of the parties.
- The contribution of a spouse as homemaker.
- The marital misconduct of either party during the marriage, not during the separation period.

Marital misconduct is a frequent allegation raised in divorce actions and could prevent a spouse from collecting alimony. However, only misconduct that occurs during the marriage is relevant. Marital misconduct that occurs after the parties separate isn't considered.

To make a successful argument against an award of alimony, the spouse alleging the misconduct must prove by clear and convincing evidence that it actually occurred — a task that is not always easily achieved.

Furthermore, misconduct that occurs during the marriage but is subsequently forgiven, as evidenced by the resumption of marital relations, cannot later be successfully raised as a bar to alimony. Finally, a challenge to an alimony award where both parties are guilty of marital misconduct will likely fail.

Alimony may be awarded for a definite or indefinite period of time, depending upon the circumstances of the case. Court-ordered alimony

will end upon the co-habitation, re-marriage or death of either spouse.

An alimony order may be modified if there is a substantial change in the parties' circumstances. Alimony agreements, however, are not subject to modification unless there is a provision in the agreement that would allow it.

We are experienced in the intricacies of family law, can evaluate whether an alimony award is appropriate and will advocate the position most advantageous to our clients.

Title Insurance Also Covers Forgery Losses

Title insurance is often thought of as protecting against unpaid liens and claims of missing heirs.

But title insurance also covers owners and lenders for forgery losses. In a recent case, a New York man succeeded in forging deeds and selling 11 small houses or apartment buildings in sections of Brooklyn.

It took only one day for him to tour the area, make a list of vacant properties, obtain microfilm copies of pertinent deeds from the Office of the City Register and file his freshly forged deeds.

In a short time, he advertised the properties and entered into contracts with buyers. At the closings, he received checks totaling \$1.6 million. Fortunately, authorities uncovered the scam and arrested him.

Owner's and loan title insurance policies cover forgery losses. Each buyer in the New York scam had ordered an owner's title insurance policy to be issued with a loan policy to cover each mortgage. When the fraud was discovered, the buyers filed a claim with the title underwriters who paid them the total amount of insurance as stated in their policies. The underwriters also refunded to each lender the amount of the unpaid mortgage loan covered by each loan policy.

The real owners of record retained ownership of the properties.

If you are considering the purchase of real estate, we can advise you and protect your interests during every step of the sales and purchase procedure.

New Home Inspection Law Ensures Tighter Controls

If you are considering buying, building or selling a home and you plan on having a home inspection as part of the process you should know that a new state law now regulates home inspections.

Known as the Pennsylvania Home Inspection Law (Act 144 of 2000), the regulations went into effect last December 20 and require a certain level of competency for home inspectors and minimum standards for home inspection reports.

Before the law was enacted, Pennsylvania had no statutory provisions directly governing the home inspection process. Individuals could call themselves "home inspectors" regardless of background and call their service a "home inspection," no matter how thorough the "inspection."

As home inspections became more common, this lack of control opened the door for unqualified individuals to become involved in the "inspection" field. The State Legislature, in an effort to protect homeowners better, enacted the Home Inspection Law. The highlights include:

STANDARDS FOR HOME INSPECTORS

- A home inspector must carry errors, omissions and general liability insurance of not less than \$100,000 per occurrence and \$500,000 in the aggregate. Not only must they carry the insurance when they are actively engaged in home inspections but also for not less than one year after quitting the business.

- Home inspectors will be held to standards in accordance with the practice and codes of ethics of the National Home Inspectors Association.

- A home inspector who completes an inspection that is required as a contingency in a real estate sales agreement must either be a member in good standing of the National Home Inspectors Association or be immediately supervised during the inspection by an association member.

- Home inspectors are, in certain circumstances, prohibited from inspecting a home and then contracting to repair the home and from inspecting a home in which they have a financial interest.

STANDARDS FOR THE HOME INSPECTION PROCESS

- The law defines a "home inspection" as "a non-invasive visual examination of some combination of the mechanical, electrical or plumbing systems or the structural and essential components of a residential dwelling designed to identify material defects in those

systems and components and performed for a fee in connection with or preparation for a proposed or possible residential real estate transfer."

- A home inspection also includes "any consultation regarding the property that is represented to be a home inspection or that is described by any confusingly similar term." The term does not include "an examination of a single system or component...such as, for example, (the) electrical or plumbing system or...roof, nor does it include "an examination that is limited to inspection for, or of, one or more of the following: wood destroying insects, underground tanks and wells, septic systems, swimming pools and spas, alarm systems, air and water quality, tennis courts, playground equipment, pollutants, toxic chemicals and environmental hazards."

- A home inspection must be in writing and contain a description of the scope of the inspection, of any material defects discovered during the inspection, including recommendations for corrective measures, and certain disclosures as required by the Act.

- Home inspectors may not share reports with anyone other than their client, without the client's permission, except that any seller who is not the client is also entitled to a copy.

ENFORCEMENT

- The home inspection industry is now bound by Pennsylvania Unfair Trade Practice laws.

- Home inspectors who fail to carry the required insurance, falsely represent themselves as home inspectors or fail to follow the inspection report guidelines may be subject to fines and imprisonment.

Because home inspectors are not required to be licensed the law is self-enforcing. Individuals who hire home inspectors must know the law and ask appropriate questions to ensure the law is being followed.

Home inspections are quickly becoming a requirement for any home purchase. An inspection provides peace of mind for the buyer and insulates the innocent seller from claims that the seller failed to disclose defects in the home. Home inspections are, however, no better than the persons doing the inspections.

Standard form real estate contracts provide options that buyers and sellers may select with regard to home inspections. To determine what options are best for you and to find out about what you need to know about home inspections contact one of our experienced real estate attorneys.



301 Market Street
P.O. Box 109
Lemoyne, PA 17043-0109

PRESORTED
STANDARD
U.S. POSTAGE
P A I D
Permit No. 762
Harrisburg, PA

SIDEBAR

301 Market Street
P.O. Box 109
Lemoyne, PA
17043-0109
761-4540

**Johnson
Duffie
Stewart
&
Weidner**

Family Law Attorney Joins Staff

Melissa Peel Greevy, who concentrates her practice on family law and mediation, has joined the staff of Johnson, Duffie, Stewart & Weidner as an associate.

In addition to her law practice, Ms. Greevy will continue as a Custody Conciliator for the Cumberland County Court of Common Pleas, a position she was appointed to by President Judge George Hoffer.

A native of Texas, she is a graduate of North Texas State University with a degree in psychology. She received her law degree from Widener University School of Law, where she was a member of the Moot Court Honor Society and was one of 10 students selected to work in the Widener University Civil Law Clinic Program.

Before attending law school, Ms. Greevy worked for 14 years as a social worker at the Harrisburg Institute of Psychiatry, a division of Harrisburg Hospital. She was in the private

practice of family law and family mediation in Camp Hill before joining the Firm.

She is a member of the Pennsylvania, Dauphin County and Cumberland County Bar Associations, the Family Law Section of the Pennsylvania and Dauphin Bar Associations and a member of the Association for Conflict Resolution. She also obtained a practitioner status in the Association and is trained as a family mediator.

She and her husband, Dr. Michael S. Greevy, live with their two children, Scott and Shawn, in Mechanicsburg. She is a member of Silver Spring Presbyterian Church, where she served as Moderator of the Board of Deacons.



Check Out Our New Website

We are pleased to announce that we have launched our updated website at www.jdsw.com. We designed the website to be a useful tool for existing and prospective clients, providing information regarding our firm and legal services. The website also contains convenient links to a wide variety of state and federal courts and government agencies.

Most importantly, however, our website provides a convenient means by which to communicate with us by E-mail.