



TRUSTS & ESTATES

The newsletter of the Illinois State Bar Association's Section on Trusts & Estates

In the October issue...

By Darrell Dies

In this month's newsletter Darrell Dies provides a short summary of how the Affordable Care Act might impact some of our estate planning clients. Jennifer Bunker provide us with the member spotlight regarding Section Council Members Katarinna McBride, Mary Lee Faupel and Tracy S. Dalton.

Thank you to each and every person that

has helped make this newsletter a success by providing informative, substantive and practical articles. Members of the Trusts & Estates Section may now comment on the articles in the newsletter by way of the online discussion board on the ISBA Web site at <<http://www.isba.org/sections/trustsestates/newsletter>> and comments are welcome. ■

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Affordable Care Act Primer for estate planners

By Steve Buttice and Darrell Dies

Are you trying to figure out how the Patient Protection and Affordable Care Act ("ACA")¹ will impact you and your estate planning clients? While some pundits are estimating that there are 5,000 to 10,000 or more pages of final and proposed regulations regarding the ACA, there are at least a few noteworthy issues for the estate planner to keep in mind when communicating with estate planning clients.

Increase in Medicare Taxes

For our high-income clients, they will need to consider how the ACA will impact their wallets. There are two taxes effective this year that are intended to help pay for the expansion of health coverage and other benefits under the ACA.

- Starting in 2013, the Medicare payroll tax will rise an additional 0.9% to 2.35% on earned income (wages/salaries) exceeding \$200,000 (\$250,000 for joint filers).²
- There is a 3.8% Medicare unearned income tax on net investment income for individuals with a modified adjusted gross incomes (MAGIs) exceeding \$200,000

(\$250,000 if filing a joint return or \$125,000 if filing a separate return) and the tax is 3.8% of the lesser of excess of MAGI over the highest income tax bracket for an estate/trust or the undistributed net investment income.³ The tax does not apply to non-resident aliens or a trust in which all of the unexpired interests are devoted to charitable purposes under Sec. 170.⁴ The tax also does not apply to a trust that is exempt from tax under Section 501 or a charitable remainder trust exempt from tax under Section 664.⁵

- "MAGI" is defined as: adjusted gross income increased by the excess of—
 - (1) the amount excluded from gross income under section 911(a)(1), over
 - (2) the amount of any deductions (taken into account in computing adjusted gross income) or exclusions disallowed under section 911(d)(6) with respect to the amounts described in paragraph (1).⁶
- "Unearned income" includes non-business income from dividends, royalties, rents



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Affordable Care Act Primer for estate planners

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- and interest, except municipal-bond interest; short-term and long-term capital gains (e.g., stocks, sales of land, etc.); the taxable portion of annuity payments; income from the sale of a principal home above the \$250,000/\$500,000 exclusion; a net gain from the sale of a second home; and passive income from real estate and investments in which a taxpayer doesn't materially participate, such as a partnership.
- Note -- Although the Medicare tax assessed on self-employment income is deductible, the Medicare tax on net investment income is not deductible when computing any tax imposed by subtitle A of the Code (i.e., income taxes).⁷ The tax is subject to the individual estimated tax provisions.

Options to Reduce/Avoid the New Tax

Unfortunately, with respect to earned income there is little that people can do to avoid these tax increases, except to earn less. However, with respect to investment income, savvy estate planners might consider advising clients, in tandem with their investment advisors, to consider using Roth IRAs which do not give off taxable income, installment sales which spread out taxable income, contributions to charitable remainder trusts which act to defer taxable income or reduce net investment income with tax exempt bonds or consider the viability of using other insurance products to avoid the new tax.

Other Tax Increases

Below is a summary of a few of the other noteworthy tax increases as a result of the ACA.

- A 10% excise tax on indoor UV tanning services has already gone into effect. The tax doesn't apply to phototherapy services performed by a licensed medical professional on his or her premises. There's also an exception for certain physical fitness facilities that offer tanning as an incidental service to members without a separately identifiable fee.
- A tax, a/k/a an "individual shared responsibility provision" payment to the IRS, on individuals not complying with the ACA

mandate, which may range from \$0 to \$4,500 annually.

- A 2.3% tax will be levied on manufacturers and importers on the sale of certain medical devices. "Medical device" has a broad definition and is believed to include more than 180,000 medical devices. Ask your dental colleagues about this new tax the next time you get your dental crown fixed.
- Effective in 2014 an additional tax will be levied on businesses with 50 or more full-time equivalent (FTE) employees that do not offer minimum essential coverage. This tax will be reconciled on 2014 tax returns in 2015.
- Beginning in 2018, there will be a 40% excise tax indexed for inflation (or the "Cadillac tax") that will be imposed on employers with insurance plans where the annual premium exceeds \$11,500 for an individual, and family plans that exceed \$29,450.

Potential Tax Reductions

In addition to the above referenced Medicare and other taxes, there are two potential tax reductions that could affect our tax paying clients irrespective of their income level.

- The threshold for deducting unreimbursed, qualified medical expenses increases from 7.5% of MAGI to 10% of MAGI in 2013 for individuals under age 65. This increase is postponed until 2017 for individuals age 65 and older.
- Flexible Spending Account (FSA) health-care contributions are capped at \$2,500 in 2013, with adjustments for inflation in future years. Previously, FSA contributions were subject only to employer plan maximums.

Information Reporting on Health Coverage by Employers

With respect to our business clients, we should keep in mind that the Department of the Treasury and IRS issued proposed regulations⁸ on employer health insurance coverage information reporting. The information reporting relates to health insurance coverage that is offered by certain employers, referred to as applicable large employers, and reporting is to be provided by each applicable large employer member. Additionally, the Department of the Treasury and the IRS

announced transition relief for 2014 from this annual information reporting. Notwithstanding this transition relief, once the information reporting rules have been issued, employers and other reporting entities are encouraged to voluntarily comply with the information reporting provisions for 2014. For more information, please see IRS Notice 2013-45.

Small Business Health Care Tax Credit

In addition to the new information reporting requirements, the Small Business Health Care Tax Credit ("credit") helps small businesses and small tax-exempt organizations afford the cost of covering their employees and is specifically targeted for those with low-income and moderate-income workers. The credit is designed to encourage small employers to offer health insurance coverage for the first time or maintain coverage they already have. Small businesses and tax-exempt organization that employ 25 or fewer workers with average incomes of \$50,000 or less, and that pay at least half of the premiums for employee health insurance coverage are eligible for the credit. For tax year 2013, the maximum credit is 35% for small business employers and 25% for small tax-exempt employers such as charities. In general, on Jan. 1, 2014, the rate will increase to 50% and 35%, respectively. For more information see the IRS website section on Small Business Health Care Tax Credit for Small Employers.

Exemptions from ACA

If a client is looking for a legitimate way around making the ACA payment, then keep in mind that the following categories are exempted from making the ACA payment.⁹

- Religious conscientious objection.
- Healthcare sharing ministry.
- Member of an Indian tribe.
- No federal tax filing requirement.
- Short coverage gap for three months.
- Hardship.
- Unaffordable coverage – if it costs more than 9 ½ % of MAGI.
- Incarcerated in a penal institution.
- Not a U.S. citizen or not in the USA.

Non-Tax Impact on Seasoned Persons

Our seasoned clients will likely be impact-

ed by the ACA in the following non-tax ways.

- They will continue to receive prescription drug savings through brand name and generic discounts.
- The Part D prescription drug coverage gap known as the “donut hole” will be phased out.
- Covered annual wellness visits for beneficiaries will continue to be provided by Medicare.

Conclusion

Whether you are for or against implementation of the ACA, the ACA is here to stay and attorneys must be informed regarding how the ACA will impact our clients. Antagonists might argue that one of the ACA’s unintended consequences may be the coming shortage of doctors; combine this with a Medicare program that pays less and less and the prospect for adequate senior medical care could be in trouble. Proponents, on the other hand, will maintain that the ACA will provide greater access to health care coverage, improve the quality of services delivered and reduce the rate of increase in health spending. Ul-

timately, one thing is certain, someone will pay for the ACA implementation and there’s a good chance that many of our clients are in that camp. ■

Steve Buttice has a University of Illinois Certification in Geriatrics, is the President & Founder of Medical Reimbursement & Management Services, Inc. and can be reached at buttice@comcast.net or at 309.693.1060.

Darrell Dies is a member of the ISBA Trusts & Estates Section Council, has a solo practice in Eureka, Illinois and can be reached at dies@darrelldies.com or 309.282.9112.

1. Health Care and Education Reconciliation Act of 2010, P.L. 111-152, codified as amended at scattered sections of the Internal Revenue Code and in 42 U.S.C.
2. Sec. 1411.
3. Secs. 1411(a)(2)(A) and (B).
4. Secs. 1411(e)(1) and (2).
5. Joint Committee on Taxation, Technical Explanation (JCX-18-10), at 135.
6. Sec. 1411(d).
7. Joint Committee on Taxation, Technical Explanation (JCX-18-10), at 135.
8. REG-136630-12.
9. Sec. 1501.

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Getting to know the Trusts & Estates Section Council members

By Jennifer Bunker

The Trusts & Estates Section Council is comprised of attorneys throughout the State of Illinois with many different backgrounds, interests and achievements. This diversity helps to ensure that the mission of the Section Council ("to be responsible for activities relating to the education of probate, estate planning and trust law practitioners; to promote and work for the development, modernization and improvement of legislation relating to the estate planning, probate and trust areas of the law; and to review relevant matters and issues, and to study and recommend solutions to various problems involving the public, the courts, and attorneys insofar as the areas of concern of the section are involved") is carried out in a comprehensive manner while taking into account multiple viewpoints.

In order to recognize the work and dedication to Trusts & Estates by its members, each newsletter will feature a few of our members including their professional accomplishments and their roles within the Section Council. We hope that this recognition will not only allow us to know more about fellow members, but also serve as a way to show them our appreciation.

Katarinna McBride

Ms. McBride is Chair of the Trusts & Estates Section Council. She is a partner at Harrison & Held, LLP in Chicago, and counsels individuals, entrepreneurs, athletes and entertainers, family businesses, family offices and charitable organizations on advanced transfer-tax strategies. Ms. McBride is a Fellow of the American College of Trust and Estate Counsel (ACTEC) and is the Treasurer and Media Relations Chair for the Chicago chapter of The Society of Trust and Estate Practitioners (STEP), the leading organization for international estate and tax planning related practice.

Ms. McBride served on the advisory board that established the Illinois Masters in Estate Planning (LL.M Program). She is a featured tax expert for Fox News, ABC News, NBC News and CBS News and is a frequent speaker and moderator for the Illinois Institute for Continuing Legal Education (IICLE), the Illinois Bar Association, the Chicago Bar Association, and for family office panels and consortiums, focusing on both practical and

technical topics.

Ms. McBride is AV rated by Martindale-Hubbell and has been recognized as a Leading Lawyer for her expertise and excellence in trust & estate planning, business representation and the representation of charitable organizations. She also serves on the boards of several charitable organizations, such as The Hadley School for the Blind, JUF, and WITS.

Ms. McBride serves on committees and speaking panels for the Chicago Bar Association, Chicago Estate Planning Council, and is an adjunct professor at several Chicago-based law schools.

Ms. McBride is licensed to practice in Illinois, North Carolina and the District of Columbia.

Mary Lee Faupel

Ms. Faupel is Vice-Chair of the Trusts & Estates Section Council. She is the founder of Faupel Law Offices, Ltd. in Eureka. Her practice is concentrated in the areas of Estate Planning and Estate Administration, Business Law, and Real Estate law.

Ms. Faupel is a member of the Illinois State Bar Association, Peoria and Woodford County Bar Associations, Estate Planning Council of Central Illinois, and the Illinois Real Estate Lawyers Association. She is past Chair of the Corporation, Securities and Business Law Section Council, the Real Estate Law Section Council, and the Agricultural Law Section Council.

Ms. Faupel has served as an adjunct professor in the College of Business at Illinois State University, as an instructor for the Peoria Board of Realtors Indocination classes, and on the Illinois Secretary of State Business Advisor Committee.

She received her Juris Doctorate from The John Marshall Law School in Chicago. Ms. Faupel is a frequent speaker in the areas of Trust and Estates Law, Real Estate Law, and Agricultural Law.

Tracy S. Dalton

Ms. Dalton is Secretary/CLE Coordinator of the Trusts & Estates Section Council. She is Fiduciary Manager of Personal Trust Services at BMO Harris N.A. in Chicago where she leads a team of skilled professionals to man-

age risks, compliance and governance matters associated with Trust and Estate Settlement Services lines of business.

Ms. Dalton is also a Certified Public Accountant.

Ms. Dalton received her B.S. – Accounting at Valparaiso University, her M.B.A. – Finance at DePaul University, her Juris Doctorate at DePaul School of Law, her LL.M. – Taxation at John Marshall Law School, and attended the King's College London School of Law for International Tax Classes.

She is a member of the American Institute of Certified Public Accountants, the Illinois CPA Society, the Chicago Bar Association, and the Illinois State Bar Association. ■

Jennifer Bunker is a member of the ISBA Trusts & Estates Section Council and practices with Zukowski Law Offices in Peru, Illinois and can be reached at Jennifer@zukowskilaw.com or at 815.223.3434.

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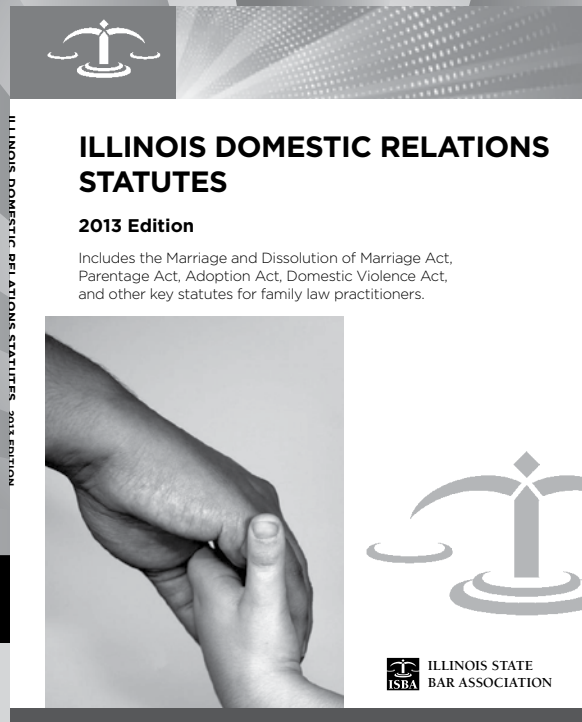
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November

Tuesday, 11/5/13 – Webinar—Intro to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 1:30 – 2:30 p.m. CST.

Tuesday, 11/5/13- Live Webcast, ISBA Studio—Children and Trauma; A Guide for Attorneys. Presented by the ISBA Child Law Section. 11-12.

Tuesday, 11/5/13- Live Webcast, ISBA Studio—2013 Immigration Law Update—Changes which Affect Your Practice & Clients. Presented by the ISBA International & Immigration Law Section, ISBA Young Lawyers Division and the ISBA General Practice, Solo and Small Firm Section. 1:00-2:00.

Thursday, 11/7/13 – Webinar—Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 1:30 – 2:30 p.m. CST.

Friday, 11/8/13- Chicago, ISBA Regional Office—Successfully Navigating Civil Litigation Evidence and Theory Involving Topics of Expert Testimony. Presented by the ISBA Civil Practice & Procedure Section. 8:50-4:00.

Thursday, 11/14/13- Chicago, ISBA Regional Office—SETTLE IT!- Resolving Financial Family Law Conundrums. Presented by the ISBA Family Law Section and the ISBA Alternative Dispute Resolution Committee. 8-5.

Thursday, 11/14/13- Springfield, INB Conference Center—Drug Case Issues and Specialty Courts. Presented by the ISBA Criminal Justice Section. 9-4.

Friday, 11/15/13- Chicago, ISBA Regional Office—Collection Issues You Don't Know About...But Should. Presented by the ISBA Commercial Banking, Collections and Bankruptcy Section. 9-4:30.

Wednesday, 11/20/13 – Webinar—Introduction to Boolean (Keyword) Search. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 1:30 – 2:30 p.m. CST.

Friday, 11/22/13- Chicago, ISBA Regional Office—Drug Case Issues and Specialty Courts. Presented by the ISBA Criminal Justice Section. 9-4.

December

Thursday, 12/5/13- Chicago, ISBA Regional Office—Civility in the Courtroom. Presented by the ISBA Bench and Bar Section. 1-5.

Thursday, 12/12/13- Chicago, Sheraton Hotel (Midyear)—Speaking to Win: Building Effective Communication Skills. Master Series presented by the ISBA. 8:30-11:45.

Thursday, 12/12/13- Chicago, Sheraton Hotel (Midyear)—Legal Writing in the Smartphone Age. Master Series presented by the ISBA. 1:00-4:15.

January

Tuesday, 1/7/14- Webinar—Introduction to Fastcase Legal Research. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 4:00 Eastern.

Thursday, 1/9/14- Webinar—Advanced Tips to Fastcase Legal Research. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 4:00 Eastern.

Wednesday, 1/15/14- Webinar—Boolean (Keyword) Searches on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 4:00 Eastern.

February

Wednesday 2/5/14- Webinar—Introduction to Fastcase Legal Research. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00 Eastern.

Friday, 2/7/14- Webinar—Advanced Tips to Fastcase Legal Research. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00 Eastern.

Friday, 2/7/14- Bloomington-Normal, Marriott Hotel and Conference Center—Hot Topics in Agricultural Law- 2014. Presented by the ISBA Agricultural Law Section.

All Day.

Wednesday, 2/12/14- Webinar—Boolean (Keyword) Searches on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00 Eastern.

Wednesday, 2/12/14- Chicago, ISBA Regional Office—Tort Law Back to Basics. Presented by the ISBA Tort Law Section. All Day.

Thursday, 2/27/14- East Peoria, Holiday Inn and Suites—SETTLE IT!- Resolving Financial Family Law Conundrums. Presented by the ISBA Family Law Section and the ISBA Alternative Dispute Resolution Committee. 8:00-5:00.

March

Tuesday, 3/4/14- Webinar—Introduction to Fastcase Legal Research. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 2:00 Eastern.

Thursday, 3/6/14- Webinar—Advanced Tips to Fastcase Legal Research. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 2:00 Eastern.

Thursday, 3/6- Friday, 3/7/14- Chicago, ITT Chicago-Kent School of Law—13th Annual Environmental Law Conference. Presented by the ISBA Environmental Law Section. 8:30-4:45 with reception from 4:45-6; 8:30-1:30.

Tuesday, 3/11/14- Webinar—Boolean (Keyword) Searches on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 2:00 Eastern.

Tuesday, 3/25/14- Chicago, ISBA Chicago Regional Office—Master Series: The Cybersleuth's Guide to the Internet: Super Search Engine Strategies and Investigative Research. Presented by the Illinois State Bar Association. All day.

Friday, 3/28/14- Chicago, ISBA Chicago Regional Office—Master Series: The Uniform Commercial Code Made Easy: A Groundbreaking Approach to Incorporating the UCC into Your Practice. Presented by the Illinois State Bar Association. All day. ■

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