

Fall 2016 Newsletter-Tax Topics and Probate Law Update

By: Michael L. Wood

A. Beware of the Household-Domestic Help Tax Trap!

If you employ domestic help in your home you may be liable for an employment tax commonly referred to as the “Household Tax” unless the individuals you hire are employees of a business or nonprofit entity. The employment tax is reported on Schedule H of your Federal form 1040 tax return. When hiring any domestic help, it is important to determine if you are the employer or the individual is an employee of a business entity that provides domestic services and pays the employment tax. **Unless the individual is employed by a business or nonprofit entity that pays the employment tax you are responsible for reporting and payment of the tax.**

When Schedule H must be filed

Your tax return must include Schedule H only if you pay any single employee at least \$1,900 in the current tax year, or cash wages to all household employees totaling \$1,000 or more during any three-month calendar quarter during either the current or previous tax year. Although you're not required to withhold federal income tax from a household employee's wages, you must file Schedule H if you do withhold tax for an employee who requests it.

Household employment taxes

The household employment taxes that you may have to account for on Schedule H cover the same three taxes that are withheld from all employment wages: the 12.4 percent Social Security tax, a 2.9 percent Medicare tax and the 6 percent federal unemployment tax, or FUTA. If you also pay state unemployment insurance taxes, Schedule H gives you credit for them by reducing the FUTA rate.

You are responsible for paying all of FUTA – employees don't make contributions through withholding. You also must pay half of each household employee's Social Security and Medicare tax liability; the employee pays the other half through amounts you withhold from her wages. If you have to pay these taxes to the Internal Revenue Service, Schedule H calculates the precise amount that you should have withheld, as well as the portion you owe.

How Schedule H affects your 1040

Schedule H helps you calculate the three formulas needed to figure out how much employment tax you owe – which is based on the total amount of wages you paid out to household employees. Once you complete Schedule H and know the total amount of household employment tax for which you're liable, enter the figure on the relevant line in the “Other Taxes” section of your 1040 form and combine it with your personal income tax bill for the year. Needless to say, the reporting and payment of the household tax can be complicated and costly and should be considered when reviewing in home long term care options. My recommendation if you decide to hire your own domestic employee is to retain one of our local tax professional to assist you with the recordkeeping and tax reporting required.

B. Probate Law Update

It is always difficult when a family loses a loved one. A new law provides a measure of relief by easing the probate process. Most people are aware of the need to have a will, to specify where they want their property to go when they die. Young families can also nominate a guardian for minor children in a will, should both parents die leaving children under the age of 18. Having a will is good, but it is not effective to actually pass property until it is filed with the Probate Court and an administrator or executor is appointed. Then, it is the administrator or executor that takes care of safeguarding all the property, receiving creditors' claims and reviewing all bills owed by the decedent. The administrator or executor is charged with paying all valid claims and, when the time for creditors to make claims has

passed, distributing all the assets. In New Hampshire, the Probate Court oversees this process in most cases. It requires an inventory of the property and appraisals of the assets, and, in most cases the executor or administrator must be bonded, all of which takes time and costs money. Accounts must be filed and the process generally takes over a year.

It is possible for most of the Court requirements (the inventory, the bond and the accounting of assets) to be waived if (1) a person dies leaving a surviving spouse or an only child; (2) the spouse or only child is left everything in the will, if there is one; and (3) the spouse or only child is appointed as administrator or executor of the estate. This process, known as “waiver of administration,” greatly simplifies the process of handling a loved one’s estate. The executor or administrator must still marshal all the assets, pay all valid claims and distribute the property, but it is done without obtaining a bond, preparing an inventory with appraisals or preparing an accounting. The administration is complete upon the filing of a simple affidavit by the executor or administrator within six months of appointment, (1) stating that, to the best of the executor or administrator’s belief, all the debts and obligations of the deceased have been paid, and (2) listing the real estate owned by the decedent at the time of death.

The law went into effect January 1, 2014. It expands the number of situations you can take advantage of the waiver of administration by adding these situations as qualifying procedures: (1) when a person dies leaving only a parent or parents (no spouse or children); the parent or parents is/are the sole beneficiary/ies if there is a will or the sole heirs if there is not, and the parent or parents are appointed as executors or administrators; (2) when a person dies with a will and a trust created by the decedent is named as the sole beneficiary, and the trustee of the trust either (a) is appointed to serve as executor or administrator, or (b) assents to another person serving as executor or administrator. This will enable many more families to take advantage of this simplified process.

Even in situations in which “waiver of administration” is not available, the Legislature simplified the “regular” probate process by eliminating the need for appraisals of property in all cases. It still may be appropriate in some estates to obtain appraisals, so that heirs know the date-of-death values of assets, which is still required if a federal estate tax return must be filed, but it is no longer required in all situations. Additionally, the annual accountings filed with the court to advise the Judge of the financial transactions that took place during the probate administration, may be waived if all beneficiaries agree to do so. This will simplify the steps needed and reduce the costs of administering decedents’ estates.

C. Time to Update Your Estate Planning!

Significant changes in estate tax law and New Hampshire probate and trust law can be largely beneficial to clients who have updated their estate plans. If you have not met with me to review your estate plan in the last 5 years I recommend you set up an appointment to meet with me as soon as possible in order to determine if any changes are necessary in order to take advantage of our revised federal and state laws!

HAVE A NICE FALL!!!!!!!!!!!!!!!

Michael L Wood's Bio:

Michael was admitted to practice law in New Hampshire in 1992. In 1995 Michael began practicing law in New London, New Hampshire and has been a Director and Shareholder of McSwiney Semple, Hankin-Birke & Wood, PC from 2000 to the present.

Michael is also an Adjunct Professor of Law at the University Of New Hampshire Law School, teaching both the Wills and Trusts and the Estate Planning courses since 1999.

Michael's Practice Areas: Elder Law, Estate Planning Law, Probate Law, Trust Administration, Taxation Law; Business Law; Non-Profit Law, Education Law (pro-bono).

Michael serves on the Board of Directors of New London Barn Playhouse (2004 to present-longest serving Board member), the Lake Sunapee Visiting Nurses' Association (2009 to present-Chairperson 2011 and 2012) and The Fells (2014 to present).