

Back to the Future — Scheduled Sunset of Reduced Dividend and Capital Gains Tax Rates

By John A. Sikora

The maximum individual tax rates on certain dividends and on long term capital gains were reduced significantly in 2003. The maximum rate on qualified dividend income was, essentially, reduced from the top individual ordinary income tax rate to 15%, and the top rate on long term capital gains was decreased from 20% to 15%.

Originally scheduled to expire in 2008, the reduced dividend and capital gains rates are now scheduled to sunset at the end of 2010. As a result, taxpayers should monitor federal legislative activity as year end approaches. If no changes to the expiration date provisions are made, corporations may desire to make dividend distributions and taxpayers may want to accelerate capital gain recognition to this year.

For example, if a complete or partial redemption of a shareholder is being contemplated, he or she may prefer that it be completed this year. Proceeds received in many partial redemptions and some complete redemptions in the closely held corporate environment are taxed as dividend income. Taxation of the amount received by an individual shareholder at the current

maximum 15% rate, as opposed to his or her ordinary income rates, would obviously be preferable. Even if the redemption would be taxed as a long term capital gain, a 2010 transaction may be preferable.

Some corporations may be susceptible to the accumulated earnings tax (a tax imposed when a corporation has retained earnings in excess of its "reasonable" needs) or the personal holding company tax (a tax imposed on certain corporations having significant income falling into certain, principally investment, income categories). Such corporations may wish to pay dividends to shareholders, as doing so may reduce the potential effect of these additional corporate taxes.

S corporations having undistributed regular corporation earnings can encounter difficulties if the corporation is earning certain levels of passive investment income. Those difficulties include potential loss of S corporation status (if applicable levels of passive investment income are received for three years) and the payment of a separate S corporation tax. Dividend distributions before the end of this year may be beneficial in some such S corporation situations.

Obviously, individual taxpayers selling long term capital gain property may want to close transactions before year end. Also, taxpayers who have closed transactions for which capital gain income is yet to be reported under the installment method may want to consider appropriate methods for accelerating future capital gain income to the 2010 year and taxpayers that may be providing seller financing in transactions yet to be closed this year may want to reconsider that structure or perhaps elect out of installment method reporting of the taxable gain.

In summary, unless Congress and the President act to extend the reduced rates on dividends and capital gains, taxpayers in a variety of circumstances should now be evaluating the tax treatment of some past transactions and the tax treatment and timing of many planned or potential transactions. Taking appropriate action this year while the lower dividend and capital gains rates are in effect may be very beneficial. [WBB](#)



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A Difficult Conversation to Have

By Philip J. Miller



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For many of us, talking about our own estate planning can be difficult. The conversation brings with it a sense of mortality and requires us to consider scenarios on which we would rather not dwell. As difficult as this may be, it can be even more difficult to talk to other family members about their planning.

Adult children of aging parents occasionally find themselves in this situation. If mom and dad have not volunteered information about their planning (or lack of it), the children will want to know if anything has been done. Do they have wills? Do they also have powers of attorney so that someone will be able to act on their behalf when they are no longer able to handle their own finances or medical decisions? Where are the original documents located? How will we be able to determine what

assets they have once they are gone or not able to tell us any more?

Another scenario involves the parents of special needs children. Such parents spend a great deal of time learning how assets and income affect a child's eligibility for public assistance. They establish special needs trusts to receive assets for the benefit of their special needs child so that the child can benefit from an inheritance and not be disqualified from any assistance available. Yet, invariably, that special needs child has grandparents, aunts and uncles, adult siblings, and possibly other relatives who have named him/her as a beneficiary, be it of a specific bequest, as a contingent beneficiary if his/her parents predecease that person, or as a beneficiary of the catch-all "to my heirs-at-law determined as of the date of my death."

How does one broach a potentially sensitive subject such as this? How does one avoid appearing nosey, meddlesome, or overly involved? In some cases, the direct approach is best. "Mom and Dad, you know we expect to be here for you if you ever need help managing things down the road, but it would help us to know whether you have done any planning for a lifetime

incapacity or death." For others, an anecdotal or indirect approach is easier. "We finally got around to doing our estate planning and it got me to thinking, have you?" or "A friend was telling me about all the problems he is having because his mom and dad did not have an estate plan in place. That got me to thinking..."

With parents of special needs children, the ap-

proach should be more educational than dictatorial. Consider a letter to all family members explaining the complicating factors and inviting them to ask for more information.

While discussions such as these can be awkward or uncomfortable, having them can help ensure that time, expense, and complications are minimized down the road. **WBB**

Who Decides What Happens to my Remains?

By Nancy M. Bonniwell



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Many people let their final wishes be known to a family member or a close friend when they pass away. Other people prepay funeral arrangements or set out a written list of desires. Unfortunately, family members and other loved ones don't always agree with each other or

follow the instructions by the deceased individual.

Wisconsin law now provides a solution to this dilemma. The law allows a person to name a "representative" and a "successor" representative to make decisions regarding final disposition of his remains. The term "final disposition" includes arrangements for viewing, funeral services, memorial services or other last rites, burial, cremation or other disposition of remains. The disposition can also include the donation of an individual's body for anatomical study. A representative's authority is not unfettered. An individual may set out directions, instructions and suggestions

Oil Spill Leaves Some Taxpayers in Dark Waters

By Robert B. Teuber

As do most things, the oil spill in the Gulf Coast has tax implications. BP has established a fund that it is using to pay any legitimate claims of lost income, property damage or other loss for those individuals and businesses impacted by the oil spill. Shortly after the fund was established, the IRS announced how it would treat these payments absent additional Congressional action.

for funeral and burial which a representative *must* carry out unless the directions for final disposition exceed the resources of an individual's estate or if the directions are unlawful.

Requirements of authorization for final distribution are very straight forward. The authorization must:

- List the name and address of the representative and any successor, and be signed by each representative.
- Be signed by the Declarant in the presence of two witnesses or acknowledged before a Notary Public.

The State of Wisconsin has created an Authorization for Final Disposition form in which a declarant may name representatives and give directions for religious services, funeral, burial and other last wishes.

If a person does not complete an Authorization for Final Disposition, Wisconsin law sets forth the prior-

The IRS explained that any payments from the BP claims fund would be taxable if the claim originates from a taxable event. That is, where the payment constitutes a substitute for lost income, the payment would be subject to taxation in the same manner as the replaced income would have been. The IRS' treatment of these payments simply applies current law to the oil spill payments.

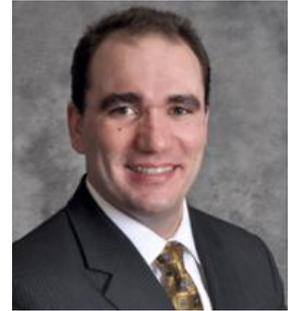
ity of persons who can authorize the final disposition. The priority is a natural progression of individuals as follows:

- Spouse (if divorce not commenced)
- Child or children
- Parents
- Siblings
- Other heirs
- Guardian
- Any other willing person

If a controversy exists with regard to funeral, burial and other final matters, the law provides that the Probate Court may become involved. For example, if children cannot agree, the Court will consider the proposed plans of each child and other factors including, the desires of the persons offering to pay for final disposition, any written desires of the decedent, and the degree to which the proposed final disposition will allow friends and family to participate in the funeral and burial services. **WBB**

Under the U.S. tax system, the IRS will look to the origin and nature of a claim to determine whether any recovery on a claim is taxable. In the context of the oil spill payments, a fishing boat captain that recovers on a claim for lost income should be subject to tax on that income. A deck hand that recovers for lost wages will be subject to income tax on the recovery of those wages. Amounts received for a damaged vessel should be taxed as if the property had been disposed of, that is, any gain on the disposition would be taxable as ordinary or capital gain depending on the facts.

These are the rules, but this is not where the real problems lie. Certain industries operate largely on a cash basis in which certain tax obligations might be overlooked. Perhaps, for a number of years, no tax returns had been filed by the claimant. When these people file a claim to recover lost income, BP will be required to issue a Form 1099 to any non-corporate claimant. A copy of the 1099 will also be filed with the IRS. When the IRS compares the social security number on the 1099 to its records, it can easily determine that past return filing obligations may not have been met. The result could be a tax audit or criminal investigation.



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While there is currently no tax amnesty granted to people and businesses facing this situation, the IRS follows a policy that can prevent criminal sanctions and limit filing requirements. If a person makes a truthful, timely and voluntary disclosure of past tax transgressions, the IRS may forgo criminal sanctions. The benefits of this voluntary disclosure include anonymity until acceptance into the program (subject to certain confirmations) and the filing requirements will be limited to the past six years.

For a disclosure under this program to be voluntary, a person/business cannot be under a current IRS investigation. Additionally, the tax, interest and penalties will still have to be paid. However, the payment of the bill is ordinarily well worth the cost where the upside is avoiding a potential prison sentence for tax fraud. **WBB**



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Comments? We'd like to hear from you. Please send an email to the editor: Megan Wiseman at reporter@wbb-law.com.

AT THE FIRM...

Welcome... **Keith R. Butler** has joined the firm. He comes to Weiss Berzowski Brady LLP with 24 years of experience. His areas of practice include estate planning and probate, general business, real estate, and mergers and acquisitions. Keith received his B.B.A. as well as his J.D. from the University of Wisconsin. Keith is a member of the Rotary Club of Milwaukee, and a past President of the Milwaukee Estate Planning Forum.

Mike Berzowski was recently awarded the rank of Grand Croix and, having been inducted into the Order of Merit, has been appointed Deputy Grand Prior for Region Six of the Sovereign Military Order of the Temple of Jerusalem also known as the Knights Templar.

Welcome... **Megan Wiseman** this past month became Weiss Berzowski Brady LLP's newest librarian. A graduate of the University of Wisconsin's School of Library and Information Studies program, she is currently pursuing an additional degree in Information Technology Management.

Robert Teuber spoke at the seminar on "Social Media and Rules of Professional Conduct" sponsored by the State Bar of Wisconsin. The State Bar offers seminars on a variety of topics—from legal trends to technology.

Tax and Business Seminar: Information for the upcoming seminar is now available on our website along with registration information.

2010 Schedule of Events

TAX & BUSINESS SEMINAR
September 29, 2010

EMPLOYMENT LAW CONFERENCE
October 20, 2010

All events will be held at the Wisconsin Club at 900 W. Wisconsin Ave., Milwaukee. Please check our website (wbb-law.com) for more event information.