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In Memoriam:

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(1900-1974)

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Highlights from Governor's 2011 Budget Proposal

By Michael G. Stefanko

Throughout his campaign, Governor Snyder repeatedly called for a significant overhaul of Michigan's financial structure, with an emphasis on the State's tax system. To that end, the Governor's Office recently released its initial budget proposal which called for a number of controversial changes. Most notably were (i) the replacement of the Michigan Business Tax (the "MBT") with a Corporate Income Tax, and (ii) the elimination of the exemption of retirement and pension benefits from Michigan's Individual Income Tax. While there will undoubtedly be numerous and significant changes to proposed budget before it can make its way through the House and the Senate, it is clear that both the Corporate Income Tax and the taxation of retirement benefits will be a central part of the debate on Michigan's budget.

A. Michigan Corporate Income Tax

Under the MBT, C-Corporations, S-Corporations, LLCs, Partnerships, and even individuals were subject to tax. However, under the proposed Corporate Income Tax, only C-Corporations are subject to the tax. While this is misleading in that LLCs and Partnerships owned by C-Corporations or included in a C-Corporation's unitary group are subject to the tax, LLCs and Partnerships owned by individuals will not pay the tax. In addition, in place of the MBT's two taxes, being the income tax and gross receipts tax (as well as the surcharge imposed on the tax itself), the newly proposed tax is a single 6% income tax. However, the numerous tax credits contained in the MBT are noticeably absent from the proposed Corporate Income Tax. While there is no need to attempt to

plan for the Corporate Income Tax at this point, given that the tax will not take effect until 2012 at the earliest, one clear option for closely held businesses is to ensure that the entity is either a Partnership, LLC, or in the case of a Corporation, make an S-Corporation election. As there will likely be a number of changes to the Governor's proposed Corporate Income Tax before it becomes law, there should be ample time to plan for the change in Michigan's business taxing structure.

B. Taxation of Retirement and Pension Benefits

Currently, one hundred percent of "public" qualified retirement and pension benefits are exempt from Michigan's Individual Income Tax. In addition, a portion of the "private" qualified retirement and pension benefits are exempt from Michigan's Individual Income Tax. For 2010, the limit on the exempt amount of private retirement and pension benefits is $45,120 for single filers, and $90,240 for those who file a joint return. Under the proposed budget, all of the previously exempt qualified retirement and pension benefits would be subject to Michigan's Individual Income Tax. It should be noted that the exemption for social security benefits will remain in place.

If you have questions about the Governor's budget proposals and how they may impact your business, please contact:

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The 2010 Estate Tax Act

By J.V. Anderton

As you may know, the federal estate tax is back after a hiatus for 2010. The new estate tax was part of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 ("Act"). Under the Act, there is an exemption of $5 million per estate, meaning that for an individual with $7 million in assets net of liabilities at the time of her death, the estate tax would only apply to $2 million. Further, the maximum tax rate is 35%, which is the first time the tax rate has been below 45% since the 1930s. This means that for the taxpayer in the example above, assuming no deductions are taken, the estate tax would be $700,000 on the $7 million total estate ($7 million minus $5 million exemption equals $2 million times 35% equals $700,000).

The Act also allows the beneficiaries of an estate to receive the assets with a "stepped-up" basis. Going back to the example, assume the taxpayer had two assets at the time of her death: an apartment building she owned worth $5.5 million (and her basis at the time of her death was $2 million), and a house worth $1.5 million (with a basis of $1 million). Had she sold both assets on the day before her death, she would have had to recognize $4 million in gain (the $7 million fair market value less the $3 million basis). However, because she died owning those assets, her beneficiaries will inherit those assets with a basis equal to their market value on the date of death, meaning a basis of $5.5 million in the apartment building and $1.5 million in the house.

A new feature in estate planning under the Act is the "portability" of the $5 million exemption. Again looking at our example, assume that our taxpayer above was a widow, and her husband died in January 2011, owning $2 million in assets for estate tax purposes. Since the husband did not fully use his $5 million exemption, in many circumstances the spouse may benefit from the remaining $3 million and add it to her own $5 million exemption (giving her a total of $8 million in exemption). In this circumstance, the taxpayer would have no estate taxes due on her death, despite owning $7 million of assets net of liabilities. The impact of this portability of the exemption is that it allows most married couples to transfer up to $10 million in assets without the estate tax being imposed, regardless of how the assets are titled.

Another new feature under the Act is that the lifetime gift tax exemption has been raised to $5 million, and the gift tax rate will now be 35%. Also, the exempt amount from the generation-skipping transfer tax has also been raised to $5 million, and the tax rate on such transfers is 35%. These two changes allow for those individuals looking to engage in gifting strategies to reduce future estate tax liabilities significant opportunities. However, such opportunities may be

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short-lived. The Act will automatically sunset on January 1, 2013, and all of the provisions described in this article will be gone. Under current law, starting on January 1, 2013, all laws will revert to 2001 levels, with a $1 million estate tax exemption and a 55% tax rate (and a possible 5% surtax for estates over $10 million).

If you have any questions regarding the new federal estate tax laws, please contact:

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The Durable Power of Attorney – A Necessity for the Business Owner

By J. V. Anderton

A business owner has a lot on his or her plate. While the issues may vary from one business to the next, depending on industry, size of the business, and where the business is in its life cycle, one issue is always present and frequently ignored – what happens if the business owner is no longer competent to make decisions? While the organizational documents of the business may declare who will run the day-to-day operations in the absence of the business owner, the owner still has an ownership interest in the entity that will need to be protected, especially in those circumstances where the ownership interest is one of the largest assets the business owner, and his or her family, has.

An easy way for the business owner to protect himself or herself and his/her assets is to have a durable power of attorney ("DPOA") in place. A DPOA is a document in which an individual appoints one or more persons to act as his or her attorney-in-fact (or agent) in the event he or she is incapacitated. For the business owner, granting this power to a spouse or other family member allows the family member to monitor the business for the owner, without running the day-to-day operations they may not be as familiar with as others. This can help ensure that the people running the day-to-day operations continue to keep in mind the responsibility to the business owner, instead of maximizing value for the employees. It gives the business owner a sense that there will be checks and balances in the management of the business if he or she should become incapacitated.

The DPOA is an important part of any estate plan, even though it is automatically terminated upon the death of the individual. Outside of the business owner context, it allows the attorney-in-fact to access bank accounts to pay bills on behalf of the incapacitated individual and make other financial decisions necessary to protect all assets owned by the individual. This will help to maximize the amount of assets which may ultimately be transferred to the individual's beneficiaries pursuant to his or her estate planning documents. Other provisions in a typical DPOA grant the attorney-in-fact authority to file tax returns on behalf of the individual and, when appropriate, make an application for government benefits on behalf of the individual. The DPOA is endlessly customizable for the specific assets and desires of any individual.

The DPOA is usually paired with a medical power of attorney/designation of patient advocate ("MPOA"). The purpose of the MPOA is to have a person (called the "Patient Advocate" in Michigan) authorized to make medical decisions on behalf of the individual when the individual is unable to participate in those decisions. The MPOA, like the DPOA, allows an individual to make his or her preferences known in writing. In the medical context, this generally relates to issues involving if and when medical treatment should be stopped if the individual is unable to live without the assistance of machines or around the clock care from medical personnel.

If you have any questions regarding a DPOA, MPOA, or other estate planning issues, please contact:

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Reviewing Property Tax Assessments

By Michael G. Stefanko

Recently, property owners throughout Michigan received their annual property tax assessments. While many likely discovered a decrease, for some, those decreases did not bring the value of the property to its fair market rate. When reviewing your property tax assessment notice, there are four values to keep in mind, three of which show up on the face of the notice. These values include:

True Cash Value (TCV)
The fair market value or the usual selling price of the property (this value will not appear on the assessment notice).

State Equalized Value (SEV)
One half (1/2) of the property's TCV.

Assessed Value (AV)
Generally the same as the SEV, unless an equalization factor other than 50% has been applied by the State or the county in which the property is located.

Taxable Value (TV)
The value used to calculate the tax on the property. Due to Proposal A, a property's taxable value can only increase annually by the rate of inflation or 5%, whichever is less, unless there is an addition to the property (i.e., physical improvement or omitted property) or the property's ownership transferred during the previous tax year.

All of the above values are important in calculating the amount of tax ultimately paid, and more importantly, whether it makes sense to appeal.

The Appeals Process

For residential property owners, appealing to the local Board of Review is the first step in the process, with a few exceptions. The date and location of Board of Review will be included on the assessment notice.

Commercial and industrial property owners are not required to appeal to the Board of Review. Nevertheless, it may be in a commercial or industrial property owner's best interest to appeal to the Board of Review, given that it can be an efficient method of lowering the assessed value.

If the appeal is denied by the Board of Review, residential property owners must appeal to the Michigan Tax Tribunal no later than July 31 of the year of the tax involved. Commercial or industrial property owners must appeal to the Tribunal by May 31 of the tax year involved.

The Tribunal itself is a multi-discipline administrative court, made up of seven members (two attorneys, one certified public accountant, one appraiser, one assessor, and two at-large members). It has sole and original jurisdiction over property tax and joint jurisdiction over non-property state and local tax. The inventory of open cases at the Tribunal is overwhelming, creating a longer than anticipated period from filing to hearing. While this does not generally increase the cost of an appeal, given that much of the time the case is dormant, it does create delays.

While the small claims division is intended to ease this burden for property owners that appeal their own assessments, if the dollar value is large enough, this option may not always be available, and the taxing authorities may hire attorneys of their own to handle the appeal.

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