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Burton. *Bulletin*

NEWS AND UPDATES FROM THE BURTON LAW FIRM:
BIG FIRM QUALITY, SMALL FIRM CHARM.

Happy New Year



Thank you for reading our latest edition of the firm newsletter.

Two Thousand and Ten marked a year of extraordinary change for the federal estate tax laws, business tax, and health care laws, as well as the legal community in Sacramento, and The Burton Law Firm in particular.

While the federal government did what few thought possible and allowed the estate tax to disappear last year, they also did the equally unlikely and brought it back with a five million

dollar estate and gift tax exclusion for the next two years. At the same time, the federal government enacted sweeping reform to employer medical benefits and very diverse tax changes to businesses and individuals alike. The opportunity and need for tax planning -- estate and income -- has never been greater. In addition, the incidents of civil lawsuits and bankruptcy filings have continued to rise over the past few years, so the need for asset protection and business structure is also very high.

While last year saw many law firms downsizing, as well as the collapse of the second largest firm in Sacramento, The Burton Law Firm has been growing substantially. Not only have we expanded physically, now occupying both our original and new office suites, but we have added new staff and attorneys to the firm. While we still focus specifically in the areas of business, tax and estate law, we now have expanded our services in these areas significantly, including our litigation services.

Thank you all for working with us. We hope to continue our relationships throughout the next decade and beyond.

- *Jeb U. Burton*



ESTATE PLANNING CHECK-UP: Is your Estate Plan Up to Date?

As you reflect on your resolutions and goals for 2011, take a moment to reflect on your estate plan... Do you still like all of your beneficiaries? Do you still trust your successor trustees to do a good job of administering your assets? Did you recently celebrate a birth in your family, or mourn a death, that might cause your distribution provisions or successor trustee provisions to change? Are your health care agents still the right people to make decisions for you?

Reflecting on your plan regularly, whether at the turn of a calendar year or during any other life-changing event, is crucial for ensuring your wishes are properly memorialized.

THE BURTON
LAW FIRM

Jeb U. Burton,
Managing Shareholder

Thomas D. Reid,
Senior Attorney

Sapphira W. Pixler,
Senior Attorney

Rebecca A. Gardner,
Senior Attorney

R. Brooks Whitehead,
Associate Attorney

Colleen Brusseau,
Senior Paralegal and
Firm Administrator

Vanessa Cornejo,
Paralegal

De Anna Moore,
Finance Director

Kassandra Carpenter,
Marketing and
Referral Source
Coordinator

Joanna Fedycki,
Receptionist

Dairl Helmer,
File Clerk

555 University Avenue,
Suite 275
Sacramento, CA 95825

916.570.5740 phone
916.570.2744 fax

www.lawburton.com

STAFF CORNER: Rebecca A. Gardner

Meet one of our Senior Attorneys

Rebecca Gardner received her J.D. from the UC, Davis, King Hall School of Law, spent a summer abroad as a scholar with the National University of Ireland, Galway, Irish Centre for Human Rights and graduated summa cum laude from CSU, Sacramento.

Previously with McDonough Holland & Allen PC, Rebecca has extensive experience assisting clients in wealth transfer, business and tax planning, and contested matters involving trusts and estates. Rebecca's practice focuses on general and complex estate planning, post-death trusts and probate administration and business planning involving family partnerships, limited liability companies, and other business entities.

In addition to her practice, Rebecca is an active member of various community and professional organizations. She is a Director and President Elect of the Sacramento State Alumni Association, a past Director and current

Technical Forum Committee Co-Chair for the Sacramento Estate Planning Council, a Member of the Crocker Art Museum's Planned Giving Committee, a Member of the Sacramento Area Special Needs Trust Study Group, a Founding Member of Professionals in Estate Planning, and a Lifetime Member of the Girl Scouts of the USA.

A past winner of the CSUS State Hornet Rookie Sports Reporter of the Year Award for her coverage of the Sac State football team, Rebecca still enjoys writing. She has authored a number of professional publications including "The Death of the California Compassionate Choices Act: Will Californians Ever Receive the Right to Die?," California Trusts and Estates Quarterly, Summer 2008 and enjoys speaking to various groups on topics ranging from basic estate planning to legal writing and art law.



New Estate Tax Rules Provide Temporary Certainty

Senior Attorney Rebecca A. Gardner deciphers the latest federal estate tax legislation

With the passage of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 on December 17, 2010, Washington DC finally gave us a clue into the future of the estate tax. Providing rules for 2011 and 2012, the Act makes key changes to the estate tax regime which will extend and expand planning opportunities, at least for the next two years.

A look at a few of the changes by the numbers:

\$5,000,000 – The new applicable exclusion amount for decedent's estates. Consequently, an individual who dies in 2011 or 2012 can pass \$5,000,000 out of his or her estate at death without subjecting that amount to estate tax. In addition, the Act provides for portability of applicable exclusion amounts between spouses, eliminating the need for credit shelter trusts in certain circumstances for the next two years.

Though the applicable exclusion amount is set to return to \$1,000,000 in 2013, this current jump to a \$5,000,000 exclusion amount after the \$3,500,000 amount in 2009 and the unlimited amount in 2010 may be an indication that the federal government is prepared to keep the exclusion amount high. Note that individuals can still pass an unlimited amount of assets at death to their U.S. citizen spouses or, with proper planning, to trusts benefiting their non-U.S. citizen spouses, without subjecting those assets to estate tax until the spouse's death.

35% – The new maximum tax rate on decedent's estates. This rate will remain the maximum rate until 2013, when the maximum rate on decedent's estates is set to jump to 55%.

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\$5,000,000 – The new exemption amount for generation-skipping transfers. Since the Act provides that 2010 GST transfers are subject to a 0% tax rate, taxpayers should consider electing out of the auto allocation of the GST tax exemption for direct skips made last year.

The new exemption amount for lifetime gifts. This reunification of the gift tax exemption and the applicable exclusion amount for estate tax may create accounting challenges if a donor maximizes his or her lifetime gifts during the next two years and the applicable exclusion amount returns to \$1,000,000, or otherwise dips below \$5,000,000 at the time of the donor's death. Nevertheless, if the gifted assets are expected to appreciate after the gift is made, donors should not be deterred from taking full advantage of this planning opportunity.

9/2011 – The extended deadline available to taxpayers for filing their 2010 estate tax returns and 2010 GST tax returns. Note that the Act allows an executor to elect between two tax regimes for the 2010 estate tax returns: (i) the unlimited exemption amount originally in place along with limited step-up in basis or (ii) a \$5,000,000 exemption amount with full stepped-up basis.

2013 – The year that the applicable exclusion amount for decedent's estates, the exemption amount for GST tax and the exemption amount for lifetime gifts each return to \$1,000,000 with the GST exemption amount indexed for inflation.

For more information on how the current estate tax regime impacts your estate and the unique planning opportunities available in the next two years, please contact our office.

Business Tax Updates

Associate Attorney R. Brooks Whitehead explains recent tax changes and what that means for you and your business

Another new year brings another round of new changes to the federal and state tax codes for businesses. Here are a few items of interest:

Federal Changes

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 was signed into law at the tail end of 2010. Under the Act, businesses can fully depreciate the cost of any newly purchased business assets that are placed in service before January 1, 2012 (or January 1, 2013, depending on the type of property). In real world terms, this means it may be a good time for businesses to make capital expenditures as the entire cost can immediately be written off. In addition, the Act cut the Social Security portion of payroll taxes paid by employees by 2%, effective for 2011 only. Therefore, employers must make changes to their payroll systems to withhold less money from employee paychecks. The IRS is requesting

the payroll change be made by January 31, 2011 and is allowing employers to make an offsetting adjustment to worker's pay for any over-withholding prior to March 31, 2011.

State Changes

Beginning January 1, 2011, the Franchise Tax Board will be using a new standard to determine whether a business is subject to income tax in California. There are now four tests for determining whether a taxpayer is "doing business" in California and therefore subject to tax. They examine whether a business: (1) is organized or commercially domiciled in the state; (2) has more than \$500,000 in sales in the state or has 25% or more of its



total sales in the state; (3) has more than \$50,000 in property in the state or has 25% or more of its total

It may be a good time for businesses to make capital expenditures as the entire cost can immediately be written off.

property in the state; or (4) pays \$50,000 in compensation to employees in the state or pays 25% or more of its total compensation to employees in the state. This change is likely to subject many businesses to tax in California for the first time.

The discussion above provides a high level overview of a few of the changes in business tax law that take effect this year. For more details, or any other questions on business or tax law, please give us a call.

BUSINESS CHECK-UP:

Are your Secretary of State Forms Current?

California law requires all business entities, including corporations and limited liability companies, to update their records with the California Secretary of State on an annual or biennial basis. The law also requires that information regarding businesses' agents for service of process also be current. As our state searches for additional funds to add to its coffers, it's possible that the Secretary of State may begin regularly imposing the many penalties allowed by law for late and delinquent filings. Enrolling your business in a maintenance program to ensure that all business records are kept up to date could help save money as well as protect your business from litigation risks. (See "Litigation Prevention and Asset Protection" by Senior Attorney Thomas D. Reid for more information about litigation protection.)





Litigation Prevention and Asset Protection

Senior Attorney Thomas D. Reid provides suggestions on how you can protect yourself and your business from litigation

A slowing economy and declining job market have brought about hard times for the average American and challenging times for businesses.

As more workers lose their jobs and their homes to foreclosure, recent trends demonstrate

that litigation rears its ugly head. Here are a few tips for business owners to consider to help minimize possible lawsuits against their companies:

Keep your Employee Handbook up to Date. An employee handbook that is up to date with current laws can provide security for employers. With more individuals seeking alternate means of revenue, it is important to protect your company's financial stability by memorializing your employee's current rights and duties.

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Ensure Your Workers Compensation Insurance is adequate. Now more than ever, your workers

compensation insurance should be current and sufficient to protect your company against claims by injured workers. During hard times, claims for workplace injuries may increase, and it is vital to ensure insurance coverage is obtained to protect against such claims.

Review Existing Contracts. Be sure to review all contracts governing interactions with employees, business associates, vendors, and clients to ensure that the contracts contain the proper provisions to provide your company with security. Litigation has increased between business associates, vendors and clients who, like former employees, may be looking to tighten their belts and obtain judgments.

Maintain Orderly Corporate Books. One of the most important aspects of asset protection from a business standpoint is to ensure that corporate formalities are followed and the appropriate documentation is kept up to date. Failure to follow these formalities may lead to creditors reaching a business owner's personal assets to satisfy a judgment or lien against the company.

It is important to remember that even with the most carefully drafted documents and safeguards in place, a business will never be 100% secure from potential litigants and creditors. However, to minimize potential liability, it is wise to ensure that every measure is taken to eliminate such exposure. Following these steps may just prevent your company from becoming a victim of the hard times we are facing.

UPCOMING SEMINARS

The Burton Law Firm enjoys partnering with other professionals to discuss matters of importance to our clients.

For information on available lecture topics and seminar opportunities, please contact
Kassandra Carpenter at
(916) 570-2740 or
kcarpenter@lawburton.com

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