



Attorneys

- Kent A. Noble
- Frederick A. Johnson
- James P. Johnson
- Brian F. Johnson
- Robert J. Hills

Of Counsel

- Patrick T. Chambers
- Michelle Gard-Ainslie
- Frederick D. Johnson

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Johnson, Bunce & Noble, P.C.
 Executive Offices—Parkway Plaza
 7800 N. Sommer St.
 Suite 425
 Peoria, IL 61615-1994
 Phone: (309) 691-9650
 Fax: (309) 691-9651
 Web: www.peorialawyers.com

Johnson, Bunce & Noble, P.C.

Client Newsletter

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When Should You Review Your Estate Plan? Now.

Almost every client asks when they should have their estate plan reviewed. In a previous newsletter, we advised that certain important life events usually trigger the need to review an estate plan. Rarely, however, do Congress and the Illinois General Assembly make such sweeping changes in estate law that we recommend that every person who has an estate plan should have it reviewed now. Now is one of those rare times.

Federal Estate Tax

As many people know, there was no federal estate tax in the year 2010. In other words, someone with \$1.5 billion in wealth (i.e. George Steinbrenner) who died in 2010 did not owe a dime in federal estate tax. The tax, however, was scheduled to return in 2011 but with an exemption amount of \$1 million.

Congress acted in December to set the exemption at \$5 million

instead, for two years. This means that persons with a gross taxable estate (which generally includes life insurance benefits) of less than \$5 million do not owe federal estate tax. The tax is 35% on that amount over and above the exemption.

In addition to the new exemption, Congress also kept the stepped-up basis rules (fair market value at the decedent's death) and introduced a new concept called "portability". Portability allows a surviving spouse to take advantage of the unused estate tax exclusion of the deceased spouse. Of course, the portability election must be timely and properly made.

Illinois Estate Tax

Illinois has a separate estate tax. Like the federal estate tax, the Illinois tax was non-existent in 2010. Unlike the federal



estate tax, however, Illinois set the exemption amount at \$2 million. Under the current law, a 2011 decedent with a \$3 million estate will owe Illinois approximately \$167,279 in tax.

It is important to note that neither the federal nor Illinois estate taxes were retroactive to persons passing in 2010.

Given this historic legal scenario, now is the ideal time to have your estate plan reviewed. Even if the taxes do not apply to you, you may wish to have several other updates made.

Robert Hills Joins JBN

Robert J. Hills has joined JBN as an associate attorney. He is a Peoria-area native, and currently resides in Washington, Illinois.

Rob attended DePaul University for his undergraduate studies, earning a Bachelor of Science degree in Commerce. He then worked for various commercial real estate companies in the Chicago-area, focusing mainly on landlord-tenant issues, including leasing, and acquisitions.

Rob then attended Thomas M. Cooley Law School where he obtained his *Juris Doctor* in 2010, and passed the Illinois Bar Exam shortly thereafter.

While in law school, Rob was the Senior Business Editor for the *Thomas M. Cooley Journal of Practical & Clinical Law*, President of the Business Law Society, participated in the school's mock trial and moot court programs, and was on the school's Dean's List.

Rob also worked as a law clerk for the United States Department of Transportation in Washington, D.C. While at the DOT, he spent numerous time researching legal issues, including issues important to some of our country's biggest DOT projects. He also authored *U.S. Department of*

Transportation Joins Global Relief Efforts in Haiti. ABA Transportation Committee Quarterly: Spring 2010, Vol. 3, No. 2.

At JBN, Rob primarily handles business, real estate, estate planning and litigation matters, becoming quickly involved in daily courtroom and collection matters.



Upcoming Business Issues: Reasonable Comp.; Discrimination Claims

Reasonable Compensation

Subchapter S corporations have routinely divided compensation to its shareholders into two categories: salary and dividends. The theory is simple, salary is subject to employment taxes (employer and employee side) while dividends are not.

As such, many sub S corporations have tried to increase the amount of dividends paid to its shareholders while consequently lowering the amount of salary paid. The result is that little or no employment taxes are paid to the federal and state government.

While the Internal Revenue Service says that shareholders, directors, and officers can receive a "reasonable

salary", they do not give a definition of what is "reasonable". As such, in an IRS audit of a sub S corporation, one of the first items the agent will look at is the dividends versus the salary paid. Frequently, the IRS will reclassify dividends to salary, making the corporation owe past employment taxes.



Although the IRS has known about this issue for a while, many experts in this area (including the IRS itself) have now made it a priority to start scrutinizing sub. S corporations more aggressively.

Some things sub. S corporations should do:

1. Reassess what is normally paid to like-employees in similar industries;
2. Make sure the corporate minutes are detailed with rationale for compensation paid; and
3. Properly document employment relationships.

JBN is experienced in drafting these corporate minutes. If your corporation does not keep these records, please call us. Likewise, if you know of any corporation owner who does not keep up their minute book, please feel free to pass along our name.

Uptick in Discrimination Claims

We saw a dramatic increase in employment discrimination claims in 2010. Just a reminder of some things that businesses should be doing:

1. Have good policies, whether through employee handbooks or otherwise;
2. Follow those policies;
3. Never address problem employees alone (have a witness); and
4. Properly document employee issues.

DISCLAIMER: Nothing in this newsletter should be relied upon as legal advice. Please consult our office for legal advice tailored to your specific factual situation.

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Executive Offices—Parkway Plaza
7800 N. Sommer St.—Suite 425
Peoria, IL 61615-1994

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