

MILLER, GRIFFIN & MARKS, PSC



LEGAL NOTES

Lexington, Kentucky

Spring 2003 Edition

Estate Planning, Tax & Corporate

Dear Friends:

Since our last newsletter there have been many changes within our law firm family, the most important of which is the death of Bob Miller. His loss continues to be felt by us in many ways, one of which is to remind us of the need to plan for the future of our own families. The enclosed articles focus on estate planning, tax and corporate issues which are relevant to all of us with families and businesses. Because so much of our practice is devoted to serving clients in the equine business, in this, and all subsequent Legal Notes, we will devote at least one of the articles to a matter of particular interest to those in that business. We have been able to put together this edition, and subsequent editions dealing with tax and estate planning issues, in large part as a result of the recent addition to our firm of Greg A. Hunter. Greg has a Masters of Laws in Taxation (LL.M) from Georgetown University Law Center in Washington, D.C. and served as the editor of this edition of Legal Notes. We would enjoy receiving your feedback to help us design future newsletters that will be both interesting and helpful.

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CERTIFICATES OF ASSUMED NAME: VALID FOR ONLY 5 YEARS?

By: Thomas C. Marks
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The Kentucky Legislature passed a law that went into effect on July 15, 1998, regarding the use of Assumed Names. Pursuant to this law, an Assumed Name registration is now effective only for a term of five (5) years from the date it is filed with the Kentucky Secretary of State. However, it can be renewed for a successive five (5) year term upon filing a Renewal Certificate. This law provides that any Certificate of Assumed Name in effect on July 15, 1998, shall only continue in effect for five (5) years. In other words, all Certificates of Assumed Name that were filed before July 15, 1998 shall only continue in effect until July 15, 2003.

Because we are within the six (6) months prior to the expiration date for Certificates of Assumed Names filed before July 15, 1998, we can file Renewal Certificates at any time prior to July 15, 2003 to keep your Assumed Name valid.

TRANSFER TAXES: WAYS TO MINIMIZE

By: Greg A. Hunter
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Federal Transfer Taxes

Numerous clients are concerned about federal estate taxes. The federal estate tax system underwent major changes as part of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("2001 Act"). We want to highlight some of the significant changes that may be relevant to your estate.

This legislation is famous for the "repeal of the estate tax." However, this is not a correct statement. For 2003, the highest estate tax rate is 49%. It drops to 48% in 2004, 47% in 2005, 46% in 2006 and 45% in 2007 through 2009. For estates of individuals dying after 2009, the estate and generation-skipping transfer taxes will be repealed, and, subject to numerous exceptions, assets acquired from a Decedent will receive a carryover basis. After 2010, the estate and generation-skipping taxes will return under the sunset provision of the 2001 Act. Because the estate and generation-skipping taxes return after one year, the estate tax has not been fully repealed.

Another significant change to the federal estate and gift tax system by the 2001 Act concerns the amount of the Unified Credit. The Unified Credit is a credit against estate and gift taxes. The applicable credit amount in 2003 is \$345,800, which exempts \$1,000,000 of a Decedent's Gross Estate from federal estate tax. In 2004 and 2005, this amount is increased to \$555,800, which exempts \$1,500,000 of a Decedent's Gross Estate from federal estate tax. In 2006 through 2008, this amount is increased to \$780,800, which exempts \$2,000,000 of a Decedent's Gross Estate from federal estate tax. Finally in 2009, this amount is increased to \$1,455,800, which exempts \$3,500,000 of a Decedent's Gross Estate from federal estate tax.

Every generation-skipping transfer ("GST") is subject to the GST Tax. However, the GST Tax will not apply to GSTs made after December 31, 2009 because it is to be repealed in 2010. The GST Tax rate is 49 percent for 2003.

Individuals are allocated a lifetime exemption that shields GSTs from the GST Tax. For 2003, the GST Tax exemption increases for inflation to \$1,120,000. Prior to the repeal in 2010, the GST Tax

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exemption is scheduled to increase as follows: in 2004 and 2005, the GST Tax exemption is \$1,500,000; in 2006 through 2009, the GST Tax exemption is \$2,000,000; and in 2009, the GST Tax exemption is \$3,500,000. In 2010, the GST Tax is repealed.

Kentucky Death Taxes

Kentucky has an inheritance tax, as well as an estate tax. The Kentucky inheritance tax is a tax on a beneficiary's right to receive property from a deceased person. The amount of the inheritance tax depends on the relationship of the beneficiary to the deceased person and the value of the property. All property belonging to a Kentucky resident is subject to the tax, except for real estate located in another state.

If a Federal Estate and Gift Tax Return is required to be filed and Kentucky's portion of the credit for state death taxes exceeds the inheritance tax, the difference between the credit and the inheritance tax must be paid as Kentucky estate tax.

Ways to Reduce Death Taxes

There are ways to minimize the impact of Federal and Kentucky death taxes while providing for your beneficiaries. We want to highlight some common ways to minimize or eliminate these taxes, as well as distribute your assets in accordance with your desires.

Credit Shelter Trust and the Marital Deduction

Almost anything that passes to a spouse will be free of federal estate tax because of the unlimited Marital Deduction. If death taxes are a concern, spouses' Wills can be drafted to take full advantage of their Unified Credit amount. This means that a person can leave up to \$1,000,000 for individuals dying in 2003, in addition to anything left to their spouse, free from federal estate tax. As noted above, these amounts dramatically increase over the next few years.

The use of Credit Shelter Trusts by spouses in 2003 could shelter up to \$2,000,000 from estate taxes. With the increase in the Unified Credit amount, spouses will eventually be able to shelter \$7,000,000 from federal estate taxes just by drafting these Credit Shelter Trusts.

Lifetime Gifting

In addition to the Unified Credit amounts mentioned above, every person can gift up to \$ 11,000 per year to as many individuals as they choose, without incurring gift taxes or consuming any portion of their Unified Credit. It is also possible that gifts would be discounted. The amount of the discount, if any, would depend on the facts and circumstances surrounding the gift, as well as the asset being gifted. Most allowable discounts range from twenty percent (20%) to thirty percent (30%).

If college tuition for children or grandchildren is a concern, contributions to a state operating Section 529 plan designed to help families save for future college costs can be an effective gifting technique.

Irrevocable Life Insurance Trust

Another alternative is the creation of an Irrevocable Life Insurance Trust. Because the Trust is irrevocable, you would be giving up your rights to the assets of the Trust. By giving up those rights, the insurance proceeds will not be included in your gross estate for tax purposes. Please be advised, if you were to die within three (3) years of making a transfer of insurance to an Irrevocable Life Insurance Trust, the proceeds of the life insurance will be included in your gross estate and will be subject to death taxes.

CALIFORNIA ADOPTS PARTIAL SALES TAX EXEMPTION REGARDING RACEHORSE BREEDING STOCK

By: Michael D. Meuser
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For many years, the imposition of California sales and use tax has been a significant obstacle to the purchase and sale of thoroughbred horses located within that state. In addition to the state statutes imposing sales and use tax upon the purchase and sale of horses, California also allows local municipalities to impose additional uniform and special sales and use taxes in connection with such transactions. The result in the past has been an effective rate of taxation between 8% and 8.5% of the total proceeds of the purchase or sale of a horse subject to taxation.

In July 2002, the California Board of Equalization gave notice of a proposed regulation to amend Regulation 1535, relating to Racehorse Breeding Stock, in Title XVIII, Division 2, Chapter 4 of the California Code of Regulations for Sales and Use Tax. After hearings, the Regulation was adopted and became effective on December 11, 2002.

Under the terms of the new Regulation, the Revenue and Taxation Code partially exempts from sales and use tax the sale or use of racehorse breeding stock purchased for use by a qualified person. The exemption applies only to the taxes imposed by the provisions of the California State Revenue and Taxation Code which imposes a total tax rate of 4.75%, but does not apply to the taxes imposed pursuant to the remaining provisions of state and local law. Thus, the effect of the Regulation is to reduce the effective sales and use tax rate in such transactions by 4.75%.

The Regulation defines "racehorse breeding stock" as a horse that is eligible to participate or will participate in horse racing in California, is capable of producing foals which would thereafter be eligible to race in California and is registered with a registry agency recognized by the California Horse Racing Board, including The Jockey Club, The American Quarter Horse Association and the United States Trotting Association, among others.

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Under the Regulation, a "qualified person" is defined as "a person who purchases racehorse breeding stock solely with the intent and purpose of breeding." Thus, if the purchase of the horse in question is related solely to the breeding properties of the animal, the exemption is available.

The Regulation also requires that a partial exemption certificate be completed by the purchaser within specified time periods. The certificate is thereafter delivered to the seller and must be maintained in the possession of the seller for a period of not less than 4 years from the date on which the seller claims a partial exemption based upon the certificate.

Properly utilized, the new Regulation could have a significant positive impact on the ability of purchasers of registered horses solely for breeding purposes to claim exemption from a significant portion otherwise applicable California sales and use tax.

MILLER, GRIFFIN AND MARKS ANNOUNCEMENTS

MILLER, GRIFFIN AND MARKS AND THE LEXINGTON/FAYETTE COUNTY URBAN LEAGUE PROVIDE SCHOLARSHIP IN HONOR OF ROBERT S. MILLER

On December 13, 2002, Miller, Griffin and Marks, P.S.C. and the Lexington/Fayette County Urban League made the first scholarship donation to Kentucky's Affordable Pre-paid Tuition ("KAPT") Foundation in honor of Robert S. Miller. This scholarship, which requires a commitment of community service from its recipient, will provide a four-year tuition scholarship at any of Kentucky's public higher education institutions.

Bob's quest for fairness and ethical treatment extended beyond his legal practice to include human rights and equality under the law. Bob was a civil rights activist whose distinguished career included drafting the Charter and serving as the first director of the Lexington/Fayette County Urban League, drafting the Charter and serving as one of the first Commissioners of the Lexington Human Rights Commission, as well as participating in the planning of the historic "March on Washington" led by Reverend Martin Luther King, Jr. This work came at a time when such causes were not universally politically popular.

"Robert Miller dedicated his life to the advancement of opportunity for all Americans. It is fitting that the first KAPT Foundation Scholarship honors a man who touched so many people in such a profound way," said Tom Miller, President of Miller, Griffin and Marks, P.S.C.

CARL D. DEVINE AND SUSAN Y.W. CHUN BECAME DIRECTORS WITH MILLER, GRIFFIN AND MARKS, P.S.C.

Carl D. Devine was elected as a Director with Miller, Griffin and Marks, P.S.C. in 2002. Carl received his law degree from the University of Kentucky College of Law in 1997. Carl joined the firm in 1997, and concentrates his practice in the areas of domestic, civil litigation and criminal law.

Susan Y.W. Chun has been elected as a Director with Miller, Griffin and Marks, P.S.C. in 2003. Susan, a native of Honolulu, Hawaii, graduated from the University of Kentucky College of Law in 1998 after receiving her Bachelor Degree from the University of California at Berkeley. Susan was a member of the Kentucky Law Journal and served as Articles Editor in her third year of law school. Susan joined the firm in 1998 and engages in the general practice of law.

GREG ARNOLD HUNTER AND J. SCOTT BENTON BECAME ASSOCIATED WITH MILLER, GRIFFIN AND MARKS, P.S.C.

Greg Arnold Hunter became associated with Miller, Griffin and Marks, P.S.C. in May 2002. Greg concentrates his practice in the areas of corporate law, business planning and transactions, estate planning and administration, and federal and state taxation. Greg received his Bachelor of Science degree from Eastern Kentucky University in 1997, his Masters of Taxation, with Honors, from the University of Akron College of Business Administration in 2000 and his Juris Doctor, with Honors, from the University of Akron School of Law in 2000. In addition, Greg received a Master of Laws in Taxation (LL.M), with Highest Distinction, from the Georgetown University Law Center in Washington, D.C. in 2001. Greg is a Member of the American, Kentucky and Fayette County Bar Associations.

J. Scott Benton became associated with Miller, Griffin and Marks, P.S.C. in October, 2002. Scott, who grew up in Utah, completed undergraduate studies at Oregon State University in 1991 and graduated from the University of Kentucky College of Law in 2002. Scott was Articles Editor for the Journal of Natural Resources and Environmental Law, a member of the Trial Advocacy Board, and member of the University of Kentucky College of Law's American Trial Lawyers Association competition team. Scott is a member of the American, Kentucky and Fayette County Bar Associations and has interests in criminal defense, civil litigation, as well as real estate transactions.

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MICHAEL J. COX ELECTED TO BAR ASSOCIATION POSITION

Michael J. Cox, a director at Miller, Griffin and Marks, P.S.C., was recently elected Chair of the Kentucky Bar Association's Young Lawyers Section. Michael is also serving on the Kentucky Bar Association's Board of Governors for the 2002-2003 term.

MICHAEL D. MEUSER NAMED TO EQUINE LAW PLANNING COMMITTEE

Michael D. Meuser, a director at Miller, Griffin and Marks, P.S.C., was appointed to the Planning Committee for the University of Kentucky's Annual National Equine Law Conference.



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