



**KUDOS**



*The Best Lawyers in America* has named **Michelyn E. Pasteur** as the "2013 Attorney of the Year in Elder Law" for the greater Lansing area. Micki's practice focuses on Medicaid planning and related Elder Law issues, Estate Planning, and Trust and Estate

Administration. She is also a member of the National Academy of Elder Law Attorneys. Micki was also named by Michigan Super Lawyers in the area of Elder Law, Estate Planning and Probate, and Business/Corporate Law.



**Patricia M. Ouellette** was recognized by *The Best Lawyers in America* in the areas of Taxation, Tax Litigation and Controversy, Trusts and Estates, and Trusts and Estates Litigation. Pat was also named by Michigan Super Lawyers in areas of Family Law, Estate Planning and Probate.



**Nancy L. Little** has been recognized in *The Best Lawyers in America* in the areas of Trusts and Estates, and Trusts and Estates Litigation. She has also been named by Michigan Super Lawyers in the areas of Probate and Estate Planning, Estate and Trust Litigation.

U.S. News and World Report has once again selected **Bernick, Radner & Ouellette, P.C.** for inclusion in its 2013 "Best Law Firms" report as a "Tier 1" law firm in the area of Trusts and Estates, Tax Law, and Trusts and Estates Litigation.



**AMERICAN TAXPAYER RELIEF ACT OF 2012**

By Nancy L. Little

In the last few months, you've probably heard the term "fiscal cliff" with such irritating frequency that it ranks right up there with such tiring expressions as "kinda", "like" (as in, like, an extraneous, like, word that adds no meaning, like, to what you are saying) and "it is what it is". At the last moment in 2012, Congress finally took the plunge and put us out of the fiscal cliff misery. Kinda. So what can you expect from the American Taxpayer Relief Act of 2012 ("ATRA")? The short answer is a more complicated tax code.

**Estate, Gift, and Generation Skipping Taxes**

The estate and gift tax is a unified tax, which means you get a certain amount of tax exemption ("unified credit") that you can use on lifetime taxable gifts and transfers at death.

Prior to January 1, 2013, you were entitled to make annual gifts of up to \$13,000 per person ("annual exclusion gift") without affecting your unified credit. The annual exclusion gift amount increased January 1, 2013, to \$14,000. This means you can give up to \$14,000 per person per year to as many people as you are inclined to gift. A gift of up to \$14,000 per year to any one person does not decrease your unified credit.

The unified credit in place for 2011 and 2012 was \$5,000,000, with a cost-of-living adjustment ("COLA") each year (the unified credit in 2012 was \$5,120,000 with the COLA adjustment). Part of the fiscal cliff crisis was the sunset provisions relating to the unified credit: if Congress did nothing, the unified credit would have reverted to \$1,000,000 as of January 1, 2013.

After much posturing, Congress has retained the unified credit at \$5,000,000 per person, with a built-in COLA. As a result of the COLA, the actual unified credit available in 2013 is \$5,250,000. Again, this amount applies to the combined total of your lifetime taxable gifts (annual gifts in excess of \$14,000 to any one individual) and to your taxable estate at death.

Some of you made sizable taxable gifts in 2012 in order to take advantage of the \$5,000,000 unified credit because it was scheduled to revert to \$1,000,000 at the end of 2012. Because the COLA sets the actual unified credit amount at \$5,250,000, you now have an additional \$250,000 available to make gifts if you so choose.

The tax rate after you exhaust your unified credit is 40%. While this is an increase over the 35% rate that was in place in 2011 - 2012, let's keep it in perspective: the current 40% rate is otherwise still the lowest that the top estate tax rate has been since 1931. It is way lower than the 77% rate that was in place between 1941 - 1976. To quote Shakespeare's Friar Laurence, "There are thou happy." And, while we are counting our blessings, keep in mind that although 16 states and the District of Columbia still impose separate inheritance or estate taxes (on top of the federal estate tax), Michigan does not.

The generation-skipping transfer tax ("GSTT") also has a \$5,250,000 exemption (\$5,000,000 with a COLA adjustment). The GSTT tax is not a unified tax with the estate and gift tax. In other words, GSTT gifts you make have their own exemption - they do not reduce your estate and gift tax unified credit.



## ARE YOU A "SNOWBIRD"?

By: Katie Lynwood

**"Are you a snow bird? Get out your sunscreen and listen up....."**

It's that time of year. The temperature is dropping and snow is falling. Many Michigan residents fly south for the winter. If you are a Michigan resident and spend several months in Florida during the winter, you should consider the following:

### **Do you own real estate in Florida?**

This would include a vacation home, condo or even a timeshare. If the answer is "yes," have you made provisions for the transfer of your real estate upon your death? If you have a Trust, has this property been transferred into your Trust? Additionally, how is the property titled: solely or jointly with another person? You should be aware that if you own real estate solely in your individual name and you die, a Florida probate administration is necessary to transfer that property to your intended beneficiaries. This could inadvertently cause you to go through probate in two states, likely doubling the costs to administer the estate. For individuals with real estate in more than one state, the cost of creating a trust and funding the trust with your real estate is nominal compared to the cost of probate in Florida. Did you know that Florida allows its attorneys to charge you 3% of your estate for administration legal fees? A trust can be created for a fraction of the cost and save your estate these fees.

### **Do you have a Florida Medical Power of Attorney?**

The states vary in their approach to allow other individuals to make medical decisions for us when we are unable. In Michigan, the Designation of Patient Advocate law allows an individual to designate a patient advocate to "exercise powers concerning care, custody, and medical or mental health treatment decisions for the individual" if they are unable to make their own treatment decisions. In Florida, not only can a person name a medical power of attorney, but they can also list their advance health care directives for physicians to follow. Michigan does not allow doctors to follow advance health care directives. In Michigan, a patient advocate must be the one to make the decision for the individual. Do you have a Florida Medical Power of Attorney AND Advance Health Care Directive?

### **Do you have a Florida General Power of Attorney?**

Florida has a new power of attorney statute after adopting the Uniform Power of Attorney Statute, effective October 1, 2011. Florida no longer recognizes a springing financial power of attorney, which means that it is only effective upon the individual's incapacity. Another new aspect of the Florida power of attorney relates to individuals named as co-agents. Unless the document provides otherwise, each co-agent that is named may exercise their authority independently.

Please call us if you have any questions. We are happy to help with the changes and documents listed above so that you are ready for your winter in the sunshine state.

Katie Lynwood is a licensed Attorney in Florida and Michigan.

## **LEGISLATIVE DEVELOPMENTS**

### **We'd like to share some important new Michigan legislative developments with you:**

*Effective June 12, 2012*, a new Revocation of Paternity Act put in place a method by which the paternity of a child born during a marriage may be contested. Previously, children born during a marriage were legally the child of the husband, regardless of actual paternity.

*Effective January 2, 2013*, MCL 600.6023 was amended to add 529 educational plans to the category of assets exempt from collection by creditors.

*Effective March 28, 2013*, mortgage debt may be deducted from the value of a probate estate inventory when computing the inventory fee.

*Effective December 31, 2013*, a transfer of residential property between a parent and child will not uncap the property taxes.

## FIRM NEWS



**Rhonda Kunkel** recently joined our firm as an associate attorney. Rhonda graduated from Michigan State University in 1999 with a Bachelor of Arts in Criminal Justice, with high honors, and from The Thomas M. Cooley Law School, cum laude, in 2002. Rhonda practices primarily in the areas of family law, custody and parenting time, contracts, and real estate. Prior to joining Bernick, Radner & Ouellette, P.C., Rhonda worked as an associate attorney with Knaggs, Harter, Brake & Schneider, P.C. where she focused on family law, collections, and foreclosures.

Rhonda resides in Eaton Rapids with her three daughters Hunter - 16, Diamond - 14, and Infiniti - 6 years old. She enjoys spending time attending her daughters' numerous athletic activities. In Rhonda's spare time, she enjoys trying new sports, reading, and the occasional ability to relax.



**Joann M. Schofield** has rejoined Bernick, Radner & Ouellette, P.C. as a paralegal after moving back to Lansing from northern Michigan. Joann originally worked for BRO from 1999-2006 and we are thrilled to welcome her back! In the interim, she worked as Chief Deputy Clerk for the Emmet County Clerk's Office in Petoskey. Joann brings a wealth of experience in the areas of probate and trust administration. She earned a Bachelors of Arts degree in Social Relations at the James Madison College of Michigan State University and also has an Associate degree in paralegal work from Lansing Community College.

Joann currently resides in Lansing with her husband Chuck. She enjoys taking her pug, Sofi, for walks and biking with friends and family. Joann also enjoys spending time during the summer months at her family cottage located on Big Crystal Lake, Beulah, Michigan, and also with Chuck's family in Harbor Springs, Michigan. Joann is a volunteer event worker for Michigan State University and works at the concession stands during home football games. (Joann bleeds green!) Joann also is a volunteer statistician for the Lansing Waverly High School Girls Varsity Basketball team.



**Katie Lynwood** is engaged to be married to Rex Foster. Both Rex and Katie are avid golfers and Rex proposed to Katie in Bandon, Oregon on #16 tee of Bandon Dunes Golf Course, overlooking the Pacific Ocean. *Congratulations Katie and Rex!*

Our law clerk, **Joe Brigman**, has been named managing editor of the Homeland National Security Law Review, an on-line law review, at the Thomas M. Cooley Law School, where Joe is a second-year student. Joe is also a captain in the U.S. Army, Company C, 3rd Battalion, 238th Aviation Regiment, with which he now serves as an Assistance Training and Operations Officer. Joe served two tours of duty in Operation Iraqi Freedom in Tallil, Iraq: first as a Forward Support Medical Team Leader/MEDEVAC Pilot and next as an Air Mission Request Officer in Charge/Air Assault Pilot. He has logged 1,250 hours flown, over 600 of which were in combat. Joe has been awarded the Air Medal, National Defense Service Medal, Army Service Medal, Global War on Terrorism Service Medal, Armed Forces Reserve Medal, Army Commendation Medal, and the German Armed Forces Efficiency Badge. We're proud of Joe's service to our country as well as his appointment as managing editor of the Homeland National Security Law Review.

One of our paralegals, **Shawna Haid**, and her son Cayden, participated in the Capital Area Humane Society's annual Walk/Run for the Animals. Shawna and Cayden have been volunteering at the Society 2 - 3 days a week since last July. Shawna reports that they love playing with the puppies, taking the dogs for walks and swims in the pond at the back of the property, and playing with the cats. It is a rewarding experience and she is happy that she and Cayden can do this together.

Jacob Zimmerman, grandson of **Micki Pasteur** and her husband, Ernie, will graduate from Haslett High School this year. Micki is proud to report that Jacob has been accepted at all six colleges to which he applied, including Michigan State University (Micki and Ernie's alma mater), University of Michigan (Jacob's mother's alma mater), and the University of Chicago. Way to go Jacob!

**Ursula Auger** recently joined our firm as our new Receptionist/Administrative Assistant. Ursula graduated from Central Michigan University and has a degree in Sociology. She and her husband, Scott, relocated to Wisconsin and Kentucky for a combined 15 years before making this relocation back to Michigan to be closer to their families. They currently reside in Grand Ledge and have two children, Brittany (13) and Zachary (12). She enjoys spending time with her family, being back in Michigan and is a Green Bay Packer fan.

**Nancy Little** participated in the Capital Area Humane Society's Run/Walk for the Animals. She has been elected Secretary of the CAHSS Board of Directors for the 2013 year. Nancy was also recently appointed to serve on the Mid-Michigan Regional Council Task Force for the American Red Cross.

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Taxation - Estate Planning - Business Succession Planning - Trust and Estate Administration - Probate and Trust Litigation - Elder Law  
Medicaid Planning - Guardianships - Conservatorship - Family Law (Divorce and Child Custody) - Mediation



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Another benefit that was carried forward is the concept of "portability". In simple terms, portability means that if a spouse dies without using all of his or her unified credit, the surviving spouse is entitled to the deceased spouse's unused exemption ("DSUE") in addition to his or her own unified credit. Keep in mind the only way to preserve portability of the DSUE is to file a federal estate tax return for each spouse. And, portability only applies to deaths occurring in 2011 or later. Note: portability does not apply to GSTT transfers.

### **Income Tax**

For those of you who prepare your own income tax returns, I offer another quote from Shakespeare: "If you have tears, prepare to shed them now"; because Congress has created so many different tax thresholds that you may need an actuary to keep track of them.

The highest tax bracket for taxpayers who have taxable income (excluding qualified dividends and long-term gain) in excess of \$400,000 (single filers) or \$450,000 (married filing jointly) will increase to 39.6%. Additionally, for these taxpayers, a new 20% tax rate will apply to qualified dividend income and long-term capital gains.

Even if you don't reach the \$400,000/\$450,000 threshold, you will lose some of your personal exemptions and itemized deductions when your

adjusted gross income exceeds \$250,000 (single filers) or \$300,000 (married couples filing jointly). Additionally, your net investment income will be subject to a new 3.8% Medicare income tax if your adjusted gross estate exceeds \$200,000 (single filers) or \$250,000 (married couples filing jointly).

Trust and estates will also be subject to the 3.8% Medicare income tax based on the lesser of the adjusted gross income or net investment income that exceeds \$11,950. Note: the 3.8% Medicare income tax does not apply to income that is distributed or distributable by the decedent's trust or will.

There is a permanent patch for the alternative minimum tax with exemptions of \$50,600 for single filers and \$78,500 for married couples filing jointly.

### **Conclusion**

Keep in mind that although none of the above changes have automatic sunset provisions, nothing should be viewed as permanent. Our tax code has undergone regular changes over the years and the provisions of ARTA, like all tax acts before it, will only remain in place until a new Congress decides to change them. So, like, ARTA is what it is - for now. Kinda.