

## The New Hampshire Trust Modernization and Competitiveness Act

Governor Lynch signed the “Trust Modernization and Competitiveness Act of 2006” into law in late June. The Act is designed to make New Hampshire a preferred destination for trust administration and private trust companies. By having the most current and flexible trust laws in the country and creating a favorable tax and regulatory climate, New Hampshire hopes to attract wealthy families from other states to establish their own trust companies here. This trust-friendly law will also help New Hampshire resident trust creators, beneficiaries and trustees, most notably by:

- *Diluting a trustee’s duty to diversify trust investments*, allowing resident trusts to hold a concentrated position (such as stock in a family business or even a publicly traded company) and allowing delegation of investment responsibilities to “directed Trustees;”
- *Providing greater latitude for the modification of existing irrevocable trusts without court supervision*, and
- *Eliminating the mandatory beneficiary reporting requirements* of New Hampshire’s Uniform Trust Code (“UTC”), enacted in 2004. Now a trust agreement, not the UTC, can determine how and when trust information is distributed and to whom the trustee must give that information. ❖

## Organ Donation in New Hampshire

Effective July 31st, a New Hampshire resident can make a legally effective organ donation by designating the gift on a driver’s license or non-driver’s picture identification card (“PIC”). Organ donors must register with the Division of Motor Vehicles by filling out a driver’s license application or renewal form, a change of address form, or an application for a PIC. The identity of individuals who register with the Division of Motor Vehicles as organ donors will be entered into a national registry that hospitals must consult if an individual becomes a candidate for organ donation. You should register for this new program even if you have a pre-July 31st driver’s license or PIC that indicates you wish to be an organ donor; otherwise, you will not be entered into the registry because your existing license or PIC is not a valid “document of gift” for purposes of the organ donation law. The new law did not change the rule that an individual may make a valid anatomical gift in a validly executed will. ❖

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McDonald & Kanyuk, PLLC

ESTATE PLANNING AND  
WEALTH MANAGEMENT  
WITH A PERSONAL TOUCH

## 2006 Federal Income Tax Changes

President Bush signed the *Tax Increase Prevention and Reconciliation Act of 2005* on May 17, 2006. The law makes several significant changes to the federal income tax.

- **The tax rate on qualifying long-term capital gains and dividends will remain at 15% through 2010.** The rates had been scheduled to increase in 2008. Lower-income taxpayers can recognize long-term capital gains and qualified dividend income with no federal income tax from 2008 through 2010.
- **Alternative minimum tax (AMT) relief will last through 2006.** The AMT is an alternate way of computing a taxpayer's tax liability designed to ensure that high-income taxpayers cannot eliminate their tax entirely through the use of credits, deductions and exemptions. In recent years, the AMT has affected many middle-income taxpayers as well. The Act's changes reduce the number of middle-income taxpayers to whom the AMT applies in 2006. Without further Congressional action, however, the AMT exemption will decrease in 2007 and future years, subjecting many additional taxpayers to the AMT regime.
- **The rules regarding the conversion of traditional IRAs to Roth IRAs have changed.** Currently, only taxpayers with \$100,000 or less of adjusted gross income can convert a traditional IRA to a Roth IRA. In 2010 and future years, however, all taxpayers may convert a traditional IRA to a Roth IRA. Assuming that this rule survives until 2010, determining whether a high-income taxpayer should pursue a Roth conversion depends on several factors, including the taxpayer's life expectancy, investment returns, and anticipated future income tax rates. The conversion is treated as a distribution from the traditional IRA, so the taxpayer also must be able to pay the income taxes due on the amount converted in the year of the conversion.
- **The age limit to which the "kiddie tax" applies has increased from 14 to 18 years old.** The kiddie tax is intended to prevent parents from shifting income to a child to take advantage of the child's lower income tax rates. For tax years beginning on or after January 1, 2006, children under the age of 18 will be taxed at their parents' marginal income tax rate on earned income over \$1,700 (in 2006). ❖

## TERMINAL CARE DIRECTIVES

*New Hampshire has updated its laws regarding advance health care directives and established procedures for do not resuscitate ("DNR") orders.* The changes go into effect on January 1, 2007.

- **New Hampshire law specifically permits two types of directives—a Health Care Power of Attorney and a Living Will.** Residents may sign either or both documents. The Health Care Power of Attorney authorizes you, as "principal," to designate a person (the "agent") to make terminal care decisions for you if you are incapacitated. The living will does not authorize anyone to make terminal care decisions for you, but instead is a written document evidencing your wishes regarding the decision concerning the application or withdrawal of life sustaining procedures if you are near death or permanently unconscious.
- **The new law clarifies the advance directive forms and simplifies the procedures for signing them.** It also assumes that every person consents to the administration of cardiopulmonary resuscitation unless certain conditions exist, most notably the existence of a DNR order. A DNR order usually is issued by a person's doctor if the person, or his agent, consents to it. A person's health care agent may consent to a DNR order if the person is incapacitated and the power of attorney grants that authority. If a physician issues a DNR order, the patient may wear a medical condition necklace or bracelet with certain information indicating the existence of the order. Those who wish to replace their existing health care directives with these new forms should do so as soon as possible. ❖

# PENSION REFORM AND CHANGES FOR CHARITABLE CONTRIBUTIONS AND ORGANIZATIONS

*The Pension Protection Act of 2006* was effective in mid-August. The new law overhauls the pension plan rules, extends and enhances retirement and education funding tax breaks and creates tax-favored charitable giving opportunities. Some of the highlights:

- **401(k) and IRA providers may offer personalized investment advice to the account owners.** The providers, however, cannot advise employers about which funds and investments to include in their plans. The government hopes that account owners with greater access to investment advice will make better retirement decisions.
- **A non-spouse beneficiary of a 401(k) or other qualified retirement plan account now may transfer inherited 401(k) assets to an inherited IRA** established by the non-spouse beneficiary. The inherited IRA still must be titled in the name of the deceased 401(k) owner's name (for example, if son inherits mom's 401(k), son can transfer the 401(k) assets to an IRA titled as "mom's IRA f/b/o son"). This also will extend to same-sex and unmarried opposite sex partner beneficiaries certain income tax deferral opportunities available to surviving spouses.
- **The rules permitting Roth 401(k) accounts, which took effect in January, have been made permanent.** Now that the future of Roth 401(k)s is secure, more employers may change their retirement benefits to provide employees with both the traditional and Roth 401(k) options.
- **Taxpayers who are at least 70½ years old can make up to \$100,000 of annual contributions to charities directly from their IRAs without first including the amount of the contribution in gross income.** This rule, which applies only for the 2006 and 2007 tax years, is good news for philanthropic higher-income

taxpayers because under the prior law the income tax charitable deduction available for donations of IRA distributions did not completely offset the federal income tax paid on the distributed funds. A distribution from the IRA can be made to any type of charity other than a donor-advised fund, a supporting organization, certain private foundations and "split interest" entities (for example, charitable remainder trusts, pooled income funds and gift annuities).

- **Taxpayers can transfer funds directly from a 401(k) or other qualified retirement plan account directly to a Roth IRA,** without first transferring the funds to a "traditional" IRA. Taxpayers still must satisfy the adjusted gross income limitation and other rules that apply to conversions to Roth IRAs.
- **The rules allowing Section 529 college savings plans have been made permanent,** eliminating the uncertainty created by the "sunset" provisions of prior law.
- **The rules regarding charitable contributions have been tightened.** The IRS will now allow a taxpayer to deduct cash contributions to charities only if the taxpayer has a bank record or written document from the charity evidencing the contribution. Donations of clothing and household items must be in at least "good used condition" to qualify for a charitable income tax deduction. ❖

**2006**  
*Pension Protection Act*

# STATUS OF GIFT AND ESTATE TAX REFORM

There appears to be no end in sight to the drama and political machinations surrounding the fate of what is euphemistically called the “death tax.” Proponents of repeal have effectively conceded that they do not have enough support in the Senate. They have shifted their focus instead to significant wealth transfer tax reform. In August, the Senate failed to pass legislation to permanently reform these taxes with significant exemptions and other features that would insulate all but the super-wealthy from federal wealth transfer taxation. The reform measures were combined in a “trifecta” bill with an increase in the minimum wage and the extension of several popular tax relief measures. Sponsors inserted a variety of “sweeteners” wholly unrelated to the estate tax and designed to win the votes of recalcitrant colleagues. Most Democrats voted against the bill and criticized Republicans for using the minimum wage increase as a way to provide tax relief to wealthy families. Republicans accused the Democrats of defeating the legislation only to gain political capital in the upcoming mid-term elections. It was all very mean-spirited and partisan. Senate Majority Leader Bill Frist (R., Tenn.) vowed to renew the fight in the fall, but recently indicated that he expects not to pursue wealth transfer tax reform before the midterm elections in November—discouraging news for those banking on meaningful wealth transfer tax relief, given the possibility that the Republicans may lose their majority in the Senate. Stay tuned. ❖

FOR MORE INFORMATION ON ANY OF THESE TOPICS, PLEASE CONTACT JOE McDONALD, AMY KANYUK OR JOY RIDDELL AT (603) 228-9900, OR VISIT OUR WEBSITE AT [WWW.MCKAN.COM](http://WWW.MCKAN.COM).

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