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Goldberg
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Gittler LLP**

A Report of Legal Trends

Susan Ward Harris, Editor

In Our Community

Members of our firm are engaged in numerous organizations to support our community. From time to time, we would like to highlight these organizations in our firm newsletter.

Phoenix is home to 550 of the Lost Boys of Sudan, and Yale Goldberg, a founding partner of Frazer Ryan Goldberg Arnold & Gittler LLP, and his wife, Jodi, have been working with the boys since 2004.

The Arizona Boys and roughly 3500 others across the United States were part of a tragic exodus from southern Sudan. They have come to be known by the world as the Lost Boys of Sudan. They are now young men hoping to live full and meaningful lives and achieve their dreams. Yale and Jodi are working to make that a reality for some of these young men.

Their treacherous journey began in 1987 when an estimated twenty thousand young boys in southern Sudan were driven from their families and villages. Many of these young boys who were only six or seven at the time fled to Ethiopia to escape death or induction into slavery and the northern army. They walked thousands of miles through lion and crocodile country, eating mud to stave off thirst and starvation. They wandered for years and many of them died before reaching Kenyan refuge camps. In 2000, several of the boys immigrated to the United States and were resettled. They were given three months of free rent, after which time they were expected to have jobs and provide for themselves. Living communally in low-income housing, they began to adjust to their new life.

That is where people like Yale and Jodi have come into the lives of these boys. They have worked and supported ten or more of these young men helping them to assimilate into our culture and providing support and mentoring. They often serve as surrogate parents and are often referred to fondly by the young men as "mom" and "dad."

"These young men have enriched our lives and provided us the opportunity to share in their growth, as well as support them through the challenges they face as they work to achieve their life dreams in a culture so foreign to them," stated Yale Goldberg.



Yale Goldberg (center) at the Grand Canyon with John Ruot (left) and Chol Jok (right).

"We have watched the first Arizona Lost Boy graduate from a four-year college and move on to begin work on his masters degree in business, as well as had the pleasure to employ two of the boys in our law firm. The rewards of our experiences with these young men far exceed anything Jodi and I have provided," added Yale.

If you are interested in learning more about The Lost Boys of Sudan, you might be interested in seeing the recent documentary film *God Grew Tired of Us: The Story of Lost Boys of Sudan* or visit their website at www.azlostboyscenter.org.

Yale Goldberg can be reached at 602.277.2010 or ygoldberg@frgaglaw.com. ■

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More Than Just A Minimum Wage Law

By Amy J. Gittler
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On November 7, 2006, Arizona voters passed Proposition 202, Raise the Minimum Wage for Working Arizonans Act, which, among other things, will increase the minimum wage for Arizona workers.

Under the new law, the minimum wage increased on January 1, 2007, to \$6.75 per hour and will increase each year thereafter to an amount based on the cost of living measured by the Consumer Price Index. The statute also imposes a \$3.75 hourly minimum wage for employees who regularly receive tips as long as the employees receive at least \$6.75 for all hours worked.

Prior to passage of Proposition 202, Arizona was one of only six states that did not have a separate minimum wage law and employers were only required to comply with the federal hourly minimum wage of \$5.15. The new wage law applies to nearly all Arizona employers except small businesses, which are narrowly defined.

But beyond increasing the minimum wage, the law includes several significant provisions affecting employers. The following are some of the highlights:

- Notice: Employers must provide employees with their business name, address and telephone numbers "upon hire."
- Posting: Employers must post notices in the workplace in a form specified by the Industrial Commission, informing employees of their rights under the new law.
- Record Retention: Employers must maintain payroll records

¹This means that in any dispute, the law assumes the employer has violated the law and it is up to the employer to disprove this assumption.

for employees showing hours worked each day and wages paid to all employees for a period of *four years*, which is a year longer than required under federal law. An employer's failure to maintain these records subjects the employer to a presumption that it didn't pay minimum wage and potential penalties.

- Inspection: The law requires employers to allow an employee (or his "designated representative") to inspect and copy the employee's own payroll records. The law also gives law enforcement the authority to inspect and copy payroll records, as well as the authority to interview employees away from the workplace.
- Retaliation: The new law also prohibits an employer from taking adverse action against any person who has asserted a claim, assisted another in asserting a claim, or informed another about his or her rights under the law. The law creates a *presumption* that any adverse action taken by an employer (such as demotion or termination) within 90 days of an employee engaging in any of these activities is retaliatory.¹ An employer found to have retaliated against an employee will be required to pay the employee at least \$150 for each day that the violation continued or until judgment is final.

You should review your record keeping policies and payroll practices to make sure you are prepared for the new minimum wage law. If we can assist you in this review, or in complying with the new law, please let us know at agittler@frgaglaw.com, or 602.200.7390. ■

New Law Permits Direct Transfers from IRAs to Charity

By Susan Ward Harris
Certified Tax Law Specialist

Want to make a charitable contribution directly from your IRA and potentially save on your tax bill? You can, but only in 2007 under a new law enacted last summer, as part of the Pension Protection Act of 2006. (Transfers were permitted in 2006 also; however, these transfers had to be made before December 31, 2006.) This new law eliminated the tax consequences of certain IRA distributions made from a taxpayer's IRA (other than ongoing SEP IRAs and SIMPLE IRAs) which are paid directly to a charity. The IRS has just issued a notice providing guidelines with respect to these transfers. The following is a list of the general requirements that must be met to take advantage of this new rule in the coming year:

First, you must be the age of 70 ½ or older to take advantage of this new provision. It does not matter whether you are the original beneficiary of the IRA or if you inherited the IRA and are the current sole beneficiary so long as you meet the age requirements.

Second, the distributions must be made directly from the IRA to the charity. Again, the IRS has taken a taxpayer friendly approach to this requirement and decided that a check drawn on an IRA account made payable to an eligible charitable organization which is delivered by the taxpayer constitutes a direct distribution.

Third, you cannot contribute more than \$100,000 from your IRA. If you have multiple IRAs, and you want to make qualified charitable distributions from more than one of them, the total distributions to charities cannot exceed \$100,000 for 2007. For married individuals filing a joint return, each spouse can make a \$100,000 contribution. Of course, to obtain the exclusion, the

contribution must truly be a contribution and not given in return for any benefit to you from the charity.

Fourth, the distribution can only be made to qualified charities, which include organizations such as churches, synagogues, educational organizations, hospitals, medical education or research facilities and public charities.

Fifth, the distribution must be one that would be included in gross income if made to you rather than to the qualified charity. The new law, however, allows you to exclude the qualifying charitable distribution from your gross income. This approach has two potential benefits to you. The fact that the qualified charitable distribution is not included in your gross income means that you may potentially be able to avoid or reduce the phase out of certain tax benefits such as the itemized deductions and personal exemptions applicable to individuals over set income levels.

Sixth, the contribution must otherwise be entirely deductible as a charitable contribution with one key exception. The normal percentage limits that cap a taxpayer's charitable deductions in a year do not apply to contributions made from an IRA and charitable contributions made directly from the IRA are not taken into account in determining the taxpayer's charitable deduction for the year.

So, if you have been meaning to make significant contributions to your favorite charities, and assuming you qualify to make those contributions from your IRA under the new rules, 2007 may be your year to act. ■

Special Needs Trust When Should I Use It For My Disabled Child?

By Charles L. Arnold
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Being the parent of a disabled child presents many challenges. Beyond the physical and emotional challenges of caring for a child with disabilities, estate planning for the future of a disabled child can be difficult. Many parents rely on governmental assistance programs to provide the level of care needed for their disabled child. These programs often pay for expensive custodial care, health care, vocational rehabilitation, supported employment and personal attendant care. Most parents want to leave this world knowing that they have left their disabled child with enough money to have a decent quality of life when they are gone. What these parents often don't realize is that their inheritance may cause their child to lose the governmental assistance benefits program they worked so hard to put into place to provide their child with the level of care he or she so desperately needs.

There are two types of governmental benefits – needs-based benefits and entitlement-based benefits. To be eligible for needs-based governmental benefits, a person cannot have more than a nominal amount of resources/assets, often not more than \$2,000.00, and/or cannot have more than a limited income, which varies by the program applied for. Thus, any significant inheritance may disqualify the child for these benefits or terminate a benefit he or she is receiving because his or her resources or income will be pushed over the eligibility limit. Examples of needs based benefits are Supplement Security Income (SSI), Arizona Long Term Care System/Medicaid (ALTCS) and various medical benefits which require limited income for eligibility.

Entitlement-based governmental benefits, on the other hand, will not be affected by inheritance because eligibility for these benefits depends upon only the individual's status or condition and not upon the amount of his or her resources or income. For example, a person is entitled to receive Social Security Retirement benefits because of his or her years of employment paying into the Social Security System, regardless of his or her current resources or income. Likewise, a person is entitled to receive Social Security Disability (SSD) payments or Developmental Disability (DDD) benefits based solely on being determined to be disabled under the appropriate law or regulation, again regardless of current resources or income.



If your child stands to lose needed governmental benefits because of your inheritance, you will need to plan ahead. The simple way of dealing with this problem is to have your child's inheritance placed into a Special Needs Trust for his or her benefit. Federal and State rules allow a parent to put money into a Special Needs Trust for the benefit of their disabled child without disqualifying the child from governmental assistance programs. The Special Needs Trust holds the property for the benefit of the child or adult who has a disability. The money in the Trust can be used to help provide for the special needs of the beneficiary. The Trust funds may be used only to supplement governmental assistance benefits and not supplant the governmental benefits. Some of the expenses typically paid for out of a Special Needs Trust are:

- Eye glasses
- Annual independent medical check-ups
- Transportation, including purchase of a vehicle
- Special equipment
- Training programs
- Maintenance
- Education
- Insurance premium
- Rehabilitation
- Entertainment
- Trips and vacations
- Computer or other electronic equipment
- Athletic training and competition
- Companion services or home health aide

Other circumstances may also call for the use of a Special Needs Trust while the parents are alive to protect these governmental benefits. If the family is aware that another family member or friend is intending to leave the child an inheritance or make a gift, a Special Needs Trust can be created to receive those funds and prevent disqualification. If your child is not receiving governmental assistance but is about to apply and he or she has resources worth more than \$2,000.00, a Special Needs Trust could be created to preserve these assets for the child's benefit and to prevent his disqualification upon application for these benefits. Another circumstance that often occurs is when the child is entitled to receive money from a Personal Injury Settlement or Judgment. These funds, as well, can be placed into a Special Needs Trust to prevent disqualification.

Governmental regulations may provide, however, that any money left in certain Special Needs Trusts upon death of the disabled child must be used to pay back the governmental assistance program for the expenses paid by the program during the lifetime of the child. Therefore, it is critical that you seek the advice of a qualified attorney whenever you are considering the use of a Special Needs Trust and seek their assistance in drafting the Trust.

If you want to protect your disabled child's right to receive governmental benefits and assure a continuity of quality care you should consider the creation of a Special Needs Trust. Frazer Ryan Goldberg Arnold & Gittler LLP has attorneys qualified to assist you with this estate planning tool. ■

Attorneys with exceptional expertise serving the diverse legal needs of businesses and individuals.

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