

# A REPORT OF LEGAL TRENDS

Susan Ward Harris, Editor

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## Welcome to Frazer Ryan Goldberg & Arnold LLP



**B**renda Church joined Frazer Ryan Goldberg & Arnold LLP as a partner in 2008. She practices exclusively in the areas of estate planning, trust and probate administration, and fiduciary law. She assists individuals and families to identify and implement their estate planning goals and objectives, utilizing the instruments and techniques best suited to each client's needs and desires. In addition to preparing simple wills and revocable living trusts, Brenda has experience implementing various charitable planning techniques, and utilizing a variety of irrevocable trusts, gift transfers and business entities to accomplish the clients' goals of transferring wealth to following generations, while reducing or eliminating estate and inheritance taxes. Brenda also routinely represents personal representatives and trustees, advising them of their fiduciary duties and responsibilities.

Brenda is a graduate of William Penn College and received her Juris Doctorate with high distinction from University of Arizona College of Law. She was chosen among her colleagues for membership in the American College of Trust and Estate Council and for inclusion in *The Best Lawyers in America*<sup>®</sup>, and she is an AV\* rated attorney with the highest ratings for legal ability and ethical standards.

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**K**acie Dillon joined Frazer Ryan Goldberg & Arnold LLP in 2008 as an associate attorney in the estate planning and tax controversy practice areas. Prior to joining the Firm she practiced in the area of tax controversy at another local firm.

While at the University of Nebraska, Kacie received CALI Excellence for the Future Award for the highest grade in Partnership Tax and Family Law and she completed the Business Transactions Program of Concentrated Study. Kacie also earned pro bono certification for her work with VITA, Volunteer Income Tax Assistance.

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## No Minimum Distributions Required for 2009

By Charles W. Whetstone, Of Counsel

The federal tax laws require individuals and their beneficiaries to take minimum distributions from “defined contribution” type retirement plans, such as individual retirement accounts (IRAs), 401(k) plans, profit sharing plans and tax sheltered 403(b) annuities. For purposes of this article, all of these types of defined contribution type plans will be referred to as “DC plans.” Required pay outs from DC plans must begin in the year in which you attain age 70½. However, if you are working for an employer and do not own at least 5% of the employer, distributions from a DC plan maintained by your employer need not commence until you actually terminate employment even after age 70½. But, in all cases, you must start taking distributions from your IRAs when you attain age 70½, even if you are still working. The IRS imposes a 50% excise tax on you or your beneficiary for not taking the minimum amount.

The first distribution required in the year you attain age 70½ need not be made until April 1 of the following year. For example, if you were born on June 1, 1938 and attained age 70½ on December 1, 2008, you would not be required to take your first distribution until April 1, 2009.

Once distributions begin, they must continue for a period not exceeding your life expectancy and the life expectancy of your beneficiary. The IRS has established tables designating the minimum amount that must be distributed each year. For example, for the first year that a distribution is required when you attain age 70½, your distribution may not be less than approximately 3.7% of the value of your account balance on December 31 of the immediately preceding calendar year. If there are monies remaining in your DC plan when you die, minimum distributions must be paid to your beneficiary or beneficiaries over a period not exceeding the longer of your life expectancy or your beneficiary’s life expectancy as of the date of your death. However, if your beneficiary is your surviving spouse, he or she may be able to rollover your DC plan to his or her own DC plan and delay distribution until he or she attains age 70½.

In late December, 2008, President Bush signed The Worker, Retiree and Employer Recovery Act of 2008 into law. This new law permanently waives any required minimum distribution for calendar year 2009. The reason for this one-year moratorium on minimum distributions is to help individuals preserve their capital



by not forcing them to liquidate investments and take distributions in the face of the depressed markets. You may still take distributions from your DC plan during 2009, you are not required to. It is important to note that the new law does not waive minimum distributions for 2008, including minimum distributions for individuals who first attained age 70½ and have until April 1, 2009 to receive the distribution. The individual in the above example who attained age 70½ on December 1, 2008, would still be required to receive his or her first distribution no later than April 1, 2009. However, the individual would not be required to receive another distribution for the 2009 plan year, but would be required to resume minimum distributions in 2010.

There are many technical rules contained in the minimum distribution regulations and in the new law and each person’s situation is unique. In addition, there are special rules for Roth IRAs. Accordingly, you should call us if you have any questions about your particular situation. Also, if you have already taken what was supposed to be your 2009 minimum distribution, you may be able to roll your distribution back to your DC plan or to an IRA within 60 days of receipt of the distribution and avoid paying tax on the distribution in 2009. Again, each situation is unique and you are urged to call us if you have any questions. ●

## Arizona and City of Phoenix Announce Tax Amnesty Programs

By Michael A. Harsch, Attorney At Law

The City of Phoenix and Department of Revenue for the State of Arizona recently announced amnesty programs in which certain taxpayers will have an opportunity to pay certain back taxes and/or license fees without penalty or criminal prosecution, and at a reduced interest rate.

The City of Phoenix program will be open for two months, beginning April 15, 2009, and ending June 15, 2009. Under the program, any business owing delinquent city sales tax on or before April 1, 2009, is eligible for consideration of penalty waiver and interest charges at 3 percent (in lieu of the current 6 percent interest rate). The City’s amnesty program also extends to delinquent license fees, but will not extend to regulatory fees.

The Arizona program will be open for only one month, beginning May 1, 2009, and ending June 1, 2009. The taxes included in Arizona’s program are the individual

income, corporate income, transaction privilege (sales), use, withholding, partnership, fiduciary and luxury (tobacco and liquor) taxes. The tax periods that can be included will depend upon the frequency of the filing requirement of a particular tax (if filed annually, the amnesty is available for years beginning January 1, 2002, and ending before January 1, 2008; if filed monthly or quarterly, the amnesty is available for periods beginning January 1, 2003, and ending before January 1, 2008). Payments of all taxes under Arizona’s program must be paid in full by June 1, 2009.

Amnesty programs are rare. As a result, eligible taxpayers should not overlook this limited opportunity to resolve delinquent accounts, especially in light of these difficult and changing economic times. ●

## A “Little Known” Benefit for Veterans and their Families

By Keith R. Lyman, Attorney At Law

For those of you who may either be a veteran or married to a veteran who needs help with some of the activities of daily living, did you know that you may be eligible to receive a monthly check from the Veterans Administration?

This little known benefit is called “Aid & Attendance.” This benefit can provide a monthly income of up to \$1,554 per month, with a surviving spouse eligible to receive up to \$998 per month. A couple is eligible for up to \$1,842 per month. Aid & Attendance is available to any war-time veteran (including WWI, WWII, the Korean Conflict, the Vietnam War and the Persian Gulf War) with at least 90 days of active duty and at least 1 day beginning or ending during a period of War. The veteran must not have been dishonorably discharged from service.



### Eligibility for this benefit only requires that the veteran meet at least one of the following conditions:

1. Needs the assistance of another with eating, bathing, dressing, toileting, adjustment of prosthetic devices, or to protect himself/herself from their daily environment;
2. Is bedridden;
3. Is a patient in a nursing home due to mental or physical incapacity; or
4. Is blind.

A veteran may also be eligible if living in an assisted living facility.

Most importantly, unlike some other veteran’s benefits, there is no requirement for service-related injuries.

Eligibility for Aid & Attendance is contingent on eligibility for a VA pension, but is paid in addition to any monthly pension received. The income from this benefit can be used to help off-set the cost of care for the veteran.

There are income limits that the veteran must meet. If there are no dependents, the yearly income must be less than \$19,736. With one dependent, the income limit is \$23,396. But it is important to note that income does *not* include Supplemental Security Income, and unreimbursed medical expenses may be deducted which will help many fall within these income limits.

There is an asset limit of \$80,000, but this does not include a home and personal effects. This limit refers to net worth, *after* deducting liens and mortgages. Significantly, there are no transfer penalties, which opens the door to the creation of special irrevocable trusts that can hold excess resources during your lifetime. Transferring assets to these trusts can result in the applicant meeting the asset limitations.

Applications for this benefit are initiated by filing a Veterans Application for Pension or Compensation, form DD-214. It may take more than 6 months to process this application, but all benefits are retroactive to the original date of filing. There are agencies that can assist you in this application process. If interested, contact one of us here at Frazer Ryan Goldberg & Arnold LLP and we will be happy to help guide you in the right direction. ●

## American Reinvestment and Recovery Tax Act Recently Enacted

The recently enacted American Reinvestment and Recovery Tax Act contains a number of tax provisions that can lower the tax bill that businesses may have otherwise expected to pay this year. Among the changes is an election that a business can make to expense rather than depreciate certain business purchases. For taxable years beginning in 2008, a business may deduct up to \$250,000 of the cost of qualifying property placed in service for the taxable year. Prior to the Act, for taxable years beginning in 2009 and 2010 the limitation was reduced to \$125,000.

In general, a business taxpayer can claim an expense under the amended section 179 for tangible personal property that is purchased for use in the active conduct

of a trade or business and which can be depreciated. Off-the-shelf computer software placed in service in taxable years beginning before 2011 qualifies for the special treatment.

The amount eligible to be expensed for a taxable year may not exceed the taxable income for a taxable year that is earned from the active conduct of a trade or business. Any amount that is not allowed as a deduction because of the taxable income limitation may be carried forward to succeeding taxable years (subject to similar limitations). For taxable years beginning in 2008, if the cost of qualifying property placed in service during the taxable year exceeds \$800,000, the excess amount will reduce the \$250,000 amount (but not below zero). ●

If you would like to receive the **Frazer Ryan Goldberg & Arnold LLP** *Report of Legal Trends* electronically, please call us at **602.277.2010**.

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