

# Holiday Newsletter

DECEMBER 2011



## INSIDE THIS ISSUE:

State Offers Tax 2  
Amnesty  
Programs

Tax Law 3  
Updates, Cont.

County Fair 4  
Time

Labor Dept. 4  
Proposes to Ban  
Youth from  
Engaging in  
Certain Types of  
Ag Work

Amanda Passes 5  
the Bar Exam

Meet Lori 5

Firm News 6

Ohio Oil & Gas 7  
Lease Issues for  
Landowners

Happy  
Hanukkah!

## Tax Law Updates

### Income Tax Laws:

At least eight new laws contain tax provisions that take effect in 2011. Complete coverage is not possible in this limited space. Keep in mind that Congress can make further changes. Among the highlights and important tax reminders:

- 100% bonus depreciation on qualifying new purchases for 2011 and 50% bonus depreciation on qualifying new purchases applies for 2012. Note that different rules may apply to automobiles.
- Section 179 expensing limit for 2011 is \$500,000. The 2012 limit is \$125,000.
- Maximum capital gain tax rate for 2001 is 15%. The 15% rate was also extended to 2012. Note that certain depreciation recapture or imposition of alternative minimum tax could result in a rate in excess of 15% in some instances.
- 15% rate on qualified dividends extended to 2012.
- For 2011, social security and self-employment taxes are reduced by 2%.
- The child tax credit remains at \$1,000 for 2011 and 2012.
- The marriage penalty relief (tax brackets and standard deduction) is extended through 2012.
- The increased alternative minimum tax exemption amount was extended through 2011.
- For 2011, Health Savings Accounts, Flexible Spending Accountings, and similar arrangements may no longer be used for over-the-counter medications.
- Long-term care insurance (subject to age limits) may be paid from Health Savings Accounts.
- The penalty for using Health Savings Account and Medical Savings Account and similar funds for non-qualified expenses is increased to 20% and the amount is included in taxable income.
- Beginning in 2011, small employers are eligible to establish simple cafeteria plans, which provide a safe harbor from some nondiscrimi-

nation rules. In a simple plan, the employer is required to make a minimum contribution to the plan. The IRS has not yet issued regulations for these plans. Depending on the elements of the plan, additional reporting and recordkeeping may be required.

- Employer reporting of the cost of employee health insurance, which was originally required for 2011, has been delayed for at least one year. Employer reporting of contributions to HSAs and MSAs must be reported for 2011 under pre-existing rules.
- The holding period for S corporation built-in gains is reduced to 5 years for gain recognized in tax years beginning in 2011, but only if the fifth year in the recognition period precedes the 2011 tax year.
- Businesses that hired a qualified employee after Feb. 3, 2010 and before Jan. 1, 2011 may be able to claim a tax credit equal to 6.2% of wages for employees who remain employees for 52 consecutive weeks.
- Credit card, debit card and other payment settlement processors must begin filing information returns reporting gross payments made to merchants beginning in 2011. Backup withholding will apply for 2012.
- Brokers must begin reporting basis for securities sold, with reporting for stock sales beginning in 2011 and mutual funds in 2012.
- 1099 reporting for owners of rental property, which would have been required beginning in 2011, has been repealed.
- Tax preparers who file at least 10 tax returns for 2011 are now required to e-file. Tax clients may opt out.
- Enhanced reporting is required for holders of foreign bank, securities and other financial accounts. Reporting is generally required if the foreign accounts have aggregate value that exceeds \$10,000 at any time. Additional reporting is required with respect to specified foreign assets (it is not clear if this includes foreign real estate) with aggregate value in

(Continued on Page 3)

## State Offers Tax Amnesty Programs



The Ohio legislature added two tax amnesty programs to the State Budget Bill signed by Governor Kasich on June 30, 2011. The Ohio Department of Taxation has responsibility for conducting these programs, raising awareness of the amnesty opportunities, and helping taxpayers better understand Ohio's tax laws. This is a limited time opportunity which offers incentives for taxpayers to pay delinquent taxes. Tax amnesty provides a chance for the taxpayer to save money and reduce future exposure. As mentioned, two amnesty programs

are being offered:

- From October 1, 2011 until May 1, 2013, the department will offer a Use Tax Amnesty for use tax due on purchases made by businesses on or after January 1, 2009.
- From May 1 through June 15, 2012, the department will offer General Tax Amnesty for most business taxes and some individual taxes

You can apply for consumer use tax amnesty only once during this program. For further information, see <http://tax.ohio.gov/>.

*Tax season is quickly approaching! Contact our office with your tax, business, and estate planning needs.*

## BECE to Offer E-File

Jeff Easterday provides income tax preparation services to clients. Our tax preparation services include individual returns, non-resident alien returns, partnership returns, fiduciary returns and some corporation returns. Beginning with 2011 returns, BECE will provide e-filing for most income tax returns. E-filing of returns is encouraged by IRS and is now mandated for preparers who prepare at least 10 returns annually. Taxpayers can elect to opt out of e-filing and file paper returns. In an interesting twist, IRS does not permit a preparer to mail the paper return for a taxpayer who elects not to e-file. Instead, the taxpayer must physically mail his or her own paper return.

*Happy New Year*



**IRS CIRCULAR 230 DISCLOSURE:** In accordance with IRS regulations, please be advised that to the extent this communication, including any attachments, contains any federal tax advice, such advice is neither intended nor written to be used (and cannot be used) for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code, nor for promoting, marketing or recommending to another person any transaction, arrangement or matter addressed herein.

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The information provided in this newsletter is for educational purposes only and should not be used as a substitute for professional advice, as there are often many exceptions to the general rules. Before applying any of this information to a specific legal problem, readers are urged to seek advice from an attorney.

# Tax Law Updates

## (Continued from Page 1)

excess of \$50,000. Penalties for failure to report can be severe.

- Form 1040, Schedule B, asks if you have a financial interest or signature authority over a foreign account. In prior years, a holder of such an interest in a foreign account that was never in excess of \$10,000 was instructed to answer no to the question. For 2011, such a holder must answer yes to the question, and will then answer the next question about whether reporting is required. This is a change from prior years.
- IRS has revoked the tax exempt status of about 275,000 organizations in 2011 for failure to file required annual returns or notices.
- Bonus and royalty payments from oil and gas leases are not considered to be income from farming. Large bonus and royalty income (i.e., income as a result of Marcellus Shale leases) may make a farmer ineligible for the farm income exemption from making quarterly estimated tax payments.
- Areas subject to increased scrutiny or audit may include: 1) any business treating workers as independent contractors rather than as employees, 2) S corporations and whether owner salary compensation is too low, 3) earned income credit, and 4) high-income taxpayers and corporations. Our information suggests that IRS expects to increase the number of audits.
- The standard mileage deduction for business use of automobiles was \$0.51 per mile through June 30, 2011 and thereafter was \$0.55 per mile for the remainder of 2011.
- For 2011 and 2012, tax rates for individuals are 10%, 15%, 25%, 28%, 33% and 35%. For married filing jointly, the 35% rate applies to taxable income over \$379,150.

### Estate Tax Laws:

- The federal estate tax applies to the value of the taxable estate as of the date of death or the alternate valuation date. The taxable estate generally includes the then current value of all assets owned by the decedent, including the amount of life insurance in which the decedent had an interest, and the value of certain property or interests in which the decedent had an interest or control, and plus the amount of lifetime gifts (other than annual exclusion gifts) that were made; but minus debts, administration expenses, property passing to a surviving spouse, and gifts to qualified charities. For 2011 deaths, an exclusion of \$5 million is applied to the taxable estate. The federal exclusion is \$5,120,000 for 2012. The federal exclusion, unless changed by Congress, will revert to \$1 million after 2012. The federal estate tax rate is 35% for 2011 and 2012. After 2012, unless changed by Congress, the federal estate tax rate will increase to between 41% and 55%.
- For deaths in 2011 and 2012, the unused federal exclusion amount may be passed to the surviving spouse for use at the time of the surviving spouse's death. This concept, known as "Portability" will not apply after 2012 unless changed by Congress. As currently structured, a federal estate tax return will need to be filed upon the death of a spouse in order to set the amount of unused credit for future portability (even if a return is not otherwise required).
- The special use valuation or Section 2032A allows farmland to be valued at its agricultural value rather than its market value for fed-

eral estate tax purposes. To qualify, the estate generally must consist of at least 50% qualified real and personal property used in farming and at least 25% qualified real estate used in farming. The qualifying farm real estate must have been owned by the decedent for at least 5 of the 8 years prior to date of death, and there must have been material participation by the decedent or a family member during such period (or prior to retirement). The qualified farm property must pass to a qualified heir and the qualified heir must continue the ownership, use and material participation for the ten-year period following the date of death.

The rules are complex and very specific. The maximum reduction in value for the farmland valued under Section 2032A is \$1,020,000 for 2011 and \$1,040,000 for 2012.

- The federal gift tax exclusion is \$5 million for 2011 and \$5,120,000 for 2012. Unless extended by Congress, the federal gift tax exclusion will be reduced to \$1,000,000 after 2012. In addition, any person may make gifts of up to \$13,000 each year to any donee (annual exclusion gifts). There is no limit to the number of donees who may receive an annual exclusion gift of up to \$13,000 from a single donor. The annual exclusion gifts do not use up any part of the federal gift tax exclusion as long as they qualify as present interest gifts.
- The State of Ohio has repealed the Ohio estate tax effective as of January 1, 2013. For deaths in 2011 and 2012, the Ohio estate tax will continue to apply. Until repeal, the amount of Ohio's exemption from the Ohio estate tax is \$338,333.

**BECE  
Supports  
4-H and FFA  
at Junior  
Livestock  
Sales.**

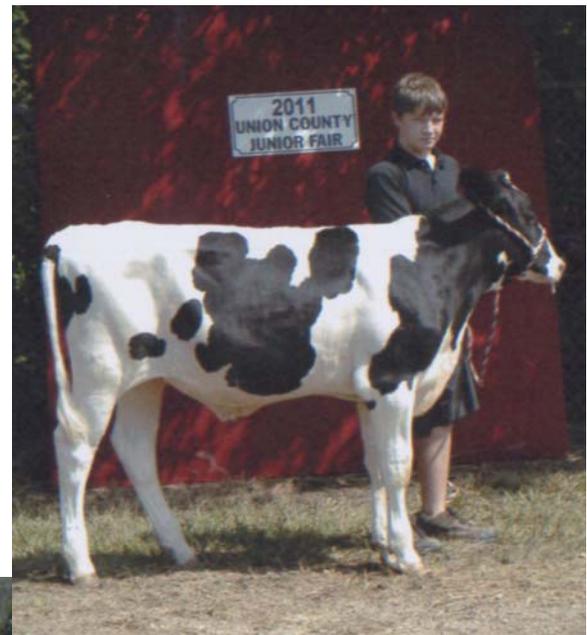
## County Fair Time

Every year BECE supports the 4-H and FFA Junior Livestock sales at Ohio county fairs. This year, BECE attended auctions and supported youth in Union County by purchasing Jason Cook's market gilt, which he named "Cleo", and also purchasing John Bouic's dairy feeder.

Thank you to all of you who wrote and told us of your livestock projects and sale dates. Although we love fair season, we just can't make it to all the county fairs. Maybe we will be in your county next year!



Jason Cook and "Cleo"



John Bouic



*The agency stressed that the proposal would not alter the statute's so-called "parental exemption" involving children working on farms owned or operated by their parents.*

## Labor Department Proposes to Ban Youth from Engaging in Certain Types of Agricultural Work

Saying that "children employed in agriculture are some of the most vulnerable workers in America," Labor Secretary Hilda Solis on Sept. 2 proposed substantial revisions to the department's child labor regulations to ban youth under certain ages from engaging in specific types of work at off-farm agricultural business, as well as on farms not owned or operated by their parents. Among other things, the U.S. Labor Department is proposing to establish a new hazardous occupation order that would prevent youth less than 18 years of age from being employed in the storing, marketing and transportation of farm product raw materials. Prohibited places and types of employment would include grain elevators, grain bins, silos, feedlots,

stockyards, livestock exchanges and livestock auctions. The proposed rule also would prohibit youth younger than 18 from agricultural work involving animals, and in storage bins, pesticide-handling, timber operations and manure pits. Farm workers less than age 16 also generally would be banned from operating almost all power-driven equipment, as well as from participating in the cultivation, harvesting and curing of tobacco. The proposal also would prohibit all youth – whether employed by agricultural or non-agricultural operations – from using electronic (including communication) devices when operating power-driven equipment.

The proposed rule also would revise the civil monetary penalty regulations to incorporate the processes the Wage and Hour Division uses to determine whether to impose a child labor fine and the amount of the penalty. The Labor Department's 50-page proposal was issued under the Fair Labor Standards Act. The agency stressed that the proposal would not alter the statute's so-called "parental exemption" involving children working on farms owned or operated by their parents.

# Amanda Stacy Passes the Bar Exam

We are pleased to announce Amanda Stacy passed the July 2011 Ohio Bar Exam and is now our newest attorney. Amanda, along with other applicants who satisfied all of the Supreme Court's other requirements for admission, was sworn in during a special public session of the Ohio Supreme Court on November 7, 2011, at the historic Ohio Theatre in Columbus.

Amanda received her Bachelor of Arts Degree from Marietta College in 2007, majoring in Psychology, with Business Management and Environmental Studies minors, and her Master of Arts Degree in Psychology in 2008, also from Marietta College. She is a 2011 graduate of the

Ohio Northern University Claude W. Pettit College of Law.

Amanda joined BECE in the summer of 2010 as a law clerk and is now officially an associate attorney with the firm. She also happens to have a fair amount of strawberry picking experience, thanks to growing up helping her parents, Bill and Janet, with Stacy Family Farm LLC, a fruit and vegetable operation in Washington County.



**Congratulations, Amanda!**

*Amanda and her mom Janet outside of the historic Ohio Theatre*

## Meet Lori Miller



BECE is pleased to announce that Lori Miller joined the firm in September as a paralegal. Lori comes to us from Manos, Martin, Pergram & Dietz Co. LPA in Delaware, where she worked as a paralegal for more than 10 years. Lori's past experience also includes work at the Delaware County Prosecutor's Office and the Delaware County Juvenile Court. She is a member of the Paralegal Association of Central Ohio (PACO), along with being a paralegal associate member of the Columbus and Ohio State Bar Associations.

Welcome, Lori!

**The Attorneys and Staff at BECE would like to thank all of our clients and friends for your continued trust in our Firm. We are honored to work with each and every one of you and hope that you all have a very Merry Christmas and a Blessed New Year!**

*David Barrett*

*Jeff Easterday*

*Russell Cunningham*

*Carolyn Eselgroth*

*Troy Callicoa*

*Kristi Kress Wilhelmy*

*Amanda Stacy*

*Rhonda Williams Wallace*

*Lori Miller*

*Trish Bradley*

## Firm News and Notes



- ◆ David Barrett was on November 3, 2011, elected to a two-year term (beginning January 1, 2012) as President of the Ohio Agricultural Council. For more information about the Ohio Agricultural Council, visit their website at <http://www.ohioagcouncil.org>.
- ◆ BECE has been elected to associate professional membership in the Grain and Feed Trade Association (Gafta), which is based in London, England. Gafta, with over 1328 members in 86 countries, promotes international trade in grain, animal feed materials, pulses and rice. Gafta standard contract terms (including Gafta arbitration rules) are incorporated into many international contracts.
- ◆ Jeff Easterday attended the North American Export Grain Association (NAEGA) Seminar in New Orleans on December 2, 2011. The focus of the seminar was on contracting and the best practices to facilitate efficient international trade.
- ◆ Jeff Easterday and Amanda Stacy attended the American Agricultural Law Association annual meeting in Austin, Texas, on October 20–22, 2011. Approximately 250 attorneys, law students and professionals from across the United States attended the conference.
- ◆ Kristi Kress Wilhelmy attended the National Grain and Feed Association (NGFA)/Pet Food Institute (PFI) 2011 Feed and Pet Food Joint Conference in Kansas City on September 14-16, 2011. The focus of the 2011 conference was "on preparing for oncoming challenges: new federal regulations that will impose new operational requirements on manufacturers and will extend to the supply chain, new expectations from customers, and other management and operational challenges."

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*For more information on this decision or physical or regulatory takings, contact Kristi Kress Wilhelmy.*

### ODNR Ordered to Compensate Landowners for Flooding

On December 1, 2011, the Supreme Court of Ohio unanimously ruled that the Ohio Department of Natural Resources ("ODNR") must compensate over 80 landowners for flooding from Grand Lake St. Marys in Mercer County. These landowners alleged that ODNR had taken their property by causing severe flooding to their properties. Specifically, landowners alleged that a 1997 project by ODNR to redesign the spillway on the western edge of the lake and ODNR's lake-level management practices caused increased, severe flooding to their properties. Landowners claimed that as a result of ODNR's continuing conduct, their properties flooded more frequently, over a larger area, and for longer periods of time, and resulted in damaged structures, crop loss, the deposit of silt, sand, stone, and other debris, drainage tile failure, soil compaction, and the destruction of trees, bushes, and shrubs.

In deciding in favor of the landowners, the Supreme Court confirmed that the statute of limitations for a physical or regulatory taking of real property is four years after the cause of action

accrues. Of significance, in construing the limitations period, the Supreme Court held that the statute of limitations for a takings claim is tolled when an act on the government's land causes continuing damage to the property of another, and the government retains control over the structure or condition that causes damage. Applying these principles to the case, the Court concluded that the statute of limitations was tolled because although ODNR had constructed the spillway in 1997, ODNR continued to exercise control over the spillway and the lake level by making decisions not to draw down the lake either annually or before heavy rains.

The matter is expected to proceed in the Mercer County Court of Common Pleas where separate appropriation trials will be held to determine the amount of compensation ODNR must pay each landowner.

For more information on this decision or physical or regulatory takings claims, please contact Kristi Kress Wilhelmy.

# Ohio Landowner Oil & Gas Lease Issues

Eastern Ohio has experienced many changes lately as a result of an industry boom surrounding Marcellus and Utica shale. Some landowners in eastern Ohio have received thousands of dollars per acre for signing oil and gas leases. Other landowners, however, have found themselves unable to take advantage of the oil and gas boom because their mineral rights are already tied up with existing leases, some back to the early 1900s. The question is now often asked: Is there any way to clear the title to the oil and gas interests, so that the new, much more lucrative leases can be executed?

The answer is maybe, and each case very much depends upon its own facts and circumstances.

## Abandonment

Under Ohio law, the interest held by an oil and gas lessee from a past lease may be deemed abandoned and vested in the owner of the surface land under certain circumstances. The statute for abandonment requires a 20-year look back period to determine whether (1) the mineral interest has been subject to a title transaction; (2) there has been actual production on the land or from lands pooled, unitized, or included in unit operations; (3) the land is used for underground storage; (4) a drilling permit has been issued to the holder of the mineral interest which was recorded in the county where the land is located; (5) a claim to preserve the mineral interest was filed; and (6) a separate tax parcel number has been created for the mineral interest. If any of these events has taken place during the past 20 years, the mineral interest has not been abandoned.

If the abandonment requirements have been met, the next step is to serve notice on each holder of the severed mineral interest, or the holder's successors or assigns, by certified mail or publication. Following the notice, an affidavit of abandonment is to be filed with the recorder in the county where the land is located. Once the affidavit has been filed, if no holder has filed its own claim or affidavit within 60 days, the landowner should have the recorder make a notation that the mineral interest was abandoned. However, if the holder has filed a claim or affidavit, further court proceedings would likely be required.

## Forfeiture

Another statutory option is an affidavit of forfeiture. A notice of forfeiture is sent to the lessee, his successors or assigns, followed by the filing of an affidavit of forfeiture when dealing with expired oil and gas leases. The process is similar to that regarding the abandonment of mineral interests, as explained previously. The notice should be sent to the lessee when there are no oil or gas wells being drilled or operating on the property, for failure of the lessee to abide by the lease terms, or if the lease has expired. The lessor, or the lessor's successors or assigns, may file the affidavit of forfeiture with the Office of the Recorder in the county in which the land is located, after serving notice on the lessee, his successor or assigns. If no claim is made, the lessor should have the recorder make a notation on the original lease that it has been forfeited. Again, the lessee may file a claim or its own affidavit, in which further court proceedings would be necessary to determine the validity of the lease.

Other courses of action also may be available to landowners depending on their specific situations.

If you are approached by anyone regarding an oil and gas lease for your land, or have any other questions regarding the mineral interests on your land, please, for your own sake and your heirs, contact an attorney familiar with oil and gas lease issues. These are extraordinary times in the industry. Besides oil and gas issues, landowners are faced with new tax issues and estate planning issues related to lease benefits beyond their wildest expectations



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Our law firm provides a wide range of individual and business-related legal services, including a special emphasis on serving the needs of agricultural producers and agribusiness clients. Areas of emphasis include agricultural legal issues, business and estate planning, agricultural finance, commodities law, commercial transactions, environmental law, estate/probate administration, federal farm program issues, government regulation, land use planning and valuation, real estate, like-kind exchanges, income and estate tax law, litigation and dispute resolution.

We are located in Dublin, Ohio, a northwest suburb of Columbus.

See us on the web at: <http://www.ohiocounsel.com>

