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CUNNINGHAM & ESELGROTH LLP

7259 Sawmill Road
Dublin, Ohio 43016

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WINTER 2013 NEWSLETTER

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2013 TAX UPDATE

Congress' annual tinkering with the Tax Code has continued during 2013. The passage of the American Taxpayer Relief Act of 2012 (ATRA) in early 2013 permanently extended a number of tax provisions by repealing the sunset date that applied to most provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 and other legislation. ATRA extended several temporary tax provisions from the 2009 legislation. In addition, the Affordable Care Act (ACA) includes tax provisions that take effect in 2013.

A few of the highlights for 2013 include:

- The 10%, 15%, 25%, 28%, 33% and 35% graduated federal income tax rates remain in effect for 2013 and subsequent years. The 39.6% rate is reinstated for higher income taxpayers.
- The 39.6% income tax rate applies to single-filer taxable income more than \$400,000, to head- of-household taxable income more than \$425,000, to married-filing-jointly taxable income more than \$450,000 (\$225,000 for married filing separately), and to trust and estate taxable income more than \$11,950.
- The long-term capital gain tax rate for individuals is 15% for income that does not exceed the top of the 35% bracket (0% if taxable income does not exceed the top limit of the 15% bracket), but increases to 20% to the extent that the individual's income would otherwise be taxable at the 39.6% rate.

- The alternative minimum tax exemption amount has been increased.
- For 2013 and later years, the child tax credit will remain at \$1,000.
- The American Opportunity Credit (education credit) is extended through 2017.
- The personal exemption deduction for 2013 is \$3,900 per person. Beginning in 2013, the deduction for personal exemptions is phased out (reduced by 2% for each \$2,500 of income over \$250,000 single and \$300,000 married filing jointly (\$150,000 married filing separately)).
- The standard deduction for 2013 is \$6,100 single and \$12,200 married filing jointly.
- Beginning in 2013, phase-out of itemized deductions will apply to taxpayers with incomes over the same amounts that apply to the personal exemption phase-out. The limits do not apply to medical expenses, investment interest, nonbusiness casualty and theft loss, or gambling losses. The reduction is the lesser of 3% of the taxpayer's excess adjusted gross income (AGI) or 80% of the itemized deductions that are subject to the phase-out.
- Marriage penalty relief for taxpayers in the 10% and 15% brackets is now permanent.
- The new 3.8% net investment income tax (NIIT) goes into effect for 2013. The tax applies to taxpayers with modified adjusted gross income (MAGI) of more than \$200,000 single, \$250,000 married filing jointly, \$125,000 married filing separately, and \$11,950 trusts and estates. The amount subject to the tax is the lesser of net investment income or the excess over MAGI.
- The new 0.9% additional Medicare tax applies to wages and self-employment income that exceed the threshold amount of \$200,000 single, \$250,000 married filing jointly, and \$125,000 married filing separately.
- Taxpayers subject to the NIIT or Medicare tax may need to arrange for additional withholding or pay additional estimated taxes to avoid penalty.
- The IRS will now recognize same sex marriage for federal tax purposes.
- Individuals who are at least 70½ years old may distribute up to \$100,000 directly from their IRAs to a qualified charitable organization without including the amount into gross income.



Several tax provisions will affect business taxpayers for 2013:

- The Section 179 expensing election deductions is limited to \$500,000 for 2013. Unless extended, it will drop to \$25,000 for 2014.
- The 50% additional first-year (bonus) depreciation for qualified property placed in service will apply for 2013. Unless extended, it will not apply to 2014.
- A simpler method of calculating the home office deduction is available beginning in 2013. The home office must be used regularly and exclusively as the principal place of business; as a place to regularly meet with patients, clients and customers; or must be a separate structure not attached to the residence. The deduction is \$5 per square foot and is limited to \$1,500.
- Self-employed persons may deduct 100% of medical insurance premiums as an above-the-line deduction.
- Final regulations have been issued that create safe harbor provisions for distinguishing repairs and capital expenses.

DID YOU KNOW?

- The applicable exclusion in 2014 for federal gift, estate and generation-skipping transfer tax purposes is \$5,340,000.
- The special use valuation (usually agricultural property) election in 2014 has a maximum reduction of \$1,090,000 for federal estate tax purposes.
- The annual exclusion for gift tax purposes remains as \$14,000 per year per recipient for most people; however, the annual exclusion for gifts to a spouse who is a non-citizen increases to \$145,000.
- Starting in 2013, a small business can claim a \$5 per square foot deduction for installing a home office up to 300 square feet.
- At least one railroad company is sending out letters regarding private crossings that may diminish a landowner's rights from an easement to a personal license for limited use. Personal licenses for a specific use terminate when the use changes or the land ownership changes. Please do not sign these letters without seeking an attorney's counsel.

NEGOTIATING A PIPELINE EASEMENT

The first rule of thumb for landowners approached about a pipeline easement: Do not feel pressured into signing any type of easement or right-of-way until your questions are answered. Discuss its impacts with an attorney before you sign. While the company representative may offer immediate benefits to quickly sign these agreements – such as an additional bonus payment – stop and think about what is more important. The little bit more cash now may not be worth limitations on how you can use your property in the future.

Oftentimes these agreements “run with the land,” meaning they will transfer with the land and will not terminate after a certain number of years or when the current landowner conveys the property to someone else.

Consider this hypothetical situation:

Sam owns 100 acres of farmland. Pipeline Company convinces Sam to sign a Pipeline Easement allowing Pipeline Company, and any of its successors or assigns, to put an unlimited number of pipelines in a 50-foot strip of land that goes through the middle of Sam's 100 acres, running parallel to the state route where the property is located. Sam received additional money from Pipeline Company for executing the agreement within two weeks of receiving it.

Pipeline Company enters Sam's property to bury its first pipeline shortly after Sam plants 100 acres of corn and soybeans. While digging the ditch for the pipeline, the Pipeline Company significantly damages Sam's field tile installed the year before. Not only is Pipeline Company digging the ditch where the pipeline will be buried, but it also is moving its equipment between the state route and the easement area directly

through the corn and beans that had just started growing. Realizing that nearly half of his crop has been lost due to the installation of the first pipeline, Sam decides to sell the property before Pipeline Company decides to install another pipeline. Will Sam's property have the same value it had prior to entering into the Pipeline Easement agreement? Who is going to pay for the damage to the field tile? The new owner will have to deal with the same potential risks of Pipeline Company entering the property to do any repairs, maintain the pipeline in working order, and possibly install another pipeline, as 50 feet is a big area allowing for the potential of more pipelines being installed in the future.





Pipeline easements can have long lasting impacts on property. When reviewing these agreements, ask yourself questions such as these:

- Is it limited to just a pipeline or can other equipment be stored on the property?
- Who will pay for any damages and how will they be calculated?
- Can livestock be near the pipeline?
- How long does installation take?
- Who determines the exact location of the pipeline?
- When will the pipeline be installed?
- Are there trees, including marketable timber, or buildings in or near the easement area that could be damaged or removed?
- Are oil, gas and mineral interests being conveyed with the easement?
- What happens when the pipeline(s) are no longer used?
- Is the use of the easement limited to pipelines? Or might it include fiber optic cable or other uses?
- Does the route affect your water source?
- Is the company reputable? May it assign the easement to others without notice or your consent?



NEW INVOICE FORM COMING

Our current clients will soon notice a change in our invoices. Office administrator Sarah Morrison has been working with our software provider to develop an invoice that is easier to understand and read. We will continue to provide a detailed explanation, along with a page that clearly states the amount due and a page to remit with payment.

STAFF NEWS

Wuebker is newest associate

We are pleased to announce Matt Wuebker satisfied all the Ohio Supreme Court's requirements for admission and took the oath as an Ohio attorney on November 4. He is now working with us as an attorney.

Matt has been working as a law clerk at BECE since graduating in May from an accelerated 2-year program at the University of Dayton School of Law. He obtained his Bachelor's degree in marketing from Wright State University. While in law school, Matt worked as an intern for the Ohio Department of Agriculture Legal Counsel and for Mercer County Prosecutor George Moore.

Matt grew up near Maria Stein, Ohio, where his parents operate a farm.



Morrison earns her bachelor's degree

Office administrator Sarah Morrison earned her Bachelor of Science bachelor's degree in Business-Finance from Kaplan University this fall. With a young family and a full-time job, this is no small feat!

Stacy continues GAFTA training

Amanda Stacy attended the Grain and Feed Trade Association (GAFTA) Grade 3 Hedging the Risk course on October 14-15 in Chicago. Attendees were from the United States, Brazil, Israel, Singapore, Hungary, Mexico, Ukraine and United Arab Emirates.

The course focused on commodity risk management, physical grain markets, hedging with futures and options, managing weather exposure, over-the-counter tools, setting up and monitoring a risk management strategy or program, and an introduction to both CME Group Foreign Currency (FX) Complex and the CME Group Energy Complex.



Barrett, Easterday, Cunningham & Eselgroth LLP became a member of GAFTA in the fall of 2011. GAFTA is an international trade association based out of London England and currently has more than 1,400 members in 86 countries. It aims to promote international trade in agricultural commodities (and more recently spices and general produce) and to protect the interests of its members worldwide, providing support and international contracts.

MF GLOBAL UPDATE

Judge grants 100% distribution to all customers

The phrase “MF Global” may still give some people chills, when they think back to October 31, 2011, the day the futures commission merchant filed bankruptcy after nearly \$1.6 billion in customer funds went missing. More than two years later, the end is in sight for those former customers that filed commodity claims.

On October 2, 2013, James W. Giddens (Giddens), Trustee for the Securities Investor Protection Act (SIPA) liquidation of MF Global, filed a motion titled “Trustee’s Motion to (I) Approve the Trustee’s Allocation of Property and (II) Approve the Terms of an Advance of General Estate Property for the Purpose of Making a Final 100% Distribution to Former Commodity Futures Customers of MF Global, Inc.”

The essence of the motion was a request for the Bankruptcy Court to approve a final allocation of property and advance funds from the general property of the debtor to complete a 100% distribution on all the allowed customer commodity claims. Approval of this motion would permit the Trustee to make one last and final distribution to the commodities futures customers that traded on U.S. exchanges (4d customers) and foreign exchanges (30.7 customers). On November 5, 2013, Judge Martin Glenn granted the Trustee’s motion to complete 100% distortion on allowed customer commodity claims. The Trustee will now move as quickly as possible to begin the final distribution.

The October 2, 2013, filing by the Trustee was a milestone event. Two years ago many customers were panicking, wondering if they were ever going to see their money again. Claims ranged from a few hundred dollars to millions of dollars per customer. Barrett, Easterday, Cunningham & Eselgroth, LLP assisted former MF Global commodity customers from across the country in filing their claims.

You can stay up to date on the MF Global bankruptcy case at mfglobaltrustee.com.



OHIO SUPREME COURT UPHOLDS STATUTE PERMITTING FILING OF REAL PROPERTY VALUATION COMPLAINTS BY SALARIED EMPLOYEES OF CORPORATIONS

Ohio statutory law permits certain non-lawyers to act on behalf of another person or legal entity when filing a complaint related to valuation of real property. Such complaints are subject to strict time limitations, are filed with the county auditor and then heard by the county board of revision. History shows that county boards of revision often look for ways to avoid making a valuation decision. That is why it is important for real property owners to understand when they can initiate a valuation case without using a lawyer.

Property owners have long had the right to contest county auditors' valuations before their county boards of revision and appeal to the board of tax appeals. Individual owners could represent themselves. But entity owners were sometimes surprised to find they had to hire a lawyer to represent them in a complaint before the county board.

For many years, as provided in Ohio Revised Code Section 5715.19(A), only certain people involved with a land-owning "firm, company, association, partnership, limited liability company, or corporation" could contest the valuation on behalf of the business. That short list included an officer, a partner, or a member of the entity, as well as an attorney appearing on behalf of the business, licensed realtors, licensed and certified real estate appraisers, and public accountants who apply for the right to appear. A recent Ohio Supreme Court case confirmed that salaried employees who are not lawyers can also initiate valuation complaints.



A case known as Marysville Exempted Village School Dist. Board of Education v. Union County Board of Revision addressed the issue of whether a valuation complaint validly invokes the jurisdiction of the board of revision when the property owner is a corporation and the complaint is prepared and filed by a salaried employee who is not a corporate officer or a lawyer.

The property owner, Connolly Construction Company, filed multiple valuation complaints through a salaried employee. The Board of Revision ordered a decrease in value, which the Marysville school district board appealed to the Board of Tax Appeals. The school board asked the Board of Tax Appeals to dismiss the original complaints because they were signed by a salaried employee who was not a lawyer. The school board acknowledged the statute now authorized salaried corporate employees to file the complaints on behalf of the corporation but argued the statute cannot be given effect because the filing constituted the unauthorized practice of law.

The Board of Tax Appeals granted the school board's motion and ordered the appeals remanded to the Union County Board of Revision to be dismissed. The corporation appealed to the Supreme Court of Ohio, which reversed the Board of Tax Appeals decision.

The justices considered an older line of cases, together known as the "Sharon Village doctrine," which held that preparing and filing a valuation complaint on behalf of another (such as a corporation) constituted the practice of law. Under the Ohio statute prohibiting the practice of law by non-lawyers, a person who is not a lawyer could not be authorized to file a valuation complaint on behalf of a legal entity. During the time the Sharon Village doctrine was developed through case law, Section 5715.19(A) did not specify persons who could file on behalf of an entity owner.



The state legislature, in 1999, amended the statute to expressly permit certain persons, who were not lawyers, to file on behalf of property owners. The question became whether this was constitutional when also taking into account the statute prohibiting the unauthorized practice of law.

The Supreme Court found that even though contesting the valuation of the Board of Revision (on appeal) is the practice of law, the legislature has the authority to make exceptions in the statute for certain individuals, such as spouses and officers, to file on behalf of the property owner. "Although the salaried corporate employee does not necessarily have the same degree of fiduciary duty toward the corporation that an officer possesses, the relationship of a salaried employee to the corporate employer does 'tend to involve an ongoing relationship between the owner and the filer' that 'allow[s] the owner to hold the filer accountable for his or her actions,'" wrote the Court, quoting a prior case. The salaried employee is considered sufficiently accountable to the property owner to faithfully serve his employer and carefully discharge his duty as an employee to file a complaint with the board of revision on behalf of the employer, even if an employee's duty is not regarded as a fiduciary duty, wrote the court in its unanimous opinion. Attorneys were involved as the appeals were made.

The bottom line: Salaried employees who are not lawyers may contest valuations of property on behalf of their employer corporations. Being able to file the complaint to contest the claim, however, does not mean the employees may practice law when making appeals. Making legal arguments is still the province of lawyers.





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, estate, probate and trust administration, federal farm program issues, administrative law, land valuation, real estate law, income and estate tax law, litigation and alternative dispute resolution.

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

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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,
& Happy Holidays,
a Blessed New Year!

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