



# Law Notes



Winter 2006

Informational Newsletter of the Law Office of Henderson, Howard, Pawluk & McNamara, P.A.

**Inside This Issue**

Page 1 – Retirement Savings Options

Page 2 – New Income Shares Child Support Calculation

Page 3 – Medical Assistance Update

Page 4 - Adoption Trends

**RETIREMENT SAVINGS  
OPTIONS**

By Michael J. McNamara

Roth IRAs have been considered extremely attractive retirement options since their inception because growth of the contributed funds (after-tax only) is tax-free. Withdrawals are also tax-free if made after the account-holder is at least age 59½ and has held the account for at least five years.

Due to the popularity of Roth IRAs, the concept has been expanded to 401(k) plans and contribution limits on individual Roth IRAs are being eliminated.

For those who are covered by an employment 401(k) plan, a “Roth” 401(k) became an option for employers and employees as of January 1, 2006. *However, the employer/employee Roth 401(k) is not subject to the contribution limits that an individual Roth IRA is subject to but is instead subject to the standard 401(k) contribution limits.* For 2006, employees under age 50 were allowed to contribute up to \$15,000.00 and

those 50 years of age and over may contribute up to \$20,000.00.<sup>1</sup>

Employers and employees who wish to take advantage of the Roth 401(k) should do so promptly because, under the legislation which was originally enacted in 2001, the Roth 401(k) is scheduled to terminate in 2010.

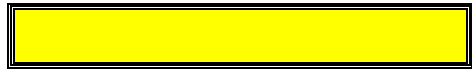
For those with individual Roth IRAs, the current income limits for annual contributions of \$4,000.00 for those under age 50 and \$5,000.00 for those over age 50 will expire in 2010, when the current \$100,000.00 adjusted gross income (AGI) limit for Roth IRA conversions will expire. Therefore, for those who now hold regular IRAs and cannot convert them to Roth IRAs because of the \$100,000.00 AGI limit, they will be able to convert to a Roth IRA freely as of January 1, 2010. Making the conversion even more attractive is a provision allowing taxpayers who convert in 2010 to pay one-half the conversion tax in 2011 and the other half in 2012.

Due to the current short scheduled life of the Roth 401(k), business owners and employees should consult with a qualified tax professional to determine whether they should immediately offer the Roth 401(k). Similarly, those who currently have regular IRAs should consult with a qualified tax professional to determine whether they should begin maximizing regular

<sup>1</sup>However, the \$15,000.00 and \$20,000.00 limits are *combined* limits for an employer/employee 401(k) and an individual 401(k).

IRA contributions in order to benefit from the elimination of AGI income limits in 2010.

© MJMcNamara 2006



**NEW INCOME SHARES CHILD  
SUPPORT CALCULATION**

By Julie M. Pawluk

The method of calculation of child support in Minnesota is about to change drastically! Child support has been calculated pursuant to child support “guidelines” for decades, and during that time has been determined by looking only at the non-custodial parent’s *net* income, and the number of children. For example, if the non-custodial parent earned over \$1,000.00 net income per month, he or she would pay 25% of his/her net income for one child, 30% of his/her net income for two children, and so forth. All of that is about to change!

The Minnesota Legislature passed new child support legislation in 2005, which took effect January 1, 2007. The new law takes into account *both* parties’ incomes, and looks at an “income sharing” calculation. The actual calculation of support involves a rather complicated formula which starts with each party’s *gross* income, then adjusts for Social Security or veterans benefits received by the parties or the children, and for spousal maintenance or child support being paid for non-joint children. Also, deductions for any non-joint children

are taken into account. The result of these calculations is a number called the "Parental Income for Child Support" or PICS. The PICS of both parties are added together, which is the number used to find combined basic support. The percentage contribution of each parent to the combined PICS is then determined. This is the pro rata share of PICS for each party (this is an important calculation, as you will see). A basic support obligation is then determined by going to a chart which is based upon this combined PICS and the number of children. Then, the percentage of each parent's PICS (as determined above), is applied to the basic support obligation, to determine each parent's share. Finally, the "obligor" (non-custodial parent) is given an adjustment in his/her obligation based upon the amount of parenting time he/she is granted. If that parenting time is 10% or greater, there will be some adjustment. Parenting time of 10% to 45% will result in a 12% adjustment, while parenting time of 45.1% or more is presumed to be equal time. (As an example, 36 overnights per year would be considered 10%, while 164 overnights per years would be 45%.) There will be a *presumption* of 25% parenting time, resulting in a presumption of a 12% adjustment.

The childcare and medical insurance coverage for children will also now be divided between the parties using the same pro rata share of the combined PICS described above. A determination will also be made of which parent has more appropriate coverage, but where both parents have appropriate coverage the custodial parent will generally be the parent required to provide the coverage for the children. This is a big change from the common prior practice of requiring the non-custodial parent to provide medical coverage. Similarly, uninsured medical expenses (copays and deductibles) will also be divided using this same pro rata share of PICS.

The new law also provides that a child support order should not exceed the obligor's *ability to pay*, and in determining that *ability*, compares the obligor's income available for support to 120% of the federal poverty guidelines. However, there is a *minimum* basic support amount of \$50.00 for one or two children, \$75.00 for three or four, and \$100.00 for five or more, unless the court determines that the obligor receives no income and is completely unable to earn any income.

Does this all sound very confusing? Time will tell! However, the calculation is intended to be simplified by an internet-based calculator, which will "automatically" calculate the appropriate support amount after the facts of your individual case are input.

This new *income shares* child support law applies to cases (or post-decree motions) filed after January 1, 2007. Thus, the timing of the filing of a divorce case, or post-decree motion for support modification, could be very important, and could result in very different outcomes! However, the law also restricts (with some exceptions) child support obligors from requesting a modification of an existing child support order until January 1, 2008, so that, presumably, the system will not be overwhelmed with new orders and modifications all at once.

© JMPawluk 2006

## MEDICAL ASSISTANCE UPDATE 2006

By Chad E. Henderson

The federal government finally made substantial changes to Medicaid, commonly referred to as Medical Assistance (hereafter referred to as "MA"), rules in the Deficit Reduction Act of 2005. The federal law became effective on February 8, 2006. The

Minnesota legislature then amended Minnesota's MA eligibility rules to bring them into conformity with the requirements set forth in the Federal Deficit Reduction Act of 2005 (DRA) as of July 1, 2006.

The most significant changes to the law were with regard to the "look-back period" and the change in the start of the penalty period (period of ineligibility). The look-back period has changed from three years to five years. Under the old rules, applicants for MA were required to account for their resources for the three years prior to the date of their application. If it was disclosed that any funds or resources were transferred (gifted) to someone else during the three prior years, there was a penalty period applied from the date of the transfer before the applicant would be eligible for MA. Now, the look-back period is extended to five years and will be phased in over five years to go from the 36-month look-back period to the 60-month look-back period, and is not being applied retroactively.

The penalty period or the period of ineligibility is the amount of time an applicant is disqualified from receiving MA benefits because of a transfer of assets during the look-back period. Under the old rules, the penalty period began to run one month after the day the assets were transferred. This meant an applicant could transfer assets and then wait out the penalty period before applying for MA. Under the new rules, if a full five years have not passed since the transfer, the penalty period does not begin until the applicant is in a nursing and applies for MA. The applicant does not get any credit for time spent in the nursing home as a private-pay patient.

The transfers of assets refers to any asset, whether money or property, that was transferred to another for less than fair market value. Most commonly, transfers are a gift of assets from a parent or parents to their

children. Any such gift transfers made on or after February 8, 2006, and less than five years (60 months) before applying for MA will now trigger a period of ineligibility that will not begin until the person applies for MA.

The more difficult situation could arise if an elder transferred assets three years ago and has been privately paying in a nursing home during those three years with the expectation of being out of funds and applying for MA next month. That person could be ineligible for MA for possibly several months. It is because the look-back period under the new law will begin on the date the MA application is made even though the transfer was initially made under the old law. It is expected that litigation concerning people who fall into this category will be necessary to determine the exact application of the new laws to a person's pre-existing planning under the old law.

The new law does not allow for any minimum gifts/transfers in the five-year period. This means that even small gifts made to family or friends at holidays or on birthdays would need to be reported. This would also include gifts to charities and payment of living expenses and/or school expenses for a family member without regard to them being made in an effort to qualify for MA. It remains to be seen how strictly MA will enforce the no-gift/transfers rule. It is unlikely MA would pursue nominal gifts if the cost to recover such amounts could exceed the amount recovered.

Previously, the homestead was totally exempt but now under the new law, you can exempt up to \$500,000.00 worth of equity. This limitation does not apply with respect to an individual if one of the following persons is lawfully residing in the individual's home: (1) the spouse of such individual; or (2) Such individual's child who is under age 21, or is blind

or permanently and totally disabled as defined under the Social Security Act. With the ever-increasing value of homes and family farms, this law change could have an adverse effect on more applicants.

The use of annuities has been changed as well and there are many new requirements that must be followed and may apply to existing as well as newly obtained annuities.

The community spouse asset allowance that governs the amount the community spouse may retain is up to a maximum \$99,540.00, and with a minimum of \$28,001.00.

The community spouse is still allowed a vehicle regardless of value as long as it is used for their use or a member of the individual's household. If it does not meet the necessary criteria, then the value of the motor vehicle will be limited to \$4,500.00.

The purpose of this article is to merely highlight the major changes. As always, if you need assistance in this area you must have a detailed analysis of your situation to make sure you comply with the laws in this complex and ever-changing area.

© CEHenderson 2006

## **NEW TRENDS IN ADOPTION**

By Thomas R. Howard

In light of the celebrity and international adoptions that we read and hear about in the media, it is interesting to note that there have been several recent developments in the area of adoptions in Minnesota. Twenty or thirty years ago, almost all adoptions were "agency adoptions" where a couple applied to an agency for the placement and eventual adoption of a child that had been placed with the agency by the birth parent(s). These adoptions were and

are time-consuming and expensive and remain a substantial portion of the number of adoptions granted in the State of Minnesota. A recent study, however, showed that up to one-third of the current adoptions granted in Minnesota are "stepparent", "relative", or "infant" adoptions. All of those types of adoptions can be completed without utilizing an adoption agency and can be substantially cheaper and take less time than normal agency adoptions.

"Stepparent" adoptions are adoptions that are done by the "stepparent" of a child where the stepparent is not the biological parent of the child sought to be adopted but is the new spouse or partner of the biological parent. These stepparent adoptions often occur after divorce and a second marriage. Another change in adoption law is that these type of adoptions and other adoptions can occur when the adoptive parents are not married but have a long-term relationship that indicates the ability to properly rear and support the adopted child.

"Relative" adoptions are adoptions that occur between family members within a certain breadth of family relationships. They often occur when a child, grandchild, or niece becomes pregnant and wishes the child to be placed with a family member rather than giving the child up to an agency for placement and subsequent adoption. Relative adoptions provide the biological parents with the security of knowing the adoptive parents and the opportunity to maintain relationships with the child in an extended family setting.

"Infancy" or "private placement" adoptions occur between non-related friends or family members that extend beyond the legally acceptable degrees of relationship. While these "private placement" adoptions are more expensive as a family study must be completed and counseling and other services must be offered to the biological parents, the advantage of

knowing the family that will be adopting the expected child is an important factor for many people. Such adoptions also provide an alternative to prospective adoptive parents who would not normally be able to obtain an adoption through an agency due to age, marital status, or other qualifying factors.

All of these adoptions still require the participation of the district court and the filing of important documents, including petitions, waivers of family investigations, and home studies when appropriate. In some counties, termination of the parental rights of the other biological parent in addition to a written consent is a requirement of adoptions granted in those counties. Please consult us with any questions about these non-traditional types of adoption.

In additions to changes in adoption law and regulations, there have been additional tax and support benefits that have become available to adopting families. There are both federal and state tax benefits that can be utilized to offset the costs of either an agency, private or stepparent adoption.

The federal tax credit grants a tax credit of up to \$10,390.00 per adoption for families with modified adjusted gross incomes of less than \$155,860.00. This is an actual tax credit that offsets, dollar for dollar, any income tax liability and can result in a substantial tax reduction. Several federal and state agencies offer

various kinds of assistance, especially in the case of adoption of "special needs" children or children who are under "state guardianship". These are children who have been or are at risk and may need special and varied care options or are in the custody of the state or county. In order to facilitate the adoption of these children, the federal and state governments have passed laws that grant benefits ranging from actual monetary subsidies for the adoption of these children, including reimbursement of up to \$2,000.00 of adoption fees and costs, to post-adoption services including childcare, respite care, medical and health care and counseling services, integration services, communication equipment, camping programs, vehicle adaptation, and other services.

There are also non-financial support systems and services available through the Minnesota Department of Human Services or the Minnesota Adoption Support and Preservation Program. These available and potential benefits and services can be reviewed by consulting with these and other agencies.

© TRHoward 2006

Henderson, Howard, Pawluk & McNamara is a full service law firm with offices in Brooklyn Center, MN. We are committed to providing quality legal representation in the following areas:

- **BANKRUPTCY**  
Individual and business.
- **BUSINESS LAW**  
Corporations, partnerships, business organization, purchases, sales and mergers.
- **CRIMINAL LAW**  
DWI, misdemeanor, traffic, license revocation, felony and juvenile matters.
- **FAMILY MATTERS**  
Divorce, child custody, child support and post-decree actions, adoptions and paternity.
- **PERSONAL INJURY**  
Automobile accidents, products liability, slip and fall, dog bite, and other accidents involving injury or death.
- **REAL ESTATE**  
Residential and commercial, purchase agreements, property closings and title opinions.
- **WILLS AND ESTATES**  
Wills and trusts, probate and estate administration, guardianships and elder law.

The materials contained in this newsletter are provided by Henderson, Howard, Pawluk and McNamara, P.A., for informational purposes only. This information is not intended to be legal advice, nor does it create an attorney-client relationship. You should consult an attorney for individual advice regarding your own situation. An attorney-client relationship can only be established through a written agreement signed by both parties. If you need legal assistance please contact any of our attorneys at: Henderson, Howard, Pawluk and McNamara, P.A., 6200 Shingle Creek Parkway, Suite 385, Brooklyn Center, Minnesota 55430, (763)566-8832.