

## TAX AND ESTATE PLANNING NEWSLETTER

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*The following tax and estate planning news may be of interest to you in your business or personal pursuits. If you have questions about any of these items, please call or e-mail one of the Tax and Estate Planning Attorneys listed below by clicking on the attorney's e-mail address or calling the telephone number.*

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### HOW MUCH INFLUENCE IS UNDUE INFLUENCE?

Many clients have elderly relatives whom they want to assist in accomplishing their estate planning goals. But, the client runs the risk of being accused of exercising undue influence over the relative if the client receives preferential treatment under the estate plan. A common situation was involved in the Estate of Holcomb v. Drennan, 63 P.3d 9 (Okla. 2002). Laura Edna Holcomb suffered a stroke in 1990 and subsequently went to live with her daughter Elaine. From that time, until Mrs. Holcomb died in 1995, she executed three wills, each of which increased the share that passed to Elaine. When Mrs. Holcomb died, her last will left her entire estate to Elaine. Mrs. Holcomb was survived by Elaine, 2 other children, and the children of a deceased child. Elaine submitted Mrs. Holcomb's last will for probate. It was challenged by her siblings and Mrs. Holcomb's grandchildren by the deceased child. Among the grounds on which it was challenged was an allegation that the terms of the will were the result of undue influence exercised by Elaine over her mother.

The trial court admitted Mrs. Holcomb's will to probate. However, the Court of Civil Appeals set aside the trial court's decision finding that the decision of the court on the issue of undue influence was clearly contrary to the weight of the evidence.

On appeal the Oklahoma Supreme Court reversed the Court of Civil Appeals decision, and found that the contestants had not proved that Elaine exercised undue influence over the terms of the will. The Court found, among other things, that the contestants had indeed offered proof that Elaine was a dominant and manipulative figure in the dynamics of the Holcomb family, that Mrs. Holcomb's frailty and dependence on Elaine made her vulnerable to Elaine's dominance and control, and that Elaine in fact exercised that dominance and control by her active involvement in her mother's legal affairs. On the other hand, the Court found that Elaine had successfully rebutted the presumption of undue influence this evidence created. The Court held that the will proponent does not bear the burden of persuasion, but must simply introduce some evidence from which the judge could find that undue influence did not engender

the will's dispositive provisions. What was the evidence Elaine produced? Elaine offered proof in the trial court that Mrs. Holcomb, though physically unable to carry out tasks on her own, directed Elaine in everything that she did, that this was evidence that Mrs. Holcomb (not Elaine) was the dominant force in the relationship, that Mrs. Holcomb's intent was to leave her entire estate to Elaine in gratitude for Elaine's caretaking and because of her fear for Elaine's financial security, and that the fear for Elaine's financial security predated Mrs. Holcomb's living with Elaine.

Although each case will depend on its particular facts, it is clear that anyone assisting an elderly relative in estate planning should take care to create a record of their efforts to see that it is the relative's wishes, and not their own, which are incorporated into the estate plan. If there is any question, the client should contact legal counsel for advice.

#### **CHANGE IN LAW MEANS NOT ALL OKLAHOMA ESTATE TAX RETURNS WILL BE AUDITED**

Effective July 1, 2003, the Oklahoma Tax Commission is no longer required by law to audit every estate tax return which is filed. Prior to that date, Okla. Stat. tit. 68, Sec. 815 (B) mandated that the Commission audit every return. HB 1356 amended the statute to provide that the Oklahoma Tax

Commission may conduct an audit of the books of account and records of any executor, administrator, trustee, devisee, heir, or other person filing an Oklahoma Estate Tax Return for the purpose of determining the value of the estate for estate tax purposes.

#### **OKLAHOMA'S LINEAL EXEMPTION INCREASES**

Effective January 1, 2004, the exemption for property passing to lineal heirs under the Oklahoma estate tax increases to \$850,000.00. There is still no exemption from the estate tax under Oklahoma law for property passing to collateral heirs. All gifts to the surviving spouse continue to be exempt from the Oklahoma estate tax.

Under Okla. Stat. tit. 68, Sec. 809 (A), the lineal exemption will increase to \$950,000.00 in 2005 and \$1 million for 2006 and thereafter.

Also, effective January 1, 2004, the federal "applicable exclusion amount" increases to \$1.5 million, thereby increasing the "applicable credit amount" available to offset the federal estate tax for decedents dying after January 1.