

December 5, 2000

I trust this note finds you and your family in good spirits and good health. This is my firm's year end memorandum updating your knowledge on various legal issues and recent activities within our offices.

Over the past year, we have seen several exciting new developments in our office structure. First and foremost, effective January 1, 2001, the new name of our firm will be Sylvester & Frank. My former partner, Scott Lawrence, resigned in August of 2000 to pursue personal objectives. At the same time, I was meeting with Attorney Jonathan Frank about becoming a part of this practice. Mr. Frank is a solo practitioner in the SouthPark area of Charlotte with over 20 years of estate, tax, probate and asset protection experience. He is certified as an estate planning and probate specialist by the North Carolina Bar Association and will be a tremendous asset to this firm and our clients. Since my last newsletter, I was selected to serve as a council member of the North Carolina Elder Law Section and then selected to serve as Secretary of that Section for the 1999-2000 year. As you can see, this merger truly sets our firm apart from the norm as one who places great emphasis on providing quality service in the concentrated areas of estate planning, estate administration, tax planning, asset protection, business succession planning and elder law. We currently maintain three offices, one in SouthPark, one in the University area, and one in Huntersville with the hopes of consolidating our SouthPark and University offices in the near future. My staff presently consists of Ms. Gina Null, our real estate and corporate paralegal, and Ms. Joyce Kale, our estate paralegal. Ms. Kale, my personal assistant, is celebrating her second year with this firm and as many of you know, continues to be a valued part of this practice.

I hope you enjoy the legal information contained in this update and of course, should you have any questions, then contact Joyce at (704) 597-7337 to arrange a meeting. My office hours are Tuesday through Friday 10:00 a.m. through 4:30 p.m.

REPEAL OF THE ESTATE TAX? In July, Congress passed the Death Tax Elimination Bill of 2000 which President Clinton vetoed on 8/31/00. Because of the importance of the proposed legislation, you should note the primary provisions of the Bill:

1. Top estate tax rate at 53% in 2001; 50% in 2002; 1% point reduction from 2003-2006; 1.5% in 2007; 2% in 2009; and the repeal of estate tax after 2009;
2. The credit would be replaced with an exemption of \$675,000 in 2001; \$700,000 in 2002-2003; \$825,000 in 2004; \$950,000 in 2005; and \$1,000,000 in 2006-2009;
3. Basis would be carried over except for a step-up in basis for property worth \$1,300,000 to beneficiaries, other than spouses, and a step-up of basis for property worth \$3,000,000 to spouses; and
4. Generation-Skipping transfer tax rules revision.

Democrats provided an alternative to this legislation which would raise the tax exemption to \$1,000,000 in 2001 and \$2,000,000 in 2010. The repeal and/or change in the estate tax will depend on who is elected (and as of yet, that remains undetermined as I finish this newsletter). Until that time, plans can change depending on which legislation you believe will be enacted. **ONCE A NEW LAW IS ENACTED, HOWEVER, YOU SHOULD CONTACT THIS OFFICE TO REVIEW YOUR ESTATE PLAN.**

GIFT DISCLOSURE. Many of you may make gifts in excess of \$10,000 per year, per person. If you do, then the regulations provide that the 3-year gift tax statute of limitations does not begin to run on a gift made after December 31, 1996 unless and until the gift is "adequately disclosed on a gift tax return." The Treasury Department issued final regulations outlining the information needed to be sure that this requirement is satisfied so as to run the statute of limitations. These requirements are typically satisfied, if the donor submits a qualified appraisal which contains certain information, and if the donor submits a detailed description of the method used to determine the fair market value of the gift. With the end of

the year approaching and thus the end of a gifting opportunity, this information becomes quite pertinent for those of you considering any gift be it in excess of \$10,000 or slightly less than \$10,000. These new rules make clear that in order to cut off any IRS scrutiny of any size gift made during your lifetime, a gift tax return must be filed and the gift must be adequately disclosed on the return. As a word of caution, those of you gifting less than \$10,000, and thus, not filing a gift tax return (in that only those gifts which exceed \$10,000, by law, require the filing of a return), there is no running of the statute of limitation so the IRS is permitted, if they choose, to question and revalue those gifts at death. That is why it is of great importance to fully document any transfer. For those transfers of non-marketable assets (such as partnership interests, closely-held stock or real estate), regardless of the value claimed by the donor, this office strongly recommends that **A QUALIFIED APPRAISAL BE OBTAINED TO VERIFY VALUE OF ANY GIFT AND A RETURN BE PREPARED TO RUN THE STATUTE OF LIMITATIONS – THUS PROHIBITING THIS IRS FROM REVALUING GIFTS AT YOUR DEATH.**

RECENT RULINGS IN THE AREA OF GIFTS. The tax court recently upheld the IRS's treatment of gifts to daughters-in-law as indirect gifts to son. Mom and dad owned a family business and as part of a strategy for saving estate taxes, and to ensure family succession of the business, they began gifting stock to family members giving \$10,000 in stock to each son and each spouse of son. The spouses then immediately transferred the stock to their husbands. The IRS took the position that mom and dad had made the gifts to the daughters-in-law for the sole purpose of obtaining additional \$10,000 annual gift tax exclusions. Therefore, these were indirect gifts of additional shares to the sons which exceeded the \$10,000 annual exclusion. **BE CAUTIOUS OF ANY PREARRANGED GIFT GIVING UNDERSTANDING AMONG FAMILY MEMBERS.**

The IRS recently agreed that a grandmother's payment directly to an educational institution in the amount of \$67,000 for advanced tuition would be allowed as a nontaxable gift under the tax code provisions which allow direct payment of tuition (in any amount) to be free of gift tax. **CONSIDER MAKING GIFTS DIRECTLY TO SCHOOLS FOR CHILDREN OR GRANDCHILDREN TO REDUCE THE SIZE OF YOUR ESTATE.**

RECENT N.C. MODIFICATIONS. N.C. passed legislation to repeal the N.C. inheritance tax. No longer are estates of N.C. decedents subject to N.C. inheritance tax (you may remember the Class A, Class B, Class C classification for this). However, N.C. will collect the state credit you receive on your federal 706 estate tax return if such a return is filed and such a credit is taken on the return. We are still waiting for the legislation to repeal the N.C. gift tax which is still a burden for those of you that gift more than \$10,000 per year. The legislation also passed an act stating that the Clerk of Superior Court **DOES NOT** have to inventory a decedent's safe deposit box if a qualified person is present at the opening of the box. A qualified person includes the personal representative, spouse or co-tenant of the box. **ANYONE YOU WANT TO HAVE ACCESS TO YOUR SAFETY DEPOSIT BOX, BE SURE TO PLACE THEIR NAME ON THE SIGNATURE CARD AT THE BANK AS A CO-TENANT.**

YEAR-END CHECKLIST. All clients should be sure to fully review their estate planning with their family, review their financial holdings with their family, let the family know where your important papers are kept, be sure that your revocable living trust is completely funded with no probatable asset still in your individual or joint name, and call if your estate has grown beyond \$675,000 as an individual or \$1,300,000 as a married couple.

This Newsletter is meant to advise you of recent changes in federal and NC law which may affect your estate planning and/or corporate and/or other matters. If any of this information affects your situation, then please contact this office.

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