



# BRIEFLY SPEAKING

December 2001

## In the Law - Tax Relief Act

By Nick Tooliatos

The Economic Growth and Tax Relief Reconciliation Act of 2001 was signed into law by President George W. Bush on June 7, 2001. This legislation represents the largest across-the-board rate reduction in the last 20 years. While the law provides tax saving opportunities, it also has traps for the unwary.

One of the most interesting aspects of the new law is that it self-destructs at the end of the year 2010. Federal budgetary rules require the Act to sunset after 2010, unless Congress provides otherwise at some future time. Some provisions of the law terminate even earlier. This article focuses on the impact the new legislation brings to the estate planning arena. Most people should reconsider their existing estate plans in light of the new legislation.

Over the next several years,

the amount of property that a decedent can pass free of transfer tax will increase. This results from a combination of an increasing amount of so-called exemption equivalent amounts, as well as from a decrease in actual tax rates. For anyone "clever enough" to plan their death in the year 2010, there will be no estate tax at all.

The prior law provided a \$675,000 exemption from transfer taxes. Under the new legislation, this exemption for estate taxes will increase to \$1.0 million for 2002 and 2003, \$1.5 million for 2004 and 2005, \$2.0 million for 2006 through 2008, and \$3.5 million for 2009. The gift tax exemption remains at \$1.0 million after 2001, and the gift tax is not repealed as is the estate tax. After 2010, the exemption for estate tax will return to \$1.0 million.

The top estate and gift tax rate will drop to 50% in 2002. This rate will drop an

additional one percent each year until 2007 when it reaches 45%. Remember, in 2010, there will be no estate tax at all (for at least one year).

The Act creates tremendous uncertainty. Will the sunset provision ever come into play? The uncertainty about whether an individual will die during a period of increasing exemptions, a total repeal of the tax or a reinstatement at substantially lower levels of exemption makes planning difficult. The law also requires us to factor in the income tax ramifications of transfers, in 2010 (and after, if the law is extended) tax basis will play a significant role since beneficiaries will not receive a "basis step-up" to fair market value at date of death for transferred assets.

If you have questions about how the new law impacts your estate plan, call us and we will review your situation and provide you with some planning alternatives.

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### Inside this issue:

In the Law	1
Recent Developments	1
Recent Successes	2
Book Corner	2
Epicurean Delight	2
Going Places	3
Going Places II	3

## Recent Developments in the Law

By Phil Vermont

### Assuming the Risk in Winter Sports

With winter here again, you may be interested in a new case which determined the liability of a snowboarder who collided with a skier while both were descending a snow-covered mountainside. In this case, a snowboarder had been descending "Boulder Alley" at Sierra Summit ski resort when he collided with the skier. The skier suffered severe knee injuries as a result of the

collision. It was established by testimony that the snowboarder had traveled the slope at approximately 30-35 miles per hour.

The court had to address the argument that the snowboarder and skier were not co-participants in the same sport. The injured skier argued that the sport of snowboarding is different than that of skiing to attempt to avoid the defense of "assumption of the risk".

Ultimately, as common sense would dictate, the court found that the nature of both activities involved descending a snow-covered mountain. Therefore, the court found that one who is pursuing his sport in an appropriate venue owes no duty of care to those who choose to occupy the same venue or who engage in their activities simultaneously. It is always refreshing to see that common sense still plays a large role in the determination of disputes.

(Continued on page 4)

## Recent Successes

Mr. Tooliatos recently resolved three related cases: in the 1980's, a taxpayer was a general partner of a partnership that defaulted on a loan. In the early 1990's the property was sold at an enormous loss. The Service pursued the taxpayer for tax on income purportedly received with the forgiveness of the debt. As he prepared the case for Tax Court, Mr. Tooliatos caused the IRS to concede that there was no income in 1994, due to IRC § 108 "Exclusion of Income from Discharge of Indebtedness." Savings to client: \$6,720,891.00 plus interest, plus over \$1,500,000.00 in penalties

In a related case for 1991, 1992, & 1993 in District Court, Mr. Tooliatos caused the IRS to concede that the

taxpayer was entitled to a refund of \$150,000 for Alternative Minimum Tax incorrectly paid. Savings to client: Approximately \$150,000.00 plus interest.

After the primary dispute was resolved, the IRS tried to argue that the taxpayer was too late in requesting a refund for 1995 pertaining to the same issue. Mr. Tooliatos resolved this fight efficiently and economically for the taxpayer by contacting the original IRS team and convincing them to speed a concession from the IRS. Savings to client: \$70,516.00.

## EPICUREAN DELIGHT - Tropical Itch

By Nick Tooliatos

If you have been searching for a thirst-quenching, stress relieving beverage, consider the Tropical Itch. I had the pleasure of consuming several of these in the pool at the Kea Lani Hotel in Maui last summer. I can hardly remember what was in them because I always asked the bartender for the recipe after the second drink!



Ingredients:  
?? 1 oz Dark Jamaican Rum  
?? 1 oz Bourbon  
?? 1 oz Orange Curacao  
?? 1 oz "151" Rum  
?? 2 Dashes Bitters  
?? Pineapple Stick  
?? Maraschino Cherry

### Directions:

Mix all ingredients, except pineapple and cherry, with cracked ice in a blender. Fill a 16", 26 oz glass with passion fruit juice along with other ingredients. Garnish with pineapple stick and maraschino cherry. The hotel would often serve this drink with a Chinese back scratcher as a swizzle stick, creating a hit drink and cottage industry in back scratchers.

## Book Corner

"I Know This Much Is True"  
by Wally Lamb

By Henry Walker

Plan on spending a few late nights with this one. Wally Lamb's 900+ page novel will grab you from the first sentence and never let go. This is the tale of twin brothers, Dominick and Thomas Birdsey, who are identical in every way but one. Thomas is a paranoid schizophrenic.

The story begins with 40-year-old Dominick learning that Thomas has cut off his own hand in an act of religious sacrifice. State officials believe Thomas is a danger to society and have him committed to a psychiatric institute. Dominick is outraged and fights to have his brother released. During this fight, Dominick realizes that he must put back the pieces in his own unraveling life. In searching for answers about his past, Dominick reads a memoir written by his maternal grandfather, Domenico Onofrio Tempesta. There, Dominick discovers past family secrets.

As the tale unfolds, Dominick confronts his own internal conflicts: the true reasons behind his divorce from his wife, Dessa, his hatred for his bullying step-father, Ray, his disgust and contempt for his weak-minded mother, Concettina, and his anger over never knowing his biological father's identity. Through intensive self-analysis and exploration, Dominick finds the strength to overcome the pain, resentment and fears of the past and look to the future with love and forgiveness.

## Going Places - Camping on the Northern Coast

*By Sharla Chandler*

Camping along the Northern California coastline is my favorite weekend get away. Most of the campgrounds along this pristine stretch of coast belong to the Sonoma County Regional Parks District. The campgrounds are well maintained, and offer reservations. These sites have flushing toilets, fire pits, running water and coin operated showers. The Park Rangers or Camp Host also sell firewood in the campgrounds for your convenience.

We began our camping season in May with a trip to Stillwater Cove (Located at 22455 Highway 1, approximately 16 miles north of the town of Jenner). Stillwater is probably one of the best places for abalone diving in Northern California, and also a popular place for skin and scuba diving. Stillwater Cove has a dramatic rocky beach, great for climbing and to check out the tide pools. I have encountered starfish and sea anemone while climbing in between the tidal rock formations. From the first section of campsites, at the campground, you can see and hear the ocean. The cove itself is right across Highway 1 from the campground. If you are a hiker, there is a great half-mile trail through majestic redwoods leading to the historic one-room Fort Ross schoolhouse.

Next, we broke from our normal routine of ocean camping and went to Casini Ranch (located on Moscow Road in Duncans Mills approximately 7 miles west of Guerneville on Highway 116) to camp along the Russian River. This is a highly developed, family oriented campsite that is quite popular and tends to book up quickly during the weekends

of the summer months. If you fancy a campsite right on the water, I would recommend calling for reservations before the beginning of summer. This facility is perfect for camping with children. There are playgrounds, farm animals to pet and feed, volley ball nets, horseshoe pits, and a general store on the premises. The facility includes showers, kitchen style sinks for dish washing, and fire barrels for campfires. All sites at this large campground are a short walking distance to the river. The most popular past time at Casini Ranch, is to rent a raft or float (for .50 cents a day) or a kayak. The water is calm and clear, and great for cooling off with a swim or a lazy float downstream.

Our next trip was to one of my favorite camp spots, Gualala Point Regional Park. (Located at 42401 Coast Highway 1, approximately 1 mile south of the town of Gualala) This park has it all: ocean, redwoods, and river ...need I say more? Gualala is absolutely stunning! The visitors center at the beach is hosted by volunteers and has an outstanding display of early California history, information regarding Native Americans, and the turn of the century logging industry. Gualala Point campground is situated along the Gualala River, which is popular for kayaking and fishing. Across the highway from the campground is the beach. The beach itself is amazing, with its tall cliffs and rock peaks stretching out into the sea. A perfect place for kite and glider flying, and to see starfish and various sea life nestled the shelves of the cliffs.

To contact the Sonoma County Regional Park for reservations, call (707) 565-CAMP (2267) or go one line to [www.sonoma-county.org](http://www.sonoma-county.org) for more information.

## Going Places II - El Dorado National Forest

*By Phil Vermont*

Pipi Valley Campground in the El Dorado National Forest, off of Highway 88 in Amador County, is an ideal campground and picnic area for families with children. The campground and picnic area have a unique feature: a wheelchair accessible trail along the Consumnes River. The trail is paved and the campground has at least three wheelchair accessible campsites.

Pipi Valley is about a 2½ hour drive from Pleasanton. There are 62 campsites, piped in water, and restroom facilities. There are no showers.

One of the most exciting aspects of the Pipi Valley campground is that it is about 8 miles east of Highway 88, down a narrow winding road. Because it is relatively difficult to get there, the campground and picnic area are rarely crowded or noisy. There are several waterholes adjacent to the campground and picnic area for wading and fishing. Camping is \$12.00 per night.

There is plenty of parking space for day use. The campground also features three or four double sized camping spaces for large family gatherings.

Another excellent campground in the El Dorado National Forest is located near Silver Lake, also off of Highway 88, near the Kirkwood ski resort. Boat rentals are available at the lake, and the fishing is excellent. While Pipi Valley Campground does not have RV hookups, the Silver Lake facility does.



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## Recent Developments in the Law...cont.

*(Continued from page 1)*

### **Encroachments and Easements**

In a broad decision affecting adjoining property owners, the California Court of Appeal, in an easement and encroachment dispute, found and confirmed that the trial court doesn't abuse its discretion in fashioning an interest, which it called an easement, to protect an encroacher's use of disputed land.

This case concerned neighbors in Bel Air, California. One landowner owned a lot of more than 40,000 square feet. The other landowner owned an adjacent lot of approximately  $\frac{3}{4}$  of an acre in size. Sometime during the 1950's, the  $\frac{3}{4}$  acre owners' predecessors built a swimming pool in the backyard, and a chain-link fence running from the street to a point about halfway down both properties. Thereafter, the larger lot owner planted a row of trees by the fence for privacy.

Sometime in January of 1997, a formal survey was commissioned to determine the boundary between the lots. The survey revealed that two sections of the land used by the smaller parcel owner were in fact on the larger parcel

owner's property. Conversely, one section of the land used by the larger parcel owner in fact belonged to the smaller parcel owner.

The court, to resolve the dispute, applied what is know as the "Relative Hardship Doctrine". Under this doctrine, once the court determines that a trespass has occurred, the court conducts an equitable balancing to determine whether to grant an injunction prohibiting the trespass or whether to award damages instead. In this case, the court decided for the smaller parcel owner and gave the smaller parcel owner (the trespasser or encroacher) rights in the land of the larger parcel owner to protect the encroachment area. Again, common sense prevailed. The court found that to remove the smaller parcel owner's improvements would cost far more than the damage suffered by the larger parcel owner for the loss of an insubstantial piece of land. At trial, the experts found that the lost land was worth roughly \$1,025.00, due to the very small square footage involved.

Both of these cases reveal a common theme: every case, before it is filed with the court, should be analyzed from a common sense perspective.