

# THE JURIS DOCTOR FAMILY WATCH

Daniel H. McKinney & Associates  
Estate Planning Group

A NEWSLETTER FOCUSING  
ON ESTATE PLANNING FOR  
ASSET PROTECTION

Daniel H. McKinney  
Ohio State Bar Association: Board Certified in  
Estate Planning, Trust and Probate Law



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## INVESTING PEARLS

Some Pearls of wisdom from others plus a few of our own.

1. Great companies bought at great prices should be like good friends - you do not drop them precipitously. (Shelby M.C. Davis \*)
2. Far more money has been lost by investors preparing for corrections or trying to anticipate corrections than has been lost in corrections themselves (Peter Lynch\*)
3. In the short run the market is a voting machine. In the long run it is a weight machine (Benjamin Graham\*)
4. If you are not willing to own a stock for 10 years, do not even think of owning it for 10 minutes. (Warren Buffet\*)
5. Buy large companies with widely held stock that will assure a permanent market for the shares (John Petzhold, Jr.\*\*)
6. Buy companies that sell a product that people cannot do without. Union Carbide produces sulfur that every battery in the world uses (John Petzhold, Jr.\*\*)
7. Never borrow money to buy stock (John Petzhold, Jr.\*\*)
8. Never invest more than you can afford to lose (John Petzhold, Jr.\*\*)
9. Don't give up your day job

- you will not make as much investing as from your day job. (John Petzhold, Jr.\*\*)

10. Never trust your broker. (*Make your own decisions; your broker has a conflict of interest. Ed.*) (John Petzhold, Jr.\*\*)
11. Be an investor- not a trader (John Petzhold, Jr.\*\*)
12. Buy good stocks when no one wants them. (John Petzhold, Jr.\*\*)
13. Buy the majority of your portfolio in stocks with a history of increasing dividends. (Daniel H. McKinney)
14. Buy other non-dividend paying stocks that have a strong potential of double digit earnings increases. (Daniel H. McKinney)
15. Buy low. Sell High (Frank Loveland\*\*\*)
16. Invest in haste - repent at leisure. (Burt Reynolds\*\*\*\*)
17. Avoid house products. (Paul Parker\*\*\*\*\*)

\*Printed in the Robertshaw Report by Fred Robertshaw, Wachovia Securities, Cincinnati, OH

\*\*Late John Petzhold, Jr. of Cincinnati, prominent businessman and philanthropist

\*\*\*Late Frank Loveland, broker - Hilliard - Lyons

\*\*\*\*Late Burt Reynolds, senior partner Bartlett & Co.

\*\*\*\*\* Late Paul Parker, broker, A.G Edwards & Co.

## DRAFT DIVORCE DECREE TO AVOID PENALTY

Randolph Simpson was in the middle of a divorce when he received \$43,000 from the sale of stock in an ESOP. (Employee Stock Ownership Plan) From the sale proceeds, Simpson paid his wife \$18,000 pursuant to the divorce decree dividing the community estate. Subsequently, IRS issued a deficiency notice because Simpson failed to pay a 10% penalty tax on a distribution before he was age 59 ½.

The 10% penalty does not apply to distributions made to an alternate payee under a Qualified Domestic Relations Order (QDRO) which is a court order meeting certain requirements. Since the divorce decree simply divested Simpson's wife of any interest in the ESOP it did not meet the requirements of a QDRO. Had Simpson structured the property division as a QDRO, he could have avoided the 10%, \$1,800 penalty in addition to the tax on ordinary income.

(Pension & Benefits Weekly, 11-3-03)

## DOMICILE SHOPPING MAY BE WORTH IT

Shopping for domicile? If you want to pay fewer taxes, shopping for domicile is a concept for you to consider. For illustration, this article briefly compares income, estate and real estate taxes in Florida and Ohio though other states may offer tax savings as well.

Florida does not have a state income tax but it does have a tax on intangible property such as stocks, bonds, mutual funds, money market funds and

similar property. The intangible tax does not include cash, C.D.s, IRAs, retirement plans and certain other intangibles. The first \$20,000 for individual filers and \$40,000 for joint filers is exempt with the excess taxed at \$1.00 per \$1,000. However, Florida does recognize Flite Trusts which avoid the intangible tax but savings must be offset by the cost of funding and defunding the trust every year.

Intangible Asset	Income at 4% return	Ohio Income Tax Individ.	Florida Intang. tax	Florida Intang. tax w/ Flite Trust
\$1,000,000	\$ 40,000	\$1,264	\$ 980	0
2,000,000	80,000	3,335	1,980	0
3,000,000	120,000	5,883	2,980	0

For many years, taxpayers with taxable assets over \$3,420,000 did not reduce their estate taxes by changing their residence to Florida. However, when the federal estate tax relief was passed as part of EGTRRA 2001, and the state death tax credit available against federal estate tax began to be

phased out, the picture changed. Now, high net worth persons in Ohio pay significantly more in Ohio estate taxes than those dying in Florida and paying the Florida pick up tax. The difference will become even greater when the federal credit is fully phased out in 2005.

Net Estate	Florida Pick up Tax			Ohio Estate tax		
	2003	2004	2005	2003	2004	2005
\$1,000,000	\$ 0	0	0		\$ 44,700	
2,000,000	49,800	24,900	0		114,700	
4,000,000	140,200	70,100	0		280,400	

Finally, not only is the Florida homestead exempt from creditors' claims, increases in assessed value of homestead real estate are limited to 3% per year to keep persons from being "taxed out of their home" as a result of an appreciating real estate market.

As this article illustrates, if reducing taxes is a part of your life and estate plan, selection of domicile is one factor for you to consider.

(From an article appearing in the Probate Law Journal of Ohio, September/October, by David Simmons. Used with permission)

**DANIEL H. MCKINNEY HAS BEEN DESIGNATED A 2004 OHIO SUPER LAWYER BY CINCINNATI MAGAZINE**

## JOINT TENANCIES FOR ESTATE PLANNING PURPOSES SUBJECTS PROPERTY TO OTHERS' DEBTS

John Jones and his mother were joint tenants with right of survivorship in a condominium held as rental property. All expenses were paid by and all income retained by Jones' mother. Jones had unpaid tax liabilities and IRS levied on the property which was eventually sold and half of the proceeds used to pay Jones' tax obligations. Jones' mother sued for a refund of the tax proceeds maintaining her son only had a nominal interest in the property. IRS, on the other hand maintained property cannot be jointly owned for probate avoidance purposes but not for tax purposes. The tax court agreed.

Because a joint tenancy was created, Jones had an interest in the whole property. Jones had a right

to rents, profits and an accounting from other joint tenants even though he did not exercise these rights. The property had value to Jones and was transferable, therefore, it was subject to a federal tax lien.

Joint tenancies should be avoided. While a legitimate estate planning tool, this case shows the danger of vesting title in others. Ohio permits transfer on death deeds for real property and pay on death accounts that accomplish probate avoidance without creating a joint tenancy in realty or joint ownership of cash or securities accounts.

(USTC 2002-2, Federal Tax Weekly, 11-6-03)

## SOCIAL SECURITY BENEFITS CANNOT BE DIVIDED BUT CAN BE CONSIDERED

Joe and Judi Neville had been married for almost 30 years when they divorced in 2001. Both were in their early fifties at the time. The issue ultimately presented to the Ohio Supreme Court was whether a court can take Social Security benefits into consideration when dividing marital assets.

Retirement benefits acquired during marriage are deemed marital assets subject to division. But while Social Security benefits share many of the same attributes as retirement benefits, under federal law, they cannot be divided in a divorce and a portion of one spouse's benefits made payable to the other spouse. However, according to this case, a court can award one spouse more of the marital assets to offset social security which will be received by the other spouse. Or, put another way, the court can consider

social security when making an equitable distribution of the marital estate.

In the Nevilles' case, Judi Neville was a high school graduate with little work experience and earning capacity, particularly after "dedicating her life to raising their children", who would lose her health insurance benefits three years after the divorce. Joe Neville argued that awarding Judi the marital residence to offset Social Security benefits that he would ultimately receive was really a division of social security benefits in disguise. But the Court said the division was equitable; again reminding us that a court is not required to make an equal distribution but only an equitable one.

(*Neville v. Neville*, 99 Ohio St.3d 275)

## NASD SEEKS DISCLOSURE OF MUTUAL FUND PAYMENTS TO SECURITIES FIRMS

"Mutual fund investors may not realize it but there are often behind-the-scenes financial arrangements that can greatly influence which funds a broker recommends for purchase". The particulars are not disclosed to investors but often involve hundreds of thousands of dollars and known as "pay to play" according to The Wall Street Journal.

It is estimated that the 50 largest mutual fund groups make \$1.5 billion dollars in revenue-sharing payments to brokers. Some of the funds to which customers are steered have a good record others less

so.

But, if the National Association of Securities Dealers has its way, a proposed rule would require securities firms to tell clients about payments made in exchange for a place on a list of funds the firm most commonly offers and to disclose incentives an individual broker receives for selling a particular fund product. The compensation covered by the rule is not the sales charge or "load" paid by the investor when buying or selling a fund.

(The Wall Street Journal, August 8, 2003, January 9, 2004)

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Bob Herzog is a 2002 graduate of the Salmon P. Chase College of Law and a member of the Ohio, Cincinnati, and American Bar Associations. Mr. Herzog's focus is in the area of Probate and Estate Planning. He is also a correspondent for WB64 TV.

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