

LEGAL EASE

Winter 2002

Amnesty in Michigan for Individuals and Small Businesses

By Carrie J. Soder, Attorney

SUMMARY

A new bill enables some Michigan taxpayers to avoid civil and criminal penalties for failing to pay taxes. Smith Haughey Rice & Roegge deciphers the bill's language for you.

While the Cayman Islands is usually the hot spot for individuals trying to avoid taxes, Michigan's Legislature recently enacted a Tax Amnesty Bill that could bring some very hot benefits to taxpayers right here at home in Michigan.

The Tax Amnesty Bill provides taxpayers with amnesty from all civil and criminal penalties for a short period of time in 2002. If a taxpayer – individual or business – incurred taxes prior to June 1, 2001, the taxpayer may request a waiver from all civil and criminal penalties assessed for failing to pay the taxes incurred prior to that date.

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In With the New

By Craig Neckers, Attorney and CEO

SUMMARY

Smith Haughey Rice & Roegge opens its fourth office in Ann Arbor.

The start of a new year often portends significant change. It is a time when resolutions abound – to lose those stubborn ten pounds, to spend more time with family and friends, to improve the way we perform our jobs, just to name a few. At Smith Haughey, our New Year's resolution is to continuously evaluate the level of service we are providing our clients and to look for ways to provide that same level of excellence even more conveniently and cost-effectively.

As of January 1, 2002, we have taken what I believe is a major step toward fulfilling this resolution. I am proud to announce to you the opening of Smith Haughey Rice & Roegge's fourth office, located in downtown Ann Arbor.

The opening of this new office will help us improve our service in a number of ways. Our clients who are located in the southeast region of the state will now have an office within close driving range for matters requiring office visits. The office includes space for Grand Rapids, Lansing, and Traverse City attorneys to use while in the southeast region. They will have access to our computer network and other office

facilities, turning what might otherwise be "dead time" during travel into productive work time.

Another great benefit to our clients accruing from the opening of our Ann Arbor office is the addition of Edward R. Stein to our team. Ed is a longtime Ann Arbor practitioner, and he will be heading the Ann Arbor office. Ed comes to us from Stein, Moran, Raimi and Goethel, P.C. He is a graduate of the University of Michigan Law School, and is listed in

The Best Lawyers in America. He will continue to teach at the University of Michigan Law School as he assumes his new position with SHRR.

For some time, we at Smith Haughey have been looking to expand our firm with a southeast Michigan office, and I believe that our new association with Ed provides a perfect opportunity. The Ann Arbor office will also be staffed by April Alexander, who will provide

administrative and clerical support. Other Smith Haughey attorneys and support staff will be brought in on an as-needed basis.

We are excited about the opportunities this new office will provide to our current and future clients. Our goal remains to provide the highest level of service in order to help our clients formulate effective and efficient solutions when legal issues arise. This is just one more way we believe we will accomplish this goal.



Tax amnesty is only for a limited time. The Treasury Department shall allow taxpayers to request relief from May 15, 2002 through June 30, 2002. The tax bill allowed the Treasury Department to designate a period of not less than 30 days, but not greater than 60 days, ending before September 30, 2002.

In order to obtain relief from stifling civil tax penalties and criminal sanctions, the taxpayer must pay the tax and interest, in whole or in installments, upon submitting a request for relief to the Treasury Department during the period prescribed in May and June of next year. The installment program requires the taxpayer to complete payments by September 30, 2002.

When a taxpayer is in tax trouble, the tax is usually only a small part of the problem. Tax penalties, both civil and criminal, can be outrageous and can hinder one's ability to avoid the pursuit of the taxing authorities.

The purpose of the Tax Amnesty Bill is to allow taxpayers an opportunity to come up-to-date on their taxes. For businesses and individuals, the savings realized could be significant. While there are exceptions to the bill, the amnesty applies to most taxes, including penalties assessed for failing to pay the individual income tax, the single business tax and the sales and use tax.

Small businesses and individuals should consult their tax advisor to determine whether requesting tax amnesty is the right solution for them. While the sandy beaches of the Cayman Islands are still appealing, Michigan's Legislature provided a new haven right here at home for at least a short time.

"Things to Do" in 2002

By Heather R. Blanton-Dykstra, Attorney

SUMMARY

Recent legislative changes may have a significant impact on your financial planning. Smith Haughey Rice & Roegge attorneys highlight the areas you should be sure to review during the year.

As many are aware, a number of significant legislative changes occurred in 2001. The most widely publicized change was the passage of the Economic Growth and Tax Relief Reconciliation Act of 2001 Tax. The Tax Act, along with other new legislation, paves the way for a variety of "things to do" on any 2002 New Year's Resolution List.

1. Take the time to review the new minimum distribution rules which simplify the method to determine lifetime required distributions from retirement plans after the owner reaches age 70½ years.

For lifetime distributions, the amount of the owner's withdrawal no longer depends on who was named as contingent beneficiary. Nor is there any need to elect a method to calculate life expectancies. Post-death distributions will now be determined by the life expectancy of the named beneficiary who inherits the account after the death of the owner. The post-death beneficiary is not identified until the end of the year following the owner's death. Moreover, special rules for surviving spouses have been clarified: if an owner dies prior to age 70½ years, and the sole designated beneficiary of the account is the owner's surviving spouse, the required distributions must now commence by the end of the later of: the year following the year in which the owner died; or the year in which the owner would have reached age 70½ years. All of these changes permit longer tax-deferred accumulations to occur.

2. Invest in Michigan's 529 Education Savings Program for your children and grandchildren's education.

The Tax Act makes distributions from these accounts federal income tax-free beginning in 2002, provided the distributions are used for qualified higher education expenses.

3. Make it a point to amend any Powers of Attorney and Trusts to allow fiduciaries to address the 529 plan.

This may include changing the beneficiary, withdrawing funds, or shifting to another state's more favorable Section 529 plan. Without this specific grant of power, the legal ability of the

successor trustee or holder of the Durable Power of Attorney to make these changes is unclear, or could cause future estate tax problems. Be sure to clearly state whether you wish to place any restrictions on your child's right to withdraw funds from the 529 account, such as maintaining or achieving certain levels of performance or providing matching contributions.

4. Talk with your bank, financial advisors and brokers to determine which of your assets qualify for a "transfer on death" distribution election.

If such a provision is present with respect to your stock portfolio or bank account, these assets will automatically be transferred to your designated beneficiary without the need to open a probate estate.

5. Talk with your estate planner about new incentives for creating a conservation easement.

A conservation easement is an exciting estate planning tool if the owner has a desire to preserve real property or to make sure the real property stays within the family. Conservation purposes include: preservation of land areas for outdoor recreation; the education of the general public; the protection of a natural habitat for fish, wildlife or plants; and the preservation of open spaces. The Tax Act eliminated the requirement that the real property be within 25 miles of a metropolitan area or national park, or within 10 miles of an Urban National Forest. Creation of a conservation easement allows an estate tax exclusion up to \$400,000 for 2001 and \$500,000 for 2002. Lifetime easements will also create charitable income tax deductions.

6. Contribute more to your traditional and Roth IRAs, as well as Section 401(k), 403(b), 457 and SIMPLE IRA plans.

The amounts eligible for contributions increase each year (until 2010), but some of these new contribution ceilings may no longer apply after 2010. Changes regarding IRAs and other qualified retirement plans have particular significance to individuals 50 years of age and older, as they may now take advantage of the "catch-up" provisions which allow them to make additional contributions to their retirement plan exceeding the normal limits imposed in the Tax Act. Most importantly, disregard present estate planning documents or decide that proper preparation of your estate is no longer necessary. As it presently stands, the federal estate tax, while scheduled for full repeal in 2010, returns with a vengeance in 2011. No one knows what changes will occur between now and then!

Have You Heard The News?

Smith Haughey Rice & Roegge has been selected to serve as general counsel to **GLIMA West**. GLIMA West is a non-profit, professional association that supports and promotes the growth of the interactive and technology industries throughout Western Michigan. GLIMA West also provides educational, networking, and community outreach opportunities to its individual and corporate members.



Joe Engel has been appointed by the State Bar of Michigan's Board of Commissioners to serve on the State Bar District C Character and Fitness Committee. This is a two-year appointment, which is renewable for up to three consecutive terms.

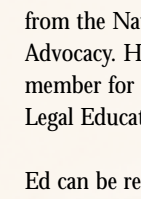


Edward R. Stein has joined the firm as a shareholder in the Ann Arbor office. He practices primarily in the areas of medical malpractice and other civil litigation. Ed is a graduate of the University of Michigan, where he also attended law school. He joined Smith Haughey Rice & Roegge in 2002, leaving his longtime practice with Stein, Moran, Raimi & Goethel, P.C.

In addition to his legal practice, Ed also serves as a Lecturer in Law at the University of Michigan Law School. He currently teaches Trial Practice, and has also taught Evidence, and has served as director of the Spring Break Trial Practice Program. He is also a member of American Board of Trial Advocates and a fellow of the American College of Trial Lawyers. Ed has been the I. Goodman Cohen Lecturer in Trial Advocacy at Wayne State University Law School, and received the Honorable Prentice Marshall Faculty Award



Tom McCarthy and **Bill Jack** have been admitted to membership in the American Board of Trial Advocates. The American Board of Trial Advocates is a national professional organization dedicated to the promotion of the art of advocacy, the preservation of the right to trial by jury, and the efficient administration of justice. Membership in the ABOTA is by invitation only, is dependent upon having tried a significant number of jury trials, and is limited to one-half of one percent of all the lawyers in any given state.



from the National Institute for Trial Advocacy. He is also a frequent faculty member for the Institute of Continuing Legal Education.

Ed can be reached in the Ann Arbor office at 734.913.5387.



Andrew M. Henningfeld is an associate of Smith Haughey Rice & Roegge, with his practice based in the Grand Rapids office. He received his Bachelor of Arts from Western Michigan University and his Juris Doctor from Indiana University – Bloomington. He practices in the areas of business and commercial litigation, corporate counseling, construction, insurance, real estate and product liability.

Andrew is married to fellow lawyer Eliza. Andrew can be reached in the Grand Rapids office at 616.458.8459.

Smith Haughey Rice & Roegge has elected **Peter Boyles**, **Joe Rossi** and **Garrett TenHave-Chapman** shareholders with the firm. Also elected were officers for 2002: **Bud Roegge**, President; **Craig Neckers**, CEO; **Robert Parker**, Secretary; and **Tom Blackwell**, Treasurer. **Pat Geary** was elected to a two-year term on the Management Committee, and **Veronica Marsich** was elected to a three-year term on the Compensation Committee.



Craig Neckers has been appointed to the council of the Law Practice Management Section of the State Bar of Michigan for a three-year term.



Jeffrey J. Noorman is the newest associate in the Traverse City office. A Grand Rapids native, Jeff attended Hope College and received his Juris Doctor from the Detroit College of Law at Michigan State University. He focuses his practice in insurance defense litigation in the areas of transportation and no-fault, dramshop, professional liability premises liability, insurance law, employment and civil rights.

Jeff is a member of the Michigan and Grand Traverse/Leelanau/Antrim Bar Associations. He belongs to the Michigan Defense Trial Counsel, the Defense Research Institute and the Economics Club of Traverse City.

Jeff is married to Dawn and they have a daughter, Grace. The Noormans live in the Traverse City area where Jeff enjoys golf, boating, fishing and snow skiing. He can be reached in Traverse City at 231.486.4539.

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By Wendy K. Passineau,
Client Services Director

Those of you who have visited the Smith Haughey Rice & Roegge web site in the past six months have likely noticed a prominent banner on the site's home page, declaring it to be "Under Construction" and asking for your patience as we rebuild. If you've visited the site since mid-January, you've surely noticed that banner is gone. In its place is the new www.shrr.com.

Just as I am excited about the opening of our new Ann Arbor office and all it represents for our clients, I am excited about the completion of this new web site. There are significant parallels. Both provide greater accessibility and convenience. We have designed the new web site to be a resource to our current clients, as well as an informational piece for prospective clients. The site is much more than simply an online brochure. Working with our developer, Control Room Technologies (www.crt.net), we have designed a tool that we hope you will bookmark and visit often.

Here are just a few examples of the things the new shrr.com allows you to do:

- Read, print and download our *Legal Alerts* (archived back to 1999), and sign up online for electronic, mail or fax delivery;
- Learn more about our lawyers by viewing narrative bios and traditional formal curriculum vitae, and contact them directly;
- Explore our office locations and get detailed directions and maps;
- Check out our *Events* page to see where SHRR attorneys will be speaking and presenting next;
- View our *News* section to see what we've been up to lately.

A brand-new section of the site is *Join Us*, and we hope you will visit and enjoy it often. The *Join Us* area spotlights three sculptures you've seen if you've visited our Grand Rapids or East Lansing offices. It is designed to provide information on current job openings and hiring procedures for prospective attorneys and staff, as well as to provide a picture of who we are – our philosophy on client service, our core values as a firm and even the things we do in our spare time –

and why we think SHRR is a great team of people and a fantastic place to work.

A great deal of time and effort has been spent making the SHRR web site a valuable, easy-to-use resource for you. I hope you will take the time to visit and explore the site. If you have questions or comments, feel free to send them along via e-mail at info@shrr.com.

Wendy K. Passineau is the Client Services Director for Smith Haughey Rice & Roegge. If you ever have questions, comments or concerns about your experience with SHRR, please contact Wendy directly in the Grand Rapids office at 616.458.3636



Her Name is "Grace": A Case Study in Adoption

By Eric W. Phelps, Attorney

SUMMARY

"Direct Placement" can streamline the adoption process – but in this case, unexpected complications threatened the agreement between birth mother and adoptive parents. Here's how Smith Haughey Rice & Roegge managed the situation.

In the early hours of a hot August morning more than two years ago, three groups of people began preparing for a day that would forever alter their lives.

The first was a young woman nineteen years of age. She had given birth the day before to a blue-eyed girl whom she had named "Autumn."

The second was a married couple in their mid-thirties who, for reasons they would never quite understand, had been unable to have children. They had been traveling west in hopeful anticipation since mid-afternoon the preceding day. The third was an attorney flying north in reflective silence above the shimmering waters of Lake Michigan.

All would soon meet to begin the legal aspect of a direct placement (attorney-assisted) adoption.

In Michigan, birth parents may arrange for the direct placement of their child with prospective adoptive parents. The adoptive parents must first undergo a preplacement assessment conducted by a child placing agency in order to be approved for an adoptive placement.

Adoptive parents may not be stepparents or related to the child within the fifth degree by marriage, blood or adoption.

One of the most attractive features of a direct placement adoption is the fact that the birth parents select the prospective adoptive parents whom they desire to raise their child.

This can be done through the review of portfolios prepared by prospective adoptive parents, or by coordinating directly with individuals who they come in contact with through any number of adoption-related networks.

Once the prospective adoptive parents have been approved to adopt and selected by the birth parents, the child may be placed in their home immediately following birth

– even prior to the termination of either birth parent's parental rights. This is called "temporary placement." A temporary placement may be made if: (a) the prospective adoptive parents with whom the child is temporarily placed are Michigan residents; and, (b) in a direct placement, the birth parents are assisted by an adoption attorney or a child placing agency.

A temporary placement will not become a formal placement until the birth parents' consent to the termination of their parental rights and the court enters an order to that effect. It is important to note that the birth parents may, at any time prior to the termination of their parental rights, file a petition with the court requesting that the temporary placement be revoked and the child returned to them.

The next step is to file a petition for adoption with the court. The court will either accept the preplacement assessment or direct that an investigation be conducted. If there is parental consent, the judge will then enter an order

terminating the birth parent's parental rights. A "consent" means a document in which all parental rights over a specific child are voluntarily relinquished to the court for placement with a specific adoptive parent.

The judge will then approve the formal placement of the child with the prospective adoptive parents if satisfied that: (a) the birth parent's consent is genuine; and (b) the best interests of the child will be served by the adoption.

The court will require an appropriate supervisory period prior to the entry of a final order of adoption. This period is usually no more than six months.

The majority of direct placement adoptions proceed along this path. The case described in this article did not.

About three weeks after the temporary placement and just prior to the formal placement, the birth mother notified the prospective adoptive parents that she might be of Native American descent. She had failed to indicate this possibility

on any of the preplacement forms. It was quickly established that she was of Native American descent. That meant her child was, too. And this posed a significant problem for the prospective adoptive parents.

The federal Indian Child Welfare Act mandates that, in any adoptive placement of an Indian child under state law, absolute preference to adopt the child is given to: (a) a member of the child's extended family; (b) other members of the Indian child's tribe; or (c) other Indian families.

Thus, if the tribe determined that the child should be placed with a Native American family, it had an absolute right to make such a placement. It didn't matter that a temporary placement had already been made under Michigan law with persons not of Native American descent – or that this couple had been parenting the child as their own for almost a month.

In preliminary discussions, the Native American tribe involved in this case clearly stated that it would make a claim to any child of Native

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Her Name is "Grace" from page 3

American descent. Despite these statements, Smith Haughey Rice & Roegge attorneys presented the case to the tribe's Child Welfare Committee, asking the tribe to recognize the adoption already in place under Michigan law. SHRR's arguments swayed the Committee, and the tribe ultimately consented to the Michigan adoption.

The new parents later reported that – as they began their new life and long journey home – they changed the baby's name from "Autumn" to "Grace."

In their words, "it seemed only fitting."

Author's note: The case study in this article depicts only a few of the many issues that can arise in an adoption. The family law attorneys of Smith Haughey Rice & Roegge are well prepared to handle any adoption matter, whether it be an intrastate, interstate, or international adoption.

Grace

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