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Client Bulletin



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New Ohio Supreme Court Decision: Property Owners not Charging for Recreational Use of their Property Owe no Duty of Care to Keep their "Premises" Safe for Entry or Use by "Recreational Users"

The Ohio Supreme Court decided the case *Pauley, et. al. v. The City of Circleville, et. al.* on October 16, 2013. This case arose from an 18-year-old boy, Jeremy Pauley, sustaining injuries while sledding in a park owned by the City of Circleville. The city used the park to store topsoil, which had formed into two mounds about 15 feet high. Jeremy decided to sled down one of the mounds and ultimately hit an "immovable object" on this premises. This collision resulted in him breaking his neck and becoming a quadriplegic. It was later discovered that a railroad tie was in the path of Jeremy's sled. Jeremy and his mother filed a complaint against the city alleging liability for Jeremy's injuries. The trial court determined that the city was immune from such liability under the recreational-user statutes and the court of appeals affirmed the decision.

Jeremy and his mother appealed to the Ohio Supreme Court arguing a single proposition of law: "[r]ecreational user immunity does not extend to man-made hazards upon real property that do not further or maintain its recreational value." The opinion analyzed the recreational-user statutes, Ohio Rev. Code §§ 1533.18 and 1533.181. As summarized by the Court, the statutes set forth that "property owners who open their premises to recreational users free of charge are immune from liability for injuries suffered by recreational users while they are engaged in a recreational activity." Jeremy and his mother urged the Court to find an exception to that general rule, arguing that in situations in which "a property owner modifies his or her property in a manner that creates a hazard without promoting or preserving the recreational character of the property, immunity does not apply." The city, however, asserted that such an argument was asking the Court to create an exception to Ohio Rev. Code § 1533.181 that did not exist in the language of the statute.

The Court explained that in order for the recreational-user immunity to apply in this matter, the property must be held open to the public for recreational use, free of charge. The Court explained that due to the fact that Jeremy was a recreational user who entered the park free of charge, "the city owed him no duty to keep the premises safe, and the city's alleged creation of a hazard on the premises does not affect its immunity." The Court noted that the presence of the railroad tie did not change the park's "essential character as a recreational space." The Court pointed out that the purpose of the statute "is to encourage owners of premises suitable for recreational pursuits to open their land to public use without fear of liability." In other cases, the courts have held that the use has to be completely free, *i.e.*, situations in which there is no charge to a softball player by the team to play. However, if the team has to pay the league a fee to use the property, the use is not "free"; therefore the statute does not apply and there is no immunity. Although the Court in this case acknowledged that its decision in this case may appear harsh, it explained that the statute is clear and if the General Assembly wanted an exception to the rule, it would have created such an exception.

Farming's Next Generation—Annual Gifting Program with Special Use Valuation

Family limited partnerships and family LLCs are maybe the first things that come to mind for succession planning with a family business or farm, and it is important to keep an eye on two things this year: the calendar with this year's short season between Thanksgiving and the year-end holidays, and the new amount of the unified credit relative to the annual gift tax exclusion for lifetime gifts.

Earlier this fall, the Internal Revenue Service raised the limit on tax-free transfers during life or at death. The unified credit against the estate tax for decedents dying in 2014 will go up to \$5.34 million per person, from \$5.25 million this year. See Rev. Proc. 2013-35 for more information. The federal government then taxes anything above that amount at a top rate of 40%.

It is important to keep this unified credit amount in mind when considering the utility of making annual gifts. For either calendar year 2013 or 2014, the annual exclusion for federal gift and estate taxes is now \$14,000 (Rev. Proc. 2012-41 and 2013-47).

So, if the oldest generation is below that \$5.34 million per person threshold, the unified credit is solving more and more federal estate tax planning issues.

However, depending on a person's age, any amounts above \$5.34 million can quickly outpace a \$14,000 annual gifting program if there are not enough recipients in the succeeding generations willing to go into the business or farm. Taking advantage of the gift must be done on a year-to-year basis.

However, in the case of certain farm property, Rev. Proc. 2013-35 also made a change to another estate planning statute that goes to how farm property is valued for estate tax purposes. In a way similar to how the State of Ohio allows the value of farm land to be written down for county real estate tax purposes under the CAUV program, IRC § 2032a allows the value on "qualified real property" to be discounted for estate tax purposes.

Unlike a year-to-year gifting program, an IRC § 2032a valuation is taken at the time of the decedent's death. Under Rev. Proc. 2013-35, the maximum amount of that discount has grown to \$1,090,000, up from \$750,000 in 1998.

As with many things with the Internal Revenue Code and the IRS, there are strings attached to plan around, such as an 8-year period of qualified use before the decedent's death and after that another 10-year period of qualified use by the decedent's qualified heir. That said, in a growing county such as Delaware with changing land uses, IRC § 2032a can be made to work with IRC § 1031 for a like-kind exchange of farm ground for other farm ground.

Notice

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If you have friends or associates who you think would enjoy receiving a copy of this Client Bulletin, please feel free to forward it on. Thank you.

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