

E359 Jan 26, 2011

**1. Plea to indictable offense barred DWI prosecution based on double jeopardy State v Hand**

**2 Mun Court not bound by another court Order that DWI conviction could not be used for enhanced penalty State v Enright**

**3. Federal Estate Tax increased to Estates over \$5,000,000, but New Jersey taxes estates over \$675,000**

**4. NJ Estate Tax Law**

**5. Raritan Valley Road Runners [RVRR Winter Party & Banquet](#) February 5th, 2011**

**1. Plea to indictable offense barred DWI prosecution based on double jeopardy State v Hand 416 NJ Super. 622 (App. Div. 2010)**

In this appeal by the State, the Court determined whether a guilty plea to fourth-degree creating a risk of widespread injury or death, N.J.S.A. 2C:17-2(c), precluded defendant's subsequent prosecution for driving under the influence (DWI), N.J.S.A. 39:4-50. The municipal court judge denied defendant's motion to dismiss the DWI and reckless driving charges on double jeopardy grounds. On appeal de novo to the Law Division, Judge Kryan Connor, citing the "same evidence" test, found defendant's prosecution for DWI and reckless driving was barred. He vacated the guilty pleas and dismissed the charges.

The Court affirmed, rejecting the State's argument that the "same evidence" test set forth in *State v. De Luca*, 108 N.J. 98, cert. denied, 484 U.S. 944, 108 S. Ct. 331, 98 L. Ed. 2d 358 (1987), should not apply to guilty pleas but should instead apply to the actual evidence to be presented at trial. Because defendant's operation of his motor vehicle under the influence of alcohol was the reckless act upon which the indictment was based and also because the State required defendant, as part of his plea to the indictment, to admit that he operated his motor vehicle under the influence of alcohol, his subsequent prosecution for DWI was barred on double jeopardy grounds.

**2 Mun Court not bound by another court Order that DWI conviction could not be used for enhanced penalty State v Enright 416 NJ Super. 391 (App. Div 2010)**

After defendant's conviction and sentence in the municipal court as a third-time DWI offender, he obtained a post-conviction order from a different municipal court in which his second DWI conviction had occurred confirming that conviction but directing that no court could use it to enhance his sentence on a subsequent DWI conviction. The Court held that the municipal court order was an erroneous application of *State v. Laurick*, 120 N.J. 1, and that on de novo review of the third DWI conviction, the Law Division correctly declined to follow the municipal court's order.

**3. Federal Estate Tax increased to Estates over \$5,000,000, but New Jersey taxes estates over \$675,000.**

After a one-year hiatus, the estate tax is reinstated for 2011 and 2012, with a top rate of 35%. The exemption amount will be \$5 million per individual in 2011 and will be indexed to inflation in 2012. Estates of people who died in 2010 can choose to follow either the rules in effect for 2010 or 2011.

The Act sets a \$5 million generation-skipping transfer tax exemption and zero percent rate for the 2010 year.

Portability of the unused estate tax exemption permits the executor of a deceased spouse's estate to transfer any unused exemption to the surviving spouse without such planning. This provision is effective for estates of decedents dying after December 31, 2010.

Reunification of the estate and gift taxes. This provision is effective for gifts made after December 31, 2010. Thus, the gift tax exemption will increase to \$5 million per person for 2011 and 2012.

Key tax credits for working families that were enacted or expanded in the American Recovery and Reinvestment Act of 2009 will be retained. Specifically, the new law extends the \$1,000 child tax credit and maintains its expanded refundability for two years, extends rules expanding the earned income credit for larger families and married couples, and extends the higher education tax credit (the American Opportunity tax credit) and its partial refundability for two years.

Businesses can write off 100% of their equipment and machinery purchases, effective for property placed in service after September 8, 2010 and through December 31, 2011. For property placed in service in 2012, the new law provides for 50% additional first-year depreciation.

Extending for two years (through 2011) the provision that permits tax-free distributions to charity from an Individual Retirement Account (IRA) of up to \$100,000 per taxpayer, per taxable year. The Act allows individuals to make charitable transfers during January of 2011 and treat them as if made during 2010.

Many of the "traditional" tax extenders are extended for two years, retroactively to 2010 and through the end of 2011. Among many others, the extended provisions include the election to take an itemized deduction for state and local general sales taxes in lieu of the itemized deduction for state and local income taxes; the \$250 above-the-line deduction for certain expenses of elementary and secondary school teachers; and the research credit.

Source:

**Saul M. Simon CFP®, CFS, RFC** □ Private Wealth Advisor □ Simon Financial Group □ 333 Thornall St. Suite 9 B □ Edison, NJ 08837 □ Phone: 732-623-2070 □ Fax: 732-623-2088 □ [simonsays@LFG.com](mailto:simonsays@LFG.com) □ [www.saulsimon.com](http://www.saulsimon.com)

#### **4. NJ Estate Tax Law**

The New Jersey estate tax was revised and made to apply retroactively to decedents dying after December 31, 2001. Prior to its revision the New Jersey estate tax was a "sponge" or "pickup" tax whose sole purpose was to absorb any credit for state inheritance, estate, succession or legacy taxes available in the Federal estate tax proceeding. The revised New Jersey estate tax is decoupled from the Federal estate tax.

The New Jersey estate tax is now imposed upon the transfer of the estate of every resident decedent, which would have been subject to a Federal estate tax under the provisions of the Internal Revenue Code in effect on December 31, 2001. The tax is either the maximum credit for state inheritance, estate, succession or legacy taxes allowable under

the provisions of the Internal Revenue Code in effect on December 31, 2001 or an amount determined pursuant to the Simplified Tax System prescribed by the Director, Division of Taxation.

A New Jersey estate tax return must be filed if the decedent's gross estate plus adjusted taxable gifts as determined in accordance with the provisions of the Internal Revenue Code in effect on December 31, 2001 exceeds \$675,000. It must be filed within nine months of the decedent's death (nine months plus 30 days if the Form 706 method is used). Additionally, a copy of any Federal estate tax return filed or required to be filed with the Federal government must be submitted within 30 days of the date it is filed with the Internal Revenue Service and a copy of any communication received from the Federal government must be submitted within 30 days of its receipt from the Internal Revenue Service.

The New Jersey estate tax is due on the decedent's date of death and must be paid within nine months in all cases. Any tax not paid within nine months generally bears interest at the rate of ten percent (10%) per annum from the expiration of nine months until paid. The Director may extend the time for the filing of the return but not for the payment of the tax. Payments are first credited in satisfaction of accrued interest.

The Form 706 method requires that the Form IT-Estate be prepared and filed along with a 2001 Form 706 completed in accordance with the provisions of the Internal Revenue Code in effect on December 31, 2001. The New Jersey estate tax is based upon the Federal credit for state inheritance, estate, succession or legacy taxes as it existed on December 31, 2001 and not as it existed on a decedent's date of death.

If a Federal estate tax return has or will be filed or is required to be filed with the Internal Revenue Service, any election made by a taxpayer to treat an asset in a particular manner for Federal estate tax purposes must also be made for New Jersey estate tax purposes. A taxpayer may not make one election for Federal purposes and another for State purposes with the following exception. If the decedent was a partner in a civil union and died on or after February 19, 2007, survived by his/her partner, a marital deduction equal to that permitted a surviving spouse under the provisions of the Internal Code in effect on December 31, 2001, is permitted for New Jersey estate tax purposes. In these cases, the 2001 Form 706 should be completed as though the Internal Revenue Code treated a surviving civil union partner and a surviving spouse in the same manner.

The Director has prescribed a Simplified Tax System method pursuant to the provisions of the revised statute. This method may only be used in those situations where a Federal estate tax return has not and will not be filed nor is a tax return required to be filed with the Internal Revenue Service. The Simplified Tax System is not intended for use in all estates. Any attempt to develop a tax system which could be used in all situations and which would produce a tax liability similar to that produced using the Form 706 method would, of necessity, result in a tax system as complex as the Federal tax itself. The Simplified Tax System requires that a Form IT- Estate be prepared and filed along with a New Jersey inheritance tax return (Form IT-R) completed in accordance with the provisions of the inheritance tax statute in effect on December 31, 2001. □ □ The taxable value of the estate using the Simplified Tax System method is the net estate as determined and reflected on line 7 of the New Jersey inheritance tax return (Form IT-R) adjusted to reflect: □

Real and tangible personal property located outside of New Jersey; plus

The proceeds of life insurance on the decedent's life owned by the decedent (or transferred within three (3) years of his/her death) paid to any beneficiary other than the estate, executor or administrator; plus

All transfers made by the decedent within three years of death not included in the inheritance tax net estate ; plus

In the event that the decedent was a surviving spouse or a civil union partner and received qualified terminable interest property (QTIP) from the predeceased spouse or civil union partner for which a marital deduction was elected for Federal and/or New Jersey purposes, the full value of the QTIP property; plus

Any other property includable in the Federal gross estate under the provisions of the Federal Internal Revenue Code in effect on December 31, 2001; less

Property passing outright to the decedent's surviving spouse or civil union partner who died on or after February 19, 2007 provided he/she was a U.S. citizen on the decedent's date of death. This deduction does not include QTIP (Qualified Terminable Interest Property) or similar property. QTIP property is property that passes from the decedent and in which the surviving spouse or civil union partner has a qualifying income interest for life. The surviving spouse or civil union partner has a qualifying income interest for life if he/she is entitled to all or a specific portion of the income from the property payable annually or at more frequent intervals, or has a usufruct interest in the property (right to enjoy the property) for life, and during the surviving spouse's or civil union partner's lifetime no person has a power to appoint any part of the property to any person other than the surviving spouse or civil union partner. Additionally, the surviving spouse or civil union partner must be a citizen of the United States on the decedent's date of death. If QTIP property or the surviving spouse's or civil union partner's citizenship is a significant factor, consideration should be given to the use of the Form 706 method of filing; less

Property passing for charitable purposes.

The NJ Estate Tax is in addition to the NJ Inheritance Tax. A tax is imposed upon the estate of every resident decedent having a date of death after December 31, 2001 which would have been subject to an estate tax payable to the United States under the provisions of the Federal Internal Revenue Code of 1986, 26 U.S.C.s.1 et seq, in effect on December 31, 2001.

## **5. Raritan Valley Road Runners **RVRR Winter Party & Banquet February 5th, 2011****

at 6:30PM  **Where.....:** [River Road Fire Company, 102 Netherwood Ave, Piscataway, NJ](#)  
 **Cost.....:** \$30 before January 31st, and \$40 after OR at the door  **Register..:** Online at [ACTIVE.COM](#)(with fee waived!!!) OR via mail using **THIS** form.  **Details.....:** The banquet recognizes everyone who has contributed to the greatness of our club - from outstanding runners to outstanding volunteers!! Hopefully there will be no snow to stop the show!! Not only will we have the awards but also random prizes. So come out and celebrate running.  
<http://www.rvrr.org/>