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Tax benefits available when providing financial support to parent

By Matthew D. Pearson CPA

Grown children may be called upon to provide financial support to their parents who are unable to pay all their own expenses. There are some tax benefits available to those who help their parents financially. This article discusses some of them. Keep in mind, however, that each person's tax situation is different. You will want to advise clients to consult a tax professional to review their specific situations.

Claiming a parent as dependent may qualify a taxpayer for the following 2013 tax benefits:

- Exemption deduction in the amount of $3,900
- Head-of-household filing status
- Medical expense deduction
- Dependent care credit

A taxpayer can claim his or her parent as a dependent if the following conditions apply:

- The parent's gross income, for tax purposes, was less than $3,900 in 2013
- The son or daughter provides more than half of the parent's support
- The parent is not required to file a married-filing-joint tax return
- The parent is a U.S. citizen or national or a resident of the U.S., Canada, or Mexico

Gross income for tax purposes consists of taxable-income items. Nontaxable income items, such as the tax-exempt portion of Social Security benefits, are not counted in gross income.

To determine if the taxpayer provides more than half of the parent's support, a worksheet can be prepared that lists the parent's living expenses and related source of payment. Living expenses include the fair rental value of housing, food, utilities, medical and dental expenses, travel and recreation, clothing, and more. The sources of support include the son or daughter's contribution, the parent's contribution, and other sources such as welfare programs. A parent may have funds of his or her own that are not used for support. These funds are not included in the calculation. The taxpayer should keep documentation to substantiate the support provided.

In some cases, more than one son or daughter may contribute to the parent's support. A multiple support agreement can be used to allow one of them to claim the parent as a dependent. To qualify for the multiple-support agreement, each participating son and daughter must contribute more than 10 percent toward support, and the participating family members together must provide more than 50 percent of the support. Only one participating son or daughter per year may claim the parent as a dependent. He or she must attach a statement to the income-tax return that identifies the other participating family members who have agreed not to claim a dependency exemption and have signed a declaration stating so.

A second tax advantage available to an unmarried daughter or son who supports a parent is the head-of-household filing status, which allows the taxpayer to benefit from broader tax

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Financial support for parents

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brackets and a higher standard deduction. A single taxpayer's 15 percent tax bracket extends to $36,250 for 2013 while a head of household taxpayer's 15% tax bracket extends to $48,600. To qualify for the head-of-household exemption, the taxpayer must be unmarried and must provide more than half the cost to maintain a household. The parent must qualify as a dependent. The parent may live with the son or daughter or in another home, such as a long term care facility, provided the son or daughter pays more than half the cost.

A third tax benefit that may be available to the son or daughter who provides support to a parent is the medical-expense deduction. Medical expenses are itemized deductions that include such things as doctors, dentists, hospital care, health and long term care insurance premiums, prescriptions, and long term care costs such as foster care, assisted living, or nursing homes. Generally, the parent must qualify as the daughter or son's dependent. However, the taxpayer may still deduct medical expenses of a parent who would qualify as a dependent had it not been for gross income that exceeds $3,900.

Planning tip: If the son or daughter and the parent pay for support, consider having the offspring pay the medical expenses and claim the related itemized deduction.

Note that in 2013, the medical expense itemized deduction threshold increased from 7.5 percent of adjusted gross income to 10 percent for taxpayers under 65.

Long term care expenses will qualify for the medical expense deduction if the parent is in need of assistance with activities of daily living or has a cognitive impairment. The expense must be part of a plan of care established by a licensed healthcare professional.

A fourth tax benefit is the dependent-care credit. This credit is available to taxpayers who incur expenses for the care of dependents, so that they are able to work or look for work. Requirements to claim the dependent-care credit are as follows:

- The care expenses must be for a dependent (or a person who would qualify as a dependent had it not been for taxable income over $3,900) who is unable to care for himself or herself.
- The dependent parent must live with the taxpayer, regularly spending eight hours per day in the home, for more than half the year.
- Overnight stays in a care facility do not qualify because they are not considered employment-related expenses.
- The taxpayer, and spouse if married, must have earned income during the year (exceptions are available for one spouse who is a full-time student or unable to provide his or her own care).
- The taxpayer must incur the care expenses in order to work or look for work.
- The taxpayer may not use the married-filing-separate status.
- The taxpayer must report the care provider's name, address, and taxpayer identification number on his or her income tax return.
- Time spent at a dependent daycare center qualifies if the center complies with the state and local regulations that apply to such centers. A dependent daycare center is a place that provides care for more than six people. Daycare providers that care for six people or fewer do not need to meet this requirement.

Dependent-care expenses may also qualify as medical expenses. The taxpayer can use care expenses to claim either the dependent-care credit or the medical-expense deduction, but may not use the same expenses to claim both benefits.

The taxpayer can claim a tax credit for up to 35 percent of the cost of care. A cost limit of $3,000 per dependent (maximum of $6,000 for two or more) applies.

Example: Mary is 89 years old and is no longer able to care for herself in her own home. Mary moves in with her son James, who is single. Mary earns $900 in interest income and receives $16,000 in Social Security benefits during the year. Her support expenses are $36,000 per year and include medical and dental expenses, the fair rental value for use of James's house, and dependent-care expenses. James pays about 40 percent of his mother's care expense, his sister Sara pays 30 percent, and Mary pays 30 percent. Sara agrees to let James claim the dependent exemption on his tax return. James attaches a multiple-support agreement to his return. Mary's gross income for tax purposes is $900, because her Social Security benefits are not taxable to her. Mary qualifies as James's dependent. James pays in-home care expenses for his mom when he is at work, so he claims the dependent-care credit on his income tax return. He claims a medical-expense deduction for the portion of his mother's medical expenses that he pays. He also claims the head-of-household filing status. ■

The perils of portability

By Jeffrey M. Cheyne, Attorney at Law

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He served on the Oregon Inheritance Tax Workgroup of the Oregon Law Commission drafting and coordinating the transition legislation from the Oregon inheritance tax to the Oregon estate tax. He recently co-authored the Oregon Estate Tax chapter in "Administering Oregon Estates."

He is the Chair of the Oregon State Bar Estate Planning & Administration section, a fellow with the American College of Trust and Estate Counsel, and a board member of the Portland Tax Forum.

When the American Taxpayer Relief Act of 2012 (ATRA) was enacted on January 2, 2013, the deceased spouse's portability exemption under the federal estate tax law was made permanent. IRC 2010(c). As a result, the executor of the estate or, if no executor is appointed, the person in possession of the property of the deceased spouse, can elect to combine the deceased spouse's unused exclusion amount (DSUE) with the surviving spouse's applicable exclusion amount (AEA). The federal basic exclusion amount is indexed for inflation. In 2013 the AEA was $5,250,000. For 2014 the AEA was increased to $5,340,000.

Portability is most useful in three situations:

1. when a married couple's combined marital estate value is in excess of the AEA ($5,340,000) but less than two times the AEA ($10,680,000)
2. for wealthy couples
3. when the majority of the value of the combined marital estate consists of assets that are hard to use in funding a credit shelter trust, such as annuities, retirement plan accounts, and personal residences

As an example, assuming that the first spouse died in 2014 and made no gifts during his or her lifetime, the DSUE could be as much as $5,340,000. With a portability election pursuant to IRC 2010(c), the executor of the deceased spouse can elect to increase the surviving spouse's total federal applicable exclusion amount up to $10,680,000.

Does a similar portability election exist under Oregon law?

No. There is no portability provision similar to federal law which allows the deceased spouse's unused Oregon exemption amount (up to $1,000,000) to be combined with the surviving spouse's Oregon exemption amount.

For an Oregon married couple with a combined marital gross estate valued at less than $1,000,000, the surviving spouse and the other heirs of the estate are not likely to spend the money to prepare a Federal Form 706 and make the DSUE election. From their perspective: why waste the money? Neither a federal estate tax return nor an Oregon 706 Estate tax return is required, and it is not likely that the surviving spouse's estate will exceed the AEA. If the surviving spouse dies with an estate value that is less than his or her AEA, the cost of filing an IRS Form 706 and making a DSUE election would have been a wasted expense.

On the other hand, if the first spouse dies with an estate valued in excess of $1,000,000 but less than his or her AEA, then it will be necessary to file an Oregon 706 Estate Tax return, but no federal estate tax return will be required. The surviving spouse and other heirs may also decide to skip the filing a Federal Form 706 and making the DSUE election. The cost of preparing and filing a Federal Form 706 under these circumstances would be less expensive because the Oregon 706 Form requires the preparation of the Federal Form 706 asset and liability schedules to attach to the Oregon return.

If the surviving spouse has the good fortune to inherit a large bequest that realizes significant business or investment gains, or wins a lottery and then dies with an estate valued in excess of his or her AEA, the heirs may regret that a DSUE election was not made when the first spouse died, because additional federal estate taxes could have been avoided.

When the heirs learn that the surviving spouse could have significantly reduced or avoided the federal estate tax with a portability election filed in a timely fashion after the death of the first spouse, they may question why the professionals who advised the surviving spouse and the personal representative did not recommend that a DSUE election be made.

What are the requirements to make a federal portability election?

In order to make a federal portability election, a Form 706 federal estate tax return must be filed in a timely manner. The portability election provisions need to be completed even though no federal estate tax is due, and no federal estate tax return is required to be filed.

The initial filing deadline is nine months after the date of death. If a timely extension application is filed within nine months following the date of death, the time for filing a Form 706 federal estate tax return and making the portability election can be automatically extended for an additional six months. The surviving spouse, unless he or she is the executor, does not have the right to make the portability election. This can be a problem if the personal representative is a

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Portability

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descendant of the deceased spouse, but not the surviving spouse.

For estates that are not required to file a federal estate tax return, a special rule applies to make the completion of the 706 return less expensive and burdensome. For smaller estates, executors do not have to report the value of certain transfers that qualify for the marital or charitable deduction, and may with due diligence estimate the total fair market value of the gross estate. With respect to marital and charitable deduction property included in the gross estate, the executor must provide only a description of the property, who the owner of the property was, and/or who the beneficiary of the property is, along with information sufficient to establish the estate's right to the marital or charitable deduction.

There are some problems with portability

1. The DSUE is not subject to subsequent inflation adjustments. Thus, as assets covered by the DSUE increase in value above the DSUE amount, such increase will be subject to federal estate tax. On the other hand, if the first spouse had utilized all of his or her exemption amount and fully funded a credit shelter trust, $5,340,000 plus any additional increases in value would be exempt from estate tax as part of the surviving spouse's estate.
2. The Generation Skipping Tax Exemption (up to $5,340,000 in 2014) cannot be allocated to the DSUE. Thus, property passing to grandchildren and other skip persons in excess of the surviving spouse's AEA will be subject to GST tax.
3. If the surviving spouse remarries and the new spouse dies before the surviving spouse, the unused DSUE of the first spouse to die will terminate. Thus, it is possible for the surviving spouse to lose the DSUE of the first spouse as a result of the death of the new spouse.

Is portability useful for married couples with lower net worth?

Because Oregon continues to impose an estate tax for the taxable value of an estate over $1,000,000, establishing a credit shelter trust in the amount that can pass free of the Oregon estate tax would still be prudent. In Oregon, the first spouse to die cannot simply leave all of his or her assets to the surviving spouse and use the DSUE, because the $1,000,000 Oregon exemption of the first spouse will be wasted.

Generally speaking, if a married couple is not likely ever to have an estate in excess of $1,000,000, a federal portability election is probably not warranted unless the surviving spouse may experience a significant increase in wealth. Consideration should be given to obtaining a written directive from the surviving spouse and the personal representative not to file a portability election.

If the first spouse to die is an Oregon resident and has an estate in excess of $1,000,000 but less than $5,340,000, an Oregon Estate tax return will be due but a federal estate tax return is not required. However, because the Oregon Form 706 form requires the preparation of the Federal Form 706 asset and liability schedules to attach to the Oregon return, filing a portability election should be considered. Factors to consider are the age and longevity of the surviving spouse, the likelihood of a significant inheritance, the potential for a significant increase in the value of business interests and investment assets, and the possibility of winning a lottery.

If the surviving spouse dies with a federal taxable estate and no portability election has been made, the heirs and representatives will likely look to the personal representative, if someone other than the surviving spouse, and the professionals who advised the personal representative and surviving spouse to pay for the tax increase that could have been avoided. If an OR 706 was filed after the first spouse's death, then the heirs of the surviving spouse may ask why a Federal 706 was not prepared and filed, since it was already substantially completed.

Recent development: IRS expands estate tax portability options

On January 27, 2014, the IRS issued Rev. Proc. 2014-18 that grants relief for certain surviving spouses who would like to combine the DSUE amount with the surviving spouse's AEA even though the due date for making the election has passed. If a first spouse died after December 31, 2010 and before January 1, 2014 and the estate was not required to file a federal estate tax return, it is now possible for the executor to file a Federal Estate Tax return and make a delayed portability election. If the estate qualifies under these circumstances, it is no longer necessary to seek private letter ruling or pay any user fees to request permission to file an estate tax return after the due date. The late-filed tax return must filed by December 31, 2014.

This same relief is also provided for the surviving spouse of a same-sex marriage whose marriage was celebrated in a state or country which allows same-sex marriage.

Practice tip

One practical approach is to provide a written explanation to the surviving spouse and the personal representative, if a different person, of the portability options for the surviving spouse; and obtain a signed statement from the surviving spouse and the personal representative, if different, that confirms whether or not he or she chooses to elect portability and file a Form 706 estate tax return. Thus, the professionals providing assistance to the surviving spouse and the personal representative would have written evidence for their file as to whether or not they wanted to elect portability or waive it.

Portability provides estate planners with a tool when planning a married couple's estate. When planning for married couples in Oregon, the Oregon and federal estate tax laws must be carefully reviewed to determine whether portability will be detrimental or helpful. ■

A sample letter to a client is provided on pages 5 and 6.

Sample client letter re portability

Surviving Spouse
Personal Representative (*if different*)
Address
Re: Estate of ________________
Date of Death: ____________
9-Month Filing Date: ________
Federal Portability Decision

Dear *Surviving Spouse* (*and Personal Representative*):

Under the American Taxpayer Relief Act of 2012 (ATRA) the spousal portability provision under the Federal Estate Tax law was made permanent. As a result, the personal representative (*Name of Personal Representative*) can elect to combine the Deceased Spouse's Unused Exclusion Amount (DSUE) with your own Applicable Exclusion Amount.

Assuming that the Deceased Spouse made no gifts during his [*her*] lifetime which would require the filing of any Form 709 Gift Tax returns, the DSUE could be as much as $5,340,000. In your case, with a portability election you could increase your total applicable exclusion amount to $10,680,000.[1]

However, in order to make the portability election, a Form 706 Federal Estate Tax Return must be filed in a timely manner. If a timely extension application is completed on or before *(insert 9-month due date)*, the time for filing a Form 706 Federal Estate Tax Return can automatically be extended for an additional six (6) months.

When the deceased spouse died on [*insert date of death*], his [*her*] estate was entitled to a federal exemption in the amount of approximately $5,340,000. The recently enacted portability provisions of the Federal Estate Tax Law allow the surviving spouse to elect to add the DSUE to the surviving spouse's exemption amount.

[*Insert sentence with specifics, if known*] In other words, based on current estimates, the deceased spouse's estate will use approximately $1.1 million dollars [*use estimate of exemption that will be used by the decedent's estate*] of his [*her*] federal exemption leaving approximately $4.0 million [*insert estimate of remaining exemption*] of his [*her*] federal exemption unused.

You have an exemption of $5,340,000 [*use current applicable exemption*]. If the deceased spouse's unused exemption amount ($4,000,000) [*insert estimate deceased spouse's remaining exemption*] were combined with your exemption ($5,340,000.00) [*use current applicable exemption*], you would have a total exemption of approximately $9,340,000 [*insert estimate of deceased spouse's remaining exemption plus the surviving spouse's applicable exclusion amount*]. In other words, with the portability election, you could have an estate with a value of up to $9,340,000 [*insert estimate of deceased spouse's remaining exemption plus the surviving spouse's applicable exclusion amount*] before there would be any federal estate taxes to be concerned about. Please note that the above discussion only applies to federal estate tax. The Oregon exemption amount is only $1,000,000 per decedent estate, and Oregon has no portability election.

There are two alternatives to consider. If you do not believe that your estate will ever exceed your applicable exclusion amount (currently $5,340,000) [*use current applicable exemption*], then the portability election to include your deceased spouse's unused exclusion amount will not provide any benefit to you.

If, on the other hand, you accumulate a significant amount of wealth in the future and have an estate subject to federal estate tax with a value in excess of $5,340,000 [*use current applicable exemption*], then the DSUE could have significant benefit to you, your estate and your heirs.

For example, if you accumulate additional wealth to the extent that you have a federal taxable estate, and if you had elected to claim the DSUE after your late spouse died, you would be able to transfer up to $9,340,000 [*insert estimate of deceased spouse's remaining exemption plus the surviving spouse's applicable exclusion amount*] to your heirs, federal estate tax-free when you die. In this scenario, a timely filed portability election would be extremely helpful because your estate would be able to save a significant amount of federal estate taxes.

As a surviving spouse, you have a unique opportunity with the portability election. We recommend that we review this election with you. With this letter we have included two alternatives for you to consider. Please review the alternatives provided below. If, for any reason, you have questions or none of these choices are acceptable, please feel free to contact us to discuss this further.

Very truly yours,

Attorney Name

Required IRS Disclosure: You may not use any tax advice contained in this letter to avoid penalties imposed under federal tax law.

1. Note: The $10,680,000 is an estimate of the Deceased Spouse's Unused Exclusion Amount plus your own Applicable Exclusion Amount (AEA) that can vary significantly depending on prior gift history, estate liabilities, estate values and the impact of inflation adjustments to the AEA. Also, if in the future you choose to remarry, the portability rules become much more complicated because of the "last such deceased spouse" requirement of IRC §2010(c)(4). We will not discuss those in any detail in this letter, but if you wish additional information about the effect of remarriage, please let us know.

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Sample client letter re portability *Continued from page 5*

Include these forms with your letter.

Alternative #1 – Do Not Make a Federal Portability Election

Please sign the following page and return a signed copy of this letter to us if you do <u>not</u> wish to file a Form 706 Federal Estate Tax Return and make a federal portability election for the Estate of ___________.

I, the Surviving Spouse and Personal Representative, have read the foregoing letter and have had an adequate opportunity to discuss the questions that I had concerning the pros and cons of my option to utilize the Deceased Spouse's unused exclusion amount.

I do not wish to incur those fees and direct my accountant ______________ and my attorneys _____________ not to file a Federal Form 706 Estate Tax Return in the Estate of __________.

[*Use this paragraph if an OR 706 is being filed*] I understand and agree that an OR 706 is in the process of being prepared, that an Oregon Estate Tax may be due, and I want the Oregon Estate Tax project to continue.

I understand that by directing my accountants and attorneys not to prepare and file a Form 706 Estate Tax Return, that I will not be able to take advantage of the deceased spouse's unused federal exclusion amount, and that if I have the good fortune of accumulating assets valued in excess of my applicable exclusion amount (currently $5,340,000), my estate will be responsible for paying a federal estate tax that could have been avoided.

I make this decision freely and voluntarily. Dated: [*Month*] [*Day*], [*Year*]

____
Surviving Spouse (*Signature)*

____
Personal Representative (*Signature)*

Alternative #2 –Make a Federal Portability Election

Please sign the following page and return a signed copy of this letter to us if you wish to file a Federal Form 706 Estate Tax Return and make a federal portability election for the Estate of ___________.

I, *Surviving Spouse*, have had an adequate opportunity to consult with the accountants _____________ and the attorneys ___________ to evaluate the pros and cons of proceeding to file a Federal Estate Tax Return in connection with the Estate of Deceased Spouse for purposes of completing an election to claim Deceased Spouse's unused exemption amount as my own.

I also understand that there will be accounting fees and some attorney fees in connection with the preparation of the Federal Form 706 Estate Tax Return. Notwithstanding those additional costs, I nevertheless request that my accountants and attorneys file a Form 706 Estate Tax Return and make a portability election that will be treated as a timely filed return.

I make this decision freely and voluntarily. Dated: [*Month*] [*Day*], [*Year*]

____
Surviving Spouse (*Signature*)

Employers of in-home caregivers must be aware of many labor and tax laws

By Dan Grinfas, Attorney at Law

Dan Grinfas is Of Counsel with the Portland labor and employment law firm Buchanan, Angeli, Altschul & Sullivan LLP (www.baasemploymentlaw.com).

Your client has decided to hire an individual or individuals to provide in-home care. What rules and regulations apply? A myriad of employment laws come into play, depending on the number of workers hired and the nature of their employment.

Civil rights issues and legal hiring practices

Before starting the hiring process, your client would be wise to develop a position description that lists any minimum qualifications and essential job functions. It's also advisable to have a detailed job application form. Job interview questions should be focused on the applicant's skills, experience, training, and ability to perform the essential job functions. Oregon and federal laws prohibit inquiries about disabilities, workers' compensation claims, age, race, national origin, pregnancy, religion, and other protected classifications.

Question and answer sheets on "Protected Classes," "Pre-Employment Questions," and "In-Home Caregivers/Domestic Service Companions" are available on the Oregon Bureau of Labor and Industries (BOLI) website at **www.oregon.gov/boli/TA/Pages/T_FAQ_Tafaq.aspx**. The same FAQ section contains Q&A sheets relating to family leave laws, employees with disabilities, military leave, and many other employment-related subjects.

Your client should be aware of the different thresholds for coverage under various civil rights laws.

Anti-discrimination laws related to age, race, color, sex, religion, marital status, national origin, sexual orientation, and gender identity apply to all Oregon employers of one or more employees. ORS 659A.030.

Other regulations relating to civil rights, the Americans with Disabilities Act, and the Family and Medical Leave Act won't apply to most of your clients, since these laws cover employers that have many employees.

Post-offer requirements

Form I-9 (see **www.uscis.gov/i-9** for downloadable forms and employer guidance) must be completed within three days after hiring an employee to verify work eligibility. Contact the U.S. Citizenship and Immigration Services for more information: 800.767.1833, **www.uscis.gov**.

All employers must report new-hire information within 20 days for purposes of child-support tracking. In Oregon, employers report to the Department of Justice, Oregon Child Support Program, New-Hire Reporting. For forms and more information: 503.378.2868, emplnewhire.help@doj.state.ur.us or **oregonchildsupport.gov/employers/Pages/reporting.aspx**.

Wage and hour issues

Oregon's minimum wage is annually indexed based on the Consumer Price Index, and it increased from $8.95 to $9.10 as of January 1, 2014. However, your client's employee may be exempt.

Companions to the elderly or infirm are exempt from Oregon and federal minimum wage and overtime laws when employed in or about the private home of the person by whom the companion is employed. 29 CFR §552.6, ORS 653.020(14), OAR 839-020-0004(11). To qualify for the exemption, the employee must spend 80 percent of his or her time in the "companionship services," which may include fellowship, care, and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs. Under the current rules, such services may include meal preparation, bed making, washing of clothes, feeding, bathing, etc. The employee may perform other general household work, so long as it is incidental and does not exceed 20 percent of the total weekly hours worked. "Companionship services" do not include services performed by trained personnel such as a registered or practical nurse.

On September 17, 2013, the U.S. Department of Labor's Wage and Hour Division announced a final rule that amended 29 CFR § 552.109(a) and eliminated the companionship exemption for an estimated 1.9 million home care workers employed by third-party home care agencies and other companies. The amendment, which does not become effective until Jan. 1, 2015, was published in the Federal Register on October 1, 2013 (78 FR 60557, **www.ecfr.gov/cgi-bin/text-idx?SID=3bd670750c44adb7ad187e0ed5af8a15&node=20131001y1.71**).

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In-home caregivers

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Beginning January 1, 2015, the federal exemption for companions will only apply if the worker is employed directly by the individual or household receiving the services. The new final rule also narrows the definition of covered "companionship services" to exclude care of the elderly or infirm individual and to cover only "fellowship and protection." Providing some care (dressing, grooming, feeding, bathing, toileting, transferring, etc.) will still be allowed if it does not exceed 20 percent of the time worked.

Even if your client's employee is subject to the minimum wage, your client may agree with the worker to exclude up to eight hours of sleep time and bona fide meal periods when the employee works shifts of 24 hours or more. 29 CFR §§ 785.20 – 785.22; OAR 839-020-0042(2). Also, when an employee resides on the premises, any reasonable agreement between the employer and employee as to hours worked will be accepted. 29 CFR § 785.23; OAR 839-020-0042(3). If a non-exempt employee is required to live on the premises as a condition of employment, the employer must pay minimum wage in addition to the value of the lodging. OAR 839-020-0025.

Wage and hour laws won't apply if the worker is an independent contractor, but it's unlikely that the worker your client hires will meet the numerous required tests under ORS 670.600. See the detailed BOLI and interagency guidances on independent contractor classification at **www.oregon.gov/boli/TA/pages/t_faq_independent_contractors_11-2010.aspx** and **www.oregon.gov/IC/pages/index.aspx**.

Caution clients about paying in cash or paying "under the table," even if the employee requests it. ORS 652.110 does permit payment in cash or negotiable instrument, but if your client chooses to pay in cash, he or she should have the employee sign a receipt, must provide a wage statement or pay stub with itemized information (ORS 652.610(1), (2), OAR 839-020-0012), and must maintain payroll records that shows all daily and weekly hours worked by non-exempt employees. Under ORS 652.120, every employer must establish and maintain a regular payday. Paydays must be scheduled no more than 35 days apart, and an employee's first paycheck must be available within 35 days of hire.

See **www.oregon.gov/boli/TA/pages/t_faq_tadeduct.aspx** for information on legal and illegal payroll deductions and **www.oregon.gov/boli/TA/pages/t_faq_tafinpay.aspx** for information on final paycheck deadlines.

Tax issues

Do withholding requirements apply, or can your client simply pay employees and issue a 1099 form at the end of the year? This again raises the independent contractor versus employee question, and certain "casual" labor may not be subject to withholding requirements. Federal tax withholding information is available from the Internal Revenue Service in its Publication 926: *Household Employer's Tax Guide*, which you can download from the Web at **www.irs.ustreas.gov/pub/irs-pdf/p926.pdf** or obtain by calling 800.829.1040. For information on Oregon employer taxes and payroll withholding, see **www.oregon.gov/DOR/BUS/pages/payroll_basics.aspx** or call the Oregon Dept. of Revenue at 503.378.4988.

Employers who pay $1,000 or more in cash wages in a calendar quarter to employees who work in a personal residence are required to provide unemployment insurance coverage for their workers. You can download information on this from the Oregon Employment Division's website at **www.oregon.gov/EMPLOY/TAX/pages/index.aspx** and read FAQ information at **www.oregon.gov/EMPLOY/TAX/pages/faqs.aspx**.

Your client may be best served by engagement of a payroll service to deal with tax withholding, reporting, garnishments, and wage assignments. Another option is hiring through a caregiver agency, which takes care of taxes and related reports. Of course, in that case the hourly rates charged will be higher, and, as noted above, the third-party agency will no longer have a minimum wage and overtime exemption as of January 1, 2015.

Workers' compensation

"Domestic servants" employed in or about a private home, including home health workers, are not "subject employees" under workers' compensation rules, which means that an employer may—but is not obligated to—provide workers' compensation coverage. ORS 656.027(1). Approximately 12,000 in-home care workers who receive state funding, plus another 7,500 who care for adults with developmental and mental illnesses, are subject to a collective bargaining agreement (CBA) and represented by Service Employees International Union (SEIU) Local 503. The CBA's terms may affect wage and benefit obligations if your client hires one of these union-represented workers.

For general employee coverage requirements and daily rates for employees, contact the Oregon Workers' Compensation Division at 800.452.0288 or check its website at **www.oregonwcd.org**. ■

Oregon eliminates tax deduction for dubious charities

A law aimed at protecting donors from bogus charities gives the Oregon Attorney General valuable new tools to prevent nonprofit abuse and protect donors.

House Bill 2060 eliminated the state income-tax deduction for donors who give money to charities that fail to spend at least 30 percent of their donations on their charitable mission. Disqualified charities will be required to disclose their status to prospective donors or face civil penalties up to $25,000 per violation under the Unlawful Trade Practices Act. The bill was signed into law by Governor John Kitzhaber on June 4.

The Oregon Department of Justice, which regulates the state's 18,000 charities estimates fewer than 100 charities registered in Oregon will be affected by the law.

Oregon and other states once had laws prohibiting charities from soliciting donations if they were paying too much to themselves and their fundraising apparatus. The statutes were repealed in 1980 after the U.S. Supreme Court ruled the attempts to restrict a charity's solicitation efforts violated their First Amendment rights.

The new law does not restrict a charity's ability to fundraise. It does eliminate the state tax advantages of donating to a charity that does not meet minimal standards. The disclosure requirement will also impose a new level of transparency.

Oregon's tax code provides that if a charity has IRS 501c(3) status, donors can deduct their contribution on their state income tax returns to the same extent as their federal return; but the new law excludes charities from that beneficial tax status if they do not use donations effectively.

The Better Business Bureau recommends donors avoid any charity spending less than 65 percent of their money on their charitable mission. Yet, a small but persistent group of charities continue to spend most of their money on fundraising and administration.

The Oregon Department of Justice publishes an annual "20 Worst Charities" list to give some guidance to potential donors on which organizations to avoid. All 20 of the worst charities are based out of state. They spend between 2.7 and 21.7 percent of donations on programs, according to the Justice Department.

There are extenuating circumstances that can temporarily push a legitimate charity's program spending below the 30 percent mark. A capital campaign, for example, or building a new facility can skew a charity's numbers. The new law offers exceptions to charities in that situation.

Also, the Department of Justice will use a three-year average of a charity's performance when making its spending calculation. ■

UnCLE program scheduled for May 2

Now is the time to mark your calendars for the OSB Elder Law Section's 12th annual unCLE program, which will be held on Friday, May 2, 2014, at the Valley River Inn in Eugene.

Registration information will be e-mailed to Section members in March.

Registration is limited to 80 Section members, so plan to register early for this popular program that features small group discussions about a wide array of elder law topics. ■

Resources for elder law attorneys

Events

Elder Law Discussion Group
Noon-1:00 p.m.
Legal Aid Services Portland conference room
921 SW Washington Street, Suite 500, Portland

- February 13, 2014: Oregon's Medically At-Risk Driver Program
- March 13, 2014: Effectively Navigating the Veteran Administration Fiduciary Process.

Estate Planning for Personal Residences
OSB CLE Audio Online Seminar
Thursday, January 30, 2014/10–11 a.m.
www.osbar.org

Attorney Ethics and Digital Communications
OSB CLE Audio Online Seminar
Friday, January 31, 2014/10–11 a.m.
www.osbar.org

2014 Ethics Update
OSB CLE Audio Online Seminars
Tuesday & Wednesday February 4 & 5, 2014
www.osbar.org

Funding Unfunded Testamentary Trusts in Estate Planning
OSB CLE Audio Online Seminar
Thursday, February 6, 2014/10–11 a.m.
www.osbar.org

Understanding the Fiduciary Duties and Liability of Trustees in Estate Planning
OSB CLE Audio Online Seminar
Thursday, February 13, 2014/10-11 a.m.
www.osbar.org

Ethics in the Receipt and Release of Confidential Information
OSB CLE Audio Online Seminar
Friday, February 21, 2014/10–11 a.m.
www.osbar.org

ABC's of Decedents Estate Administration
Oregon Law Institute CLE Seminar
Friday, March 14, 2014
Ambridge Event Center; Portland
http://law.lclark.edu/continuing_education

Elder Law Section unCLE Program
Friday, May 2, 2014
Valley River Inn; Eugene

NAELA Annual Conference
May 15–17, 2014
Scottsdale, Arizona
www.naela.org ■

Websites

Elder Law Section website
www.osbar.org/sections/elder/elderlaw.html
The website provides useful links for elder law practitioners, past issues of *Elder Law Newsletter,* and current elder law numbers.

IRS *Household Employer's Tax Guide*
www.irs.ustreas.gov/pub/irs-pdf/p926.pdf

Aging and Disability Resource Connection
adrcoforegon.org
A resource directory for Oregon families, caregivers, and consumers seeking information about long-term supports and services. Includes downloadable *Family Caregiver Handbook*, available in English and Spanish versions.

OregonLawHelp
www.oregonlawhelp.org
This website, operated by legal aid offices in Oregon, provides helpful information for low-income Oregonians and their lawyers. Much of the information is useful for clients in any income bracket.

Administration on Aging
www.aoa.gov
This website provides information about resources that connect older persons, caregivers, and professionals to important federal, national, and local programs.

Alzheimers Navigator
www.alzheimersnavigator.org
When facing Alzheimer's disease, there are a lot of things to consider. Alzheimer's Navigator helps guide you to answers by creating a personalized action plan and linking you to information, support, and local resources.

BigCharts
http://bigcharts.marketwatch.com/historical
Provides the price of a stock on a specific date.

LongTermCare.gov
http://longtermcare.gov
U.S. Department of Human Services website with information and resources to help plan for future long term care needs.

National Academy of Elder Law Attorneys (NAELA)
www.naela.org
A professional association of attorneys who are dedicated to improving the quality of legal services provided to people as they age and people with special needs. ■

Elder Law Discussion List

To post to the list, enter **eldlaw@forums.osbar.org** in the *To* line of your email. The discussion list provides a forum for sharing information and asking questions. ■

Important elder law numbers

as of
January 1, 2014

Supplemental Security Income (SSI) Benefit Standards	Eligible individual .... $721/month Eligible couple $1,082/month
Medicaid (Oregon)	Long term care income cap .... $2,163/month Community spouse minimum resource standard .... $23,448 Community spouse maximum resource standard .... $117,240 Community spouse minimum and maximum monthly allowance standards .... $1,939/month; $2,931/month Excess shelter allowance .... Amount above $582/month SNAP (food stamp) utility allowance used to figure excess shelter allowance .... $441/month Personal needs allowance in nursing home .... $30/month Personal needs allowance in community-based care .... $160/month Room & board rate for community-based care facilities .... $561/month OSIP maintenance standard for person receiving in-home services .... $721* Average private pay rate for calculating ineligibility for applications made on or after October 1, 2010 .... $7,663/month
Medicare	Part B premium .... $104.90/month** Part B deductible .... $147/year Part A hospital deductible per spell of illness .... $1,216 Part D premium: .... Varies according to plan chosen Skilled nursing facility co-insurance for days 21-100 .... $152/day * Note: The need standard is scheduled to increase by $500 effective 2/1/14 ** Premiums are higher if annual income is more than $85,000 (single filer) or $170,000 (married couple filing jointly).

Elder Law Section

Newsletter Advisory Board

The Elder Law Newsletter is published quarterly by the Oregon State Bar's Elder Law Section, Michael A. Schmidt, Chair. Statements of fact are the responsibility of the authors, and the opinions expressed do not imply endorsement by the Section.

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