

Ask the Probate Judge—Good News for 2009

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Here is some good news for 2009.

Increased Federal Estate Tax Exemption

The good news for those who hope to avoid estate tax liability is that, under current federal estate tax laws, the estate tax exemption increased January 1, 2009 to \$3,500,000 per person, up from \$2,000,000 per person in 2008. With proper tax planning, married couples can now pass up to \$7,000,000 without owing federal or state estate tax.

Bigger Gifts

Effective January 1, 2009 the “annual gift tax exclusion” increased to \$13,000 per person per year, up from \$12,000 in 2008. Recipients of gifts can be children, other relatives, or anyone else. A married couple can gift up to \$26,000 per person per year with no gift tax consequences. The donor does not have to file a federal gift tax return if the total amount of each gift is \$13,000 or less per person per year. Gifts over \$13,000 per person per year may be made without tax consequences if paid directly to persons who provide certain medical care or for tuition to qualified educational institutions.

Are You 100 Years Old?

The income of an individual who is one hundred years of age or older and who is not a dependent of another individual is exempt from New Mexico income tax!

Property Tax Deduction

For 2008 federal income tax returns, taxpayers who do not itemize deductions but pay state and local real property taxes can increase the amount of their standard deduction by the amount of real property tax paid during the year or by \$500 (\$1,000 for a married couple filing jointly), whichever is less. Page 2 of IRS Form 1040 should include a line for this new deduction.

FDIC Changes

Basic FDIC Deposit Insurance Coverage limits for single accounts recently rose from \$100,000 to \$250,000 per owner, \$250,000 per co-owner for joint accounts, and \$250,000 per owner for IRAs and certain other retirement accounts. On January 1, 2010, the standard coverage limit will return to \$100,000 for all deposit categories except IRAs and certain retirement accounts, which will continue to be insured up to \$250,000 per owner (unless Congress changes the law in 2009). If you have questions about FDIC coverage limits and requirements, visit www.myFDICinsurance.gov, call toll-free 1-877-ASK-FDIC, or ask a representative at your bank or credit union.

New Family Law in New Mexico Book

The 2009 second edition of *Family Law in New Mexico* by Barbara Shapiro and Antoinette Sedillo López has finally arrived. The book is a guide to New Mexico’s laws on marriage, living together, divorce, property and debt division, child custody and

support, spousal support, domestic violence, and more. Visit www.abogadapress.com for details.

Time to Shred

If you are a diligent taxpayer, you can shred tax receipts, bank statements, and other documentation from 2004 and earlier because the statute of limitations (SOL) for 2004 federal income tax returns has expired. The general rule for federal tax returns is that the IRS must assess a tax “within 3 years after the return was filed.” So for 2004 tax returns, which were filed by April 15, 2005, the three-year SOL expired at midnight on April 15, 2008.

If you filed after April 15, the SOL runs from the date the return was filed. Be aware, however, if you omitted more than 25% of the amount of gross income stated in an income, estate, or gift tax return, tax can be assessed at any time within **six years** after the return was filed.

If you (1) file a false or fraudulent return with the intent to evade tax; (2) make a willful attempt to defeat or evade tax; or (3) fail to file a return altogether, there is no SOL. The IRS can assess tax, penalties, and interest against you at any time.

The SOL for 2004 New Mexico income tax returns expired at midnight on December 31, 2008. For false or fraudulent returns with the intent to evade tax, the state SOL is ten years; for failure to file a return, seven years; and understating by more than 25% the amount of tax liability, six years. These time limits apply to both state income taxes and gross receipts taxes.

Write to Judge Rudd at P.O. Box 36011, Albuquerque, N.M., 87176-6011, or email jueznm@aol.com. The judge cannot answer questions about specific cases.

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