

▼ **New IRS Valuation Penalties**

The 2006 Pension Protection Act made substantial changes regarding valuation penalties. When a valuation differs too much from the finally determined value, penalties will be imposed by the IRS, and the rules make it easier to violate the rules for what is too much of a difference. In addition to changing the threshold for penalizing taxpayers, Code §6695A penalizes those who prepare valuations. These new penalties now apply to any “person,” not just the taxpayer, and are aimed primarily at professional appraisers. Many questions surround the new Code section. Do the new penalties apply to an individual appraiser in an appraisal firm,



the appraisal firm as a whole, or both? Do the new penalties apply to valuations made for estate and gift tax purposes or only to valuations made for income tax purposes? Is the IRS targeting only appraisers or others as well? For example, would the new penalties apply to a personal representative of an estate who estimates the value of an asset on the estate tax return? Will the IRS establish a “black-list” of appraisers whom they wish to target? A task force, that this author chairs, of the Business Planning Group of the Real Property, Probate and Trust Section of the American Bar Association will be presenting comments to the IRS on this subject in the near future.

William Forsberg
Parsinen Kaplan Rosberg & Gotlieb
Minneapolis
wforsberg@parlaw.com

▲ **Unemployment Compensation**

An employee who loses a license due to an off-duty incident will generally lose the right to unemployment compensation benefits if the license is necessary to perform the job. A pair of recent rulings of the Minnesota Court of Appeals reaffirms the principle that off-duty conduct may result in disqualification for unemployment benefits if the behavior leads to loss of license that is essential to the employee’s job duties. In *Shambour v. Property Upkeep Services*, 2006 WL 3719677 (Minn. App. 12/29/06) (unpublished), the appellate court held that an employee whose driver’s license was revoked because of a DUI charge was disqualified from receiving unemployment compensation benefits on grounds of “misconduct,” even though the driving incident occurred off-duty. The employee worked for a landscape crew and her job required her to drive from site-to-site. Because the employer’s insurance carrier did not cover her due to the DUI, the employee was not entitled to unemployment compensation benefits after she was terminated. Similarly, in *Chung v. SMCS Gaming Enterprises* 2007 WL 3537 (Minn. App. 01/02/07) (unpublished), an employee of a casino who lost his gaming license because of a careless driving offense was barred from receiving unemployment compensation benefits because the license was a requirement for the job.

Employees are not resigned to relinquishing their unemployment benefits if they lose their license in all circumstances. An employee who shows that the job does not require a license is still entitled to unemployment compensation benefits notwithstanding the off-duty offense. Employers can fend off unemployment compensation claims by showing that the job duties require the employee to have a license, or that third parties, such as insurers, insist upon licensure in order for the employee to hold the job.

Marshall H. Tanick
Mansfield Tanick & Cohen, P.A.
Minneapolis
mtanick@mansfieldtanick.com



▲ **CLE Reporting**

As an alternative to filing the traditional affidavit, Minnesota attorneys can report their CLE attendance to the CLE Board through the internet. Details are available at www.mbcle.state.mn.us. Reporting online alleviates the need to maintain a log, file a timely affidavit, etc., and provides a current snapshot of CLE credits earned, including bias and ethics credits.

John P. Worrell
Hoene & Worrell, P.A.
Saint Paul
john@hwlawpa.com



▲ **Nonrefundable Fee Disclosures**

For many years, lawyers who wanted to charge clients a nonrefundable fee in advance of the representation and also avoid depositing the funds in a trust account had to comply with the elaborate provisions of Lawyers Professional Responsibility Board Opinion 15. That opinion required lawyers to include a specific paragraph in the retainer agreement, just above the client signature, explicitly

stating that the fee would neither be deposited into a trust account nor be refunded to the client. Lawyers without that specific language could be disciplined by the Lawyers Board. With the Minnesota Supreme Court’s revision of the Minnesota Rules of Professional Conduct in October 2005 and the repeal of Opinion 15 in January 2006, the specific language requirements have been eliminated. Lawyers must still enter into a written agreement, signed by the client, for all nonrefundable advance fees, but the agreement need only be “clearly communicated” to the client. See MRPC, Rule 1.5 (b). With the signed agreement in hand, the lawyer may deposit the fees directly to the lawyer’s business account, and need not disclose that fact to the client.

Eric T. Cooperstein
Office of the Monitor
St. Paul
etc@ethicsmaven.com



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