

THE Erb Law News

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A successful trip to Germany

One of the focuses of the law practice of The Erb Law Firm, P.C. is assisting foreign, mostly European, investors in the United States and vice versa. Having spent a little over five years in Germany, both before becoming a lawyer and after, Germany is a natural focus for my work. Of course, the strong and increasingly successful mid-tier German company is also a knowledgeable exporter. I recently took a trip through Germany, my second this year, to meet with German business persons and lawyers and to explore the opportunities available to Americans wishing to enter the European market.

The first stop was Munich, known to most Americans for beer, pretzels, and the Oktoberfest. Notwithstanding the appeal of all of those things, Munich has also become an international center for the information technology industry, particularly in the area of software development and multimedia. Under the slogan of "laptops and lederhosen," Munich and the state of Bavaria have made impressive inroads into the IT market. Software campus, an innovative program for the education of would-be entrepreneurs set up with the support of the state of Bavaria, was kind enough to ask me to speak on the topic of access to the United States market. That presentation, in German, will be made available on the software campus web site at www.software-campus.de, in case you're curious. Of course, I also met with clients and colleagues while there, all of whom are intimately involved in the development of Munich as a computer capital of Germany.

From there it was on to Hamburg, and a meeting with more colleagues in the old Hanseatic League city. Long a center of printing and publishing, Hamburg has taken the lead in content development and provision in the German Internet industry. Indeed, IBM chose Hamburg as the location for one of its most important pilot projects. Of course, the old guard of transit and trade still have a strong impact on the

economy of this port city, and attorneys here have a broad and varied practice.

My final stop was Frankfurt, the commercial and financial capital of Germany. If they are being left behind in the computer generation there in Frankfurt, they sure don't know about it. The city, the most international in Germany, has a vibrant economy, and is the undisputed financial capital of the country. The bricks and mortar economy is alive and well here in the center of Germany, and the sophisticated legal market is an indicator of the level of business savvy and understanding.

I plan to return to Germany in the spring or summer, with stops in two additional German cities - Stuttgart and Berlin. If you have questions about Germany as a location for business, have any questions, or if you know of attorneys or companies I should contact while there, please let me know.

For more information on this topic contact Chris Erb at jcerb@erblaw.com or see www.erblaw.com/news/V1I2_1.html

End of the year tax planning

It's hard to believe that the end of the year is nearly upon us! Here are a few end of the year tax planning ideas to consider. Remember to consult with a professional before making decisions about issues that you're not sure about.

• **Make that donation to a qualified charity that you've been putting off all year!**

If you write a check, make sure it has plenty of time to clear before the end of year. If you're donating gifts in kind (i.e. clothing to the Salvation Army), be sure to get receipts.

• **Pay medical and other expenses incurred during the year!** Don't forget that you may take deductions for medical and other expenses that are incurred during the year. You may want to pay these expenses by credit card, which allows you to take a current deduction and defer actual payment.

• **Take advantage of your annual exclusion!** Your annual exclusion under the tax code is \$10,000 per person

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per year; \$20,000 if you "split gifts" with your spouse. This means that you can reduce your estate by making gifts to as many people as you'd like "estate and give tax free" so long as the gifts qualify for the exclusion. To qualify, a gift must be able to be enjoyed immediately; this doesn't mean you can't place certain restrictions on the gift in the form of a family partnership or trust. Again, if you're gifting by check, make sure you leave time for the check to clear. If you're gifting in kind, you may want to check with an attorney to see if you will need to file a gift tax return for the year 2000.

• **Pay those business expenses!** If you're a business with a calendar year end, plan now to escape the "double tax" at the end of the year. Pay those business expenses you've been avoiding; remember that paying by credit card can offer additional benefits.

• **Procrastinate!** It's the one time of the year that procrastinating makes sense. There's no need to rush at the end of the year to generate bills. Remember that income will be taxed in the year it's received (depending on your method of accounting).

For more information on this topic contact Kelly Phillips at taxgirl@erblaw.com or see www.erblaw.com/news/V1I2_2.html

Give me your highly trained technical workers, your computer geeks ...

Congress, somewhat unexpectedly, passed the "American Competitiveness in the Twenty-first Century Act of 2000" (S 2045) in the evening of October 3rd, increasing the number of H-1B visas available for fiscal years 2001 through 2003 to 195,000. H-1B visas are intended for employers needing to bring specialty workers into the country to alleviate shortages in the US labor market. The total number of H-1B visas available in a given fiscal year, running from October to September, is limited, or "capped," currently at 105,000. H-1B visa holders can remain in the United States for up to a maximum of six years in H-1B status.

H-1B visas are frequently used for highly trained computer and other technical personnel. In recent years, despite increases in the number of such visas available each year, the booming economy, particularly in the computer industry, has resulted in shortages of both technical workers and the H-1B visas needed to supplement the US work force with highly trained immigrants.

The bill also contains provisions intended to reduce the backlog in H-1B applications. It also requires that all H-1B cases approved in 1999 after the cap was reached and before October 1, 1999 be counted against the FY1999 cap, and that cases filed before September 1, 2000 be counted against the FY2000 cap. Those caps are raised retroactively to compensate for the additional numbers counted against them, ensuring that the entire 195,000 quota is available to new applicants.

Holders of valid H-1B visas will be permitted to change jobs as soon as a new H-1B visa petition is filed, rather than once the approval is received. In addition, H-1B applicants in their sixth year of H-1B status who are awaiting approval for their green card may be eligible for extensions beyond six years until their application for an immigrant visa or adjustment of status is granted or denied. Under a separate bill, HR 5382, the fee for H-1B visa applications increases to \$1000.

Additional provisions attempt to address inconsistencies in the INS'

counting of petitions against the cap and recapture unused H-1B visa approvals. A portion of the H-1B fee is allocated towards improving the skills of US workers so as to allow US employers to fulfill their hiring needs using domestic workers, and the bill also addresses the allocation of those funds to different studies and programs intended to teach US workers technical skills. Finally, the bill includes provisions requiring the INS to actively pursue programs designed to reduce processing times and petition backlogs are contained in the bill as well.

The bill now goes to President Clinton, who is expected to sign the bill into law.

For more information on this topic contact Chris Erb at jcerb@erblaw.com or see www.erblaw.com/news/V1I2_3.html

Virtual Taxes?

I'll admit it. I have www.llbean.com bookmarked on my computer. I browse www.etoys.com in search of gifts from time to time. My dog's food is on automatic reorder from www.pets.com each month. I am part of an increasing number of consumers who choose to shop online. And why not? I can sit at my computer and browse at my leisure. I can go in search of the best deals with the click of my mouse - free shipping, perhaps? I, just as much as anyone, am in search of a bargain.

Companies who market over the Internet are capitalizing on this increasing share in the retail market. And, of course, this means e-commerce is booming. Millions of dollars are changing hands each day and many of these transactions are sales tax-free. Taxing these transactions is proving to be a difficult - and politically dangerous situation.

Recently, the California legislature passed a bill that would have required retailers in California to collect sales tax on transactions over the Internet. Governor Gray Davis (D) vetoed this legislation claiming that the tax "would send the wrong signal about California's international role as the incubator of the dot-com economy." As an alternative, he approved a measure calling for

Tidbits...

We're Moving! It's been a great year for The Erb Law Firm, PC. We hope to be moving into our new office space on Main Street in Manayunk (Philadelphia) by the beginning of December. Check www.erblaw.com for details as they happen and check your mail for official change of address information!

The 1997 Taxpayer Relief Act indexed the annual exclusion for estate and gift tax purposes to reflect inflation. Since the act has taken effect, the exclusion has remained exactly where it was - at \$10,000. However, had the act taken effect in the early 1980s, according to a recent study based on government data, the exclusion would have been \$18,000 this year.

This month, workers who are 25 years old or older and who are not yet receiving Social Security benefits, will begin to receive Social Security Statements. If you qualify, you should receive your Statement about three months before your birthday.

According to a recent study, 57% of Americans fear the IRS more than God.

The Social Security Administration is cracking down on a scam targeting elderly African Americans. The scam involves flyers that claim that the US government is paying reparations to any African American born before 1927. If you know anyone who has been affected by this scam, call the fraud hotline at 1-800-269-0271.

"The hardest thing to understand in the world is the income tax."
-Albert Einstein

a state commission to report by 2004 on the implications for such a tax policy. This makes the California governor the first to be publicly confronted with the Internet sales tax issue.

The federal government has struggled in recent years to address the issue as well. Rep. Christopher Cox of

California and Sen. Ron Wyden of Oregon proposed an Internet tax moratorium in March 1997. After more than a year of negotiations, on October 21, 1998, the Internet Tax Freedom Act was signed into law, imposing a three year tax moratorium on Internet taxes. In the meantime, a national panel, the Advisory Commission on Electronic Commerce, was formed to address the issue. The Commission, chaired by the Hon. James S. Gilmore, III, Governor of Virginia, consisted of nearly 20 state and local officials and heads of such corporations as America Online, Inc. and Time Warner, Inc. After months of meetings in Virginia, NY, California and Texas, the Commission released a 75 page report (not including attachments) to Congress in April 2000, with little in the way of actual recommendations beyond extending the current moratorium.

In response to the federal government's failure to address the issue, officials from 27 states met on September 29 to discuss proposals for an interstate uniform e-sales tax. How concerned are states about the sales tax? Politically, it's dynamite. According to a recent study, almost 75% of consumers opposed Internet sales taxes. Almost 20% of consumers said that they would not make purchases online if Internet sales taxes were implemented.

However politically challenging, the issue will not go away. The Senate commerce committee is currently holding closed-door meetings to discuss Internet taxation. The EU is having similar discussions between its member countries this fall. The results of these meetings are sure to affect Internet retailers one way or the other in the near future. While it's unlikely that any such changes would affect the upcoming holiday season, the whole world (wide web) is watching...

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Reports of the death of the death tax, marriage penalty are greatly exaggerated

On 7 September 2000, US House Republican leaders failed to muster the

votes needed to override President Clinton's veto of a bill that would repeal the federal estate and gift tax system over 10 years. The House vote was 274-157, in support of the override but falling short of the two-thirds needed.

"I commend the House members who voted today to reject the majority's flawed estate tax bill," Clinton said in a written statement after the vote.

"While I support estate tax relief that addresses family farms, small businesses and principal residences, the approach taken by the majority in Congress is part of a \$2 trillion tax plan that would take us back to the days of deficits, high interest rates and fiscal irresponsibility," he said.

Democrats argued that the tax benefit would go to the richest Americans and that it would be better to raise exemptions for small businesses and farmers than eliminate the tax. Only about 2 percent of estates pay the tax, which is currently assessed on estates with assets totaling more than \$675,000. As a result of the 1997 Taxpayer Relief Act, that exemption is scheduled to eventually rise to \$1 million by the year 2006.

Republicans argued the tax, which they refer to as the "death tax," imposed an unfair burden on small business owners and family farmers who want to leave their businesses to their families.

Also as predicted, on September 13, 2000, House Republicans failed to round up the two-thirds majority needed to override President Clinton's veto of the so-called "marriage penalty". The House sustained Clinton's veto on a vote of 270-158, 15 votes short of the two-thirds necessary to overturn the veto.

The bill which would have reduced federal revenues by about \$90 billion over five years would have increased the standard deduction for married couples to the rough equivalent of two single people, and would have expanded the lowest 15 percent tax bracket for married couples.

The Democrats argued that the bill was irresponsible and did little to ease the burden of lower and middle class taxpayers. Currently, some working married couples pay more in taxes than they would if they were single. But

many other couples, mostly those with one wage earner, pay a smaller tax bill than they would as single taxpayers.

For more information on this topic contact Kelly Phillips at taxgirl@erblaw.com or see www.erblaw.com/news/V1I2_5.html

Click-eat empor

The Internet is a world of opportunity, but all of that exposure to new potential clients also exposes you and your company to new risks. A well-drafted disclaimer can limit that risk by providing users of your web site with the information they need to make informed decisions about your products and services. In a similar vein, a comprehensive privacy policy can ensure that consumers know what you are doing with their personal information and why, preventing misunderstandings which could lead to lawsuits or worse.

Although lawyers are known for disclaimers, ultimately a disclaimer serves to inform consumers. Obviously, information provided on the Internet is only intended to serve a limited purpose, be it to inform consumers about a product you would like to sell or simply to provide information for other marketing or promotional purposes. It is important to let surfers know what level of service they can expect, and what guarantees you are offering as to the quality of information and the products you are providing.

Generally, disclaimers should include information as to what services are being provided (and, more importantly, what services are not offered), whether you guarantee or warrant any of the service and at what level, and what limitations are imposed on the user of the services.

Typically, disclaimers also include a requirement that the user be at least eighteen years of age, and that the services offered are legal in the user's home jurisdiction. Depending on the nature of your web site, other disclaimers may be necessary. For example, a web site providing information on a sport may have a disclaimer as to injuries which you suffer while participating, and a legal site will almost certainly contain a disclaimer stating that information on the site is not and cannot substitute for

legal advice. Just look at our web site.

Equally important is what you will be doing with information you collect from users of your web site. In the United States, consumer protection and other laws offer incomplete protection to consumers of online services, but must be observed nonetheless. For those targeting Canadian or European clients, the rules are much more well-defined and strict. In any case, it is best to ensure that no information is collected from Internet users without a privacy policy outlining what information will be collected, for what purposes, and to with whom the information will be shared. One very important aspect of privacy is to what extent you will be collecting or distributing information which will allow you to identify particular consumers and determine their purchasing or surfing habits.

The best advice is to avoid collecting information from children. Laws in the United States and elsewhere can make things difficult for those who collect information from children without observing the appropriate regulations.

If your web site targets children, make sure you understand the limitations imposed on your activities and the collection of information.

When selling abroad, particularly to Europeans, be aware of the European Union Directive on privacy. While the United States Department of Commerce has negotiated a safe harbor for companies collecting data from Europeans, it is important to review, understand, and follow those guidelines in developing your web site. A properly drafted and readily accessed privacy policy is critical to qualifying for the safe harbor.

Think of disclaimers and privacy policies as a way to inform your web site's visitors about the services you are providing and the limitations on those services. A happy consumer is a well-informed consumer.


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