

September 2010

Article on Tanner

By: Matthew Thornton

After several years of unresolved conflict between the decisions of the Western and Middle Sections of the Tennessee Court of Appeals on several issues involving the Bureau of TennCare's claims against decedents' estates, the Tennessee Supreme Court handed down *Tanner*, 295 S.W.3d 610 (Tenn. 2009). The *Tanner* decision confirmed (1) that the one-year statute of limitations on claims against a decedent's estate starts to run on the date of death, not the date the estate is opened, (2) that the Bureau of TennCare is a "creditor", and (3) that the Bureau of TennCare's claim is not a claim for "state taxes" as referenced in TENN. CODE ANN. § 30-2-310(b). Most importantly, the *Tanner* court found that the legislative framework, as it existed in 2004 at the time of the *Tanner* decedent's death, created a "belt and suspenders approach" which placed an affirmative duty on a Personal Representative to obtain a TennCare claim release before closing an estate, even if the Bureau of TennCare had not timely filed a claim.

Because *Tanner* was decided in 2009, the Supreme Court was obviously aware of the 2006 amendment to TENN. CODE ANN. § 71-5-116 (effective January 1, 2007). Public Act, Chapter No. 639 (2006) SECTION 3 adds a new subsection (d)(4) to § 71-5-116 which reads in relevant part: "If a notice to creditors is provided to the bureau, *the bureau shall file a claim* for recovery in accordance with the requirements of Title 30, Chapter 2, Part 3." TENN. CODE ANN. § 71-5-116(d)(1)(D) (emphasis added)

The *Tanner* Court strongly implied that its holding did not address the effect of the amendment on decedents who died after January 1, 2007. Three examples of this limiting language are as follows:

(1) *Tanner* at 627 "[T]he Roberts panel adopted an interpretation of section 71-5-116 (*as it existed at the time of Ms. Tanner's death*) entitling the Bureau to recover until a waiver or release is obtained by the representative of the estate, regardless of the passage of time, because the more specific provisions of section 71-5-116(c)(2) established an implied exception to the general rule of section 30-2-310(b)." (emphasis added)

(2) *Tanner* at 628 "That amendment [the January 1, 2007 amendment], . . . is not applicable to this case, . . ."; and

(3) *Tanner* at 630 "[T]he Bureau was empowered under the terms of the applicable statute, *as then written*, to file a claim beyond the one-year period of limitation. *At least until the first day of January, 2007, when the most recent amendment took effect, claims by the Bureau were not subject to a one-year statute of limitations*, regardless of whether it received a notice to creditors." (emphasis added)

The amendment to § 71-5-116, from which the Supreme Court was so careful to distinguish its *Tanner* holding, eliminates the "belt and suspenders approach" that applied to decedents dying before the January 1, 2007 amendment to § 71-5-116. Therefore, when an estate of a decedent who died after January 1, 2007 is opened before one year from the date of death, TENN. CODE ANN. § 30-2-310(b) governs the Bureau of TennCare's claim. The text of the statute reads as follows:

Notwithstanding subsection (a), *all claims and demands not filed by the state with the probate court clerk, as required by §§ 30-2-306 - 30-2-309*, or, if later, in which suit has not been brought or revived *before the end of twelve (12) months from the date of death of the decedent, shall be forever barred*. This statute of limitations shall not apply to claims for state taxes. Claims for state taxes shall continue to be governed by § 67-1-1501. (emphasis added)

Together these two statutes appear to now place the affirmative burden on the Bureau of TennCare to timely file a claim when (1) a decedent dies after January 1, 2007, (2) when an administration has been opened before the one-year statute of limitations, and (3) when the Bureau has been provided timely notice as a creditor. If these three conditions are met and the Bureau fails to file its claim within the one-year deadline, its claim is likely "forever barred."

Estate Tax

By: Victoria Tillman

Despite all of the seminars and webcasts, I know many of us are still confused about the federal estate tax repeal and what it means, practically, for our clients and for their estate planning documents. I also know that if your clients are like my clients, they want to know what is going to happen to the federal estate tax in 2011. Unfortunately, my only honest response to that question can be to shrug my shoulders and say "I don't know."

The following is a link to seminar materials prepared by Ed Smith of Holbrook, Peterson & Smith, PLLC and Anne M. McKinney of Anne M. McKinney, P.C. The handout and Exhibits provide further guidance on what to be looking for as well as what to be doing as a result of the repeal. Also included in the materials is a chart of the bills being offered as possible solutions to the estate tax chaos.

I don't know if any of us will ever fully understand all the implications of the repeal, but I do know that 2010 will soon be over, and we will have a new estate tax regime, whatever it may be, to deal with in 2011.

ESTATE TAX 2010

2010 Estate Planning Legislative Update WebCast

Description:

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The Basics:

Credit Hours: General: 1.00

Speaker(s): [Stephanie Edwards](#) and [Bryan Howard](#)

Format: WebCast

Course Dates: 09/14/2010 - 09/14/2010

Course Schedule: September 14, 2010 12:00 PM - 1:00 PM (All times listed are in Central Time)

The Costs:

TBA Member Price: \$45.00

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TBA members who are judges, lawmakers and law students can take TennBarU onsite courses at no charge for the programming. There may be a separate charge if meals, special materials or other premium features are involved.

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SAVE THE DATES: UPCOMING WEBCASTS

SAVE THE DATE for the Estate Planning and Probate Section's webcast series which will focus on basic estate planning and probate issues and will give the viewers an opportunity to ask questions regarding issues effecting them directly. The series will run as follows:

January 18, 2011 with the first webcast at 12:00 p.m. - 1:00 p.m. and the second webcast at 1:30 p.m. - 2:30 p.m.

January 25, 2011 with the first webcast at 12:00 p.m. - 1:00 p.m. and the second webcast at 1:30 p.m. - 2:30 p.m.

Speakers for the Estate Planning and Probate Section's webcast series will be Victoria Tillman and Angelia Morie Nystrom.

More details to be provided at a later date.

SAVE THE DATE: ESTATE PLANNING AND PROBATE LAW SECTION CLE

SAVE THE DATE for the Estate Planning and Probate Section's CLE which is scheduled for February 25, 2011 in Nashville, Tennessee. This CLE has continued to grow over the years and we are looking forward to having an even larger crowd this year. As more details become available, we will update the section.

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