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By Dick Gregerson • [dick.gregerson@woodsfuller.com](mailto:dick.gregerson@woodsfuller.com)



## 85th SD Legislative Session Poised for Contentious Atmosphere

Dick's areas of law include: Government, Insurance, Litigation

In January, the biggest winter show in South Dakota begins - the 85th session of the State Legislature. At this time of year, many of my friends head for warmer weather. What do I do? I go to Pierre. Don't feel sorry for me; the trip is not compulsory. I imagine most of us remember Clement Moore's poem, "T'was the night before Christmas, when all through the house not a creature was stirring - not even a mouse." When the first of the year arrives, I think to myself: "T'was the week before the session, and all through the Senate and House, not a politician was willing to commit to a vote, not even to their spouse. Campaign promises were placed in their closets with care, in hopes that no one would remember they were there."

### ***"T'was the week before the Session and all through the Senate and the House..."***

On a more serious note, the Legislature goes into session on January 12, the main session ends on March 12, and lawmakers come back on March 29 to consider any vetoes. The Republicans remain in control of both the House and Senate. In the House, there are 43 Republicans and 27 Democrats. In the Senate, there are 21 Republicans and 14 Democrats.

The 85th Session of the Legislature has the potential for being contentious. Issues include the national economy's impact and the shortfall in State income. Election politics will impact the issues this year, an election year which includes a Congressional race, a contest for the Governor's chair, and election of Constitutional officers and the entire Legislature.

There have been 12 pre-filed bills in the Senate and 13 in the House. Eight of the Senate bills deal with sex offenders. In the House, 4 of the bills pertain to the regulation of alcoholic beverages. One of the reasons for pre-filing bills is to allow legislative committees to hit the ground running when the Session begins. Last year, there were a total of 504 bills filed. With only 40 days to complete their work, the Legislature cannot waste any time getting started.

It is sometimes difficult to predict what issues will dominate any Legislative session, but I believe the following subjects bear watching:

It has been estimated there will be a drop in State income of \$80 million. That is a lot of money in a State that has an annual budget of approximately \$1.1 billion. The Legislature will either have to cut spending or raise revenue. Raising revenue is not a popular sport, especially in an election year. There are a number of trust funds that are being looked at by some legislators as a source of revenue, but that can also be very tricky. Some of the funds are dedicated for particular purposes, while others may require a super majority vote to appropriate money from the fund. Some of these trusts are referred to as "rainy day" funds. I have heard more than one legislator state that "it is now raining" to justify taking money from those funds. An added problem is that a number of those funds are losing money or have zero growth.

State aid to education has also been affected by the money crunch. Although not fully funded, the State has

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By Mary Akkerman • mary.akkerman@woodsfuller.com

# It's 2010: Do You Know Where The Estate Tax Is?

Mary's areas of law include: Estate Planning & Probate, Taxation, Trusts

It's 2010, and the long-awaited repeal of the federal estate tax has begun. Under 2001 legislation, the federal estate tax has gradually been phased out and, as of January 1, 2010, has been completely repealed. However, repeal under the 2001 law affects only estates for individuals who die in 2010. Under current law at the time of publication of this article, the estate tax returns with a vengeance in 2011 with higher maximum tax rates of 55% and a lower exemption amount of \$1 million per person. In 2009, individuals were entitled to a \$3.5 million exemption from federal estate tax, and married couples could shelter up to \$7 million with proper planning. The maximum tax rate was 45%.

*...the Estate Tax returns with a vengeance in 2011 with higher maximum tax rates of 55%...*

Over the past year, there were several efforts by Congress to extend the 2009 estate tax exemption amount and tax rate into 2010. However, no estate tax legislation was adopted, and repeal under the 2001 law became effective. The question remains as to whether Congress will act in 2010 to prevent estate tax repeal from having any practical effect. Estates are not required to file federal estate tax returns until 9 months after the individual's date of death, and it is possible (and some would say probable) that Congress will enact new estate tax legislation by September 2010, making it retroactive to January 1, 2010.

If Congress does not enact new estate tax laws retroactively, estates of individuals dying in 2010 will escape federal estate tax, but will still be subject to applicable estate taxes assessed at the state level. Although South Dakota does not currently subject its residents to estate tax, many of our neighboring states do have estate taxes, and the exemption amounts and tax rates vary.

Under the 2001 legislation currently in effect, individuals dying in 2010 will no longer receive a "step up" in status for property subject to some exemptions. Instead, the person inheriting property will receive a "transfer" or "carryover" basis. For example, if the property had been purchased for \$50,000 by the decedent, but is worth \$100,000 at the time of the decedent's death, the person inheriting the property will receive a basis of \$50,000. Under prior tax law, the recipient would have received a "stepped up" basis equal to the fair market value of the property on the date of death. Under this scenario, if the recipient sells the inherited property for its fair market value, a 15% capital gains tax will be owed on the \$50,000 difference between the seller's basis and the fair market value.

Congress will likely make some changes before 2011 when the estate tax returns. However, the current tax climate has created some unique estate planning challenges and opportunities. If you have any questions or concerns about your current estate plan, or if you would like to explore planning opportunities, please contact one of the Woods Fuller estate planning attorneys.

In the last newsletter we listed some of the entities, events and activities Woods Fuller is proud to support in and around Sioux Falls. Here are some more: Washington Pavilion, SD Wind Energy Association, Sales and Marketing Executives, Inc., Festival of Bands, Sioux Empire Community Theater, University of South Dakota Law School, Sioux Falls Chamber of Commerce, Sioux Falls Development Foundation, Downtown Sioux Falls, March of Dimes, SD Corn Growers Association, SD Soybean Growers, Sioux Empire Baseball Association, Sioux Falls Humane Society.



By Lisa Maguire • Lisa.Maguire@woodsfuller.com

# What it Means to be a Personal Representative

## Estate Planning Quick Look

Lisa's areas of law include: Estate Planning & Probate, Taxation, Trusts

“Personal Representative” is the modern term for Executor or Administrator. This person is the one who pays bills and taxes for your estate, collects income due to your estate, and distributes your assets. If you have a Will in place, you are able to choose the person you would like to act in this capacity. If you do not have a Will in place, a Personal Representative will be appointed for you by the courts according to your state’s laws.

In South Dakota, a person does not qualify to serve as a Personal Representative if he or she is under the age of 18; if he or she is found by a judge, in a formal proceeding, to be unsuitable; or if the Personal Representative is a bank or a trust company not qualified to do trust business or exercise trust powers in South Dakota.

A Personal Representative is entitled to reasonable compensation for service performed in administering or probating your estate, as well as reimbursement for any costs or expenses advanced or paid on behalf of your estate.

*Lisa recently competed in the national qualifier at the 2009 NPC Minnesota Army National Guard North Star Bodybuilding Competition. Sanctioned by The National Physique Committee of the USA, Inc. (“NPC”), the competition is one of the largest bodybuilding competitions in the Midwest with over 75 competitors.*

*In this year’s competition, Lisa won the Master’s (age 35 - 44) category and the title of Master’s Overall Champion. She also won the title of Class E Figure Champion. Lisa went on to win the title of Figure Overall Champion. She is now qualified to compete in any of the NPC’s National competitions, held across the country, in 2010.*

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traditionally increased State aid for education every year. The Governor is asking the Legislature not to increase State aid in next year’s budget. Other agencies -- such as Health, Human and Social Services -- face a potential need for funds to provide services, such as Medicaid.

Highway funding is also a matter of great concern to most segments of our population. There are questions about the stability and amount of future federal funding. Costs of new construction and maintenance of present facilities are rising. By way of example, the cost of replacing one mile of concrete on the interstate is now close to two million dollars. With this problem in mind, the Legislature appointed an interim committee to look at South Dakota’s highway funding needs. New funding sources will be voted on by the Legislature in 2010. Funding options include raising the gas tax, increasing the vehicle excise tax and the non-commercial vehicle registration fees, and lengthening the time required to qualify for the 30 percent old car exemption. I suspect these proposed tax increases will face strong opposition.

Another bill that will be of particular interest to Sioux Falls provides local governments with the ability to impose a one cent sales tax for a specific project, if approved by the local voters. The South Dakota Municipal League is the main sponsor of this legislation and predicts strong resistance by some members of the Legislature. If enacted into law, this tax could be used by Sioux Falls to fund the planned events center.

Please give me a call if you have questions about particular bills or need a lobbyist to represent your view and interests.



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Adam R. Hoier

**Woods Fuller Welcomes Two New Associates**

Woods, Fuller, Shultz & Smith, P.C. is pleased to announce the addition of two new Associate attorneys.

Adam R. Hoier of Sioux Falls joins the firm as a general litigator. Adam graduated from the University of South Dakota with a B.S. in Political Science in 2006, summa cum laude. He earned his J.D. from the University of South Dakota Law School earlier this year. While in law school, Adam was active on the Moot Court Board and the Trial Team. He is a member of the American Bar Association and the State Bar of South Dakota.



Craig J. Krogstad

Craig J. Krogstad of Willmar, Minnesota comes to Woods Fuller to practice in Taxation, Estate Planning and Probate, Trusts and Business Law. Craig graduated from Augustana College in 2003 with a B.A. in Economics and Government. He earned his J.D. with Distinction from the University of North Dakota in 2007. Craig earned his LL.M in taxation earlier this year from the University of Florida. He is a member of the American Bar Association, State Bar of South Dakota and the State Bar of Minnesota. His membership to the State Bar of North Dakota is pending.

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