

## No good deed goes unpunished: IRS says employee gifts now subject to taxation

by GARY R. GEHLBACH

Beware, employers. Those holiday or other gifts to your staff or employees, if functionally equivalent to cash even with significant restrictions, probably constitute taxable income.

In a recent Technical Advice Memorandum issued by the Internal Revenue Service, employer-provided gift coupons with a face value of \$35 were determined to be taxable income to the employees. This was true even though the gift coupons



were subject to several restrictions.

The employer in this case was a charitable organization that traditionally had provided its employees with a ham, turkey or gift basket as an annual holiday gift. However, in an appar-

ent effort to be more politically correct and mindful that some of its employees were vegetarians, the company implemented a gift coupon program. Each employee was given a gift coupon with the employee's name and address on the front.

The face amount of the coupon was \$35, and the coupon was redeemable at several grocery stores for grocery products (excluding tobacco, alcohol and pharmacy

Gifts continued on page 2

### Inside

Grandparents raising grandchildren..... 3

New mileage rates ..... 4

In Print & At the Podium ..... 4

Deals and Decisions..... 4

## New Illinois WARN statute covers more employers

by DOUGLAS E. LEE

Beginning Jan. 1, 2005, Illinois employers with as few as 75 full-time employees are required to provide 60 days' written notice before they implement a covered "mass layoff, relocation or employment loss."

Employees with 100 or more full-time employees have faced similar requirements for several years under the federal Worker Adjustment and Retraining Notification Act. On Aug. 12, 2004, however, Gov. Blagojevich signed an Illinois version of the law, which applies to all employers in the state with at least 75 full-time employees.

While similar to the federal law, the Illinois WARN statute contains several important differences. The Illinois act, for example, defines notice-triggering events differently than the federal law. While both laws define a covered "mass layoff" as a reduction in force at a single site of employment that is not the result of a plant closing and that results in employment losses during any 30-day period for at least 33% of the employees, they have different minimum requirements.

WARN continued on page 2

## Gifts...

Continued from page 1

goods). The coupon provided that a listed grocery store had the right to reject the coupon. Moreover, the coupon could be used only once, and any unused portion would be forfeited. Finally, the coupon was valid for only two months.

In the Internal Revenue Code, "gross income" is defined as "any income from whatever source derived, including, but not limited to, compensation for services including fringe benefits." "Wages" includes "remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash," with certain exceptions. One of those exceptions is any fringe benefit that qualifies as a *de minimis* fringe benefit. A *de minimis* fringe benefit is any property or service that has a value so small that it would be unreasonable or administratively impracticable to account for it.

The term *de minimis* is actually short for *de minimis non curat lex*, which literally means "The law does not care for small or trifling matters."

Income tax regulations provide examples of *de minimis* fringe benefits that may be excluded from an employee's wages. These include:

- Occasional typing of personal letters by a company secretary;
- occasional personal use of an employer's copying machine;
- occasional cocktail parties, group meals or picnics for employees and their guests;
- traditional birthday or holiday gifts of property (but not cash) with a low fair market value;



- occasional theater or sporting event tickets;
- coffee, donuts and soft drinks;
- local telephone calls and
- flowers, fruit, books or similar property provided to employees under special circumstances (illness, outstanding performance or family crisis).

The Internal Revenue Code specifically provides that the *de minimis* fringe benefit is limited to property or services and does not include cash. The regulations provide that cash is generally not excludable as a *de minimis* fringe benefit even when the property or service provided would be excludable as a *de minimis* fringe benefit by virtue of its value. Moreover, the regulations provide that it is not administratively impracticable to account for cash, regardless of how small the amount might be.

In the particular case that is the subject of the Technical Advice Memorandum, the IRS found that the gift coupons were essentially equivalent to cash and therefore wages subject to income tax withholding and reporting.

We are reminded not to seek logic in the ways of the omniscient Internal Revenue Service. If an employer pro-

vides a nice gift basket, ham or turkey for, say, \$35 for each employee, this is probably not considered wages. However, if the employer instead provides coupons to the employees redeemable at participating businesses, those coupons will constitute taxable income subject to withholding.



## WARN law...

Continued from page 1

In Illinois, the notice is not triggered unless the layoff affects at least 25 employees (or 250 employees regardless of the percentage). Under the federal law, the layoff must affect at least 50 employees (or 500 employees regardless of the percentage).

Another difference between the laws is that the Illinois act applies to a "relocation," while the federal law does not. Unfortunately, "relocation" is not defined in the new law.

Differences also exist concerning enforcement. The federal WARN law is not enforced by a governmental agency but instead through civil lawsuits that can be brought by affected employees or their representatives. In Illinois, the new statute will be interpreted and enforced by the Illinois Department of Labor. Employers contemplating significant layoffs or plant closings accordingly should ensure that they comply with both the federal and state laws.



# Grandparents raising grandchildren face legal challenges

by Rolfe EHRMANN

At a time when the U.S. Supreme Court is limiting the rights of grandparents to visit their grandchildren, lower courts are dealing with a substantial increase in the number of grandparents who are raising their grandchildren.

This increase is a result of the growing number of parents who fail to meet their child-rearing responsibilities. Whether these failures result from teen pregnancy, strong pro-life values, drug and alcohol abuse, increasing rates of incarceration or other modern-day trends, there exist now well over 200,000 children in Illinois who are being raised by grandparents.

In addition to the social, financial and emotional issues that accompany this cultural trend, grandparents also must face the stress and expense of navigating the legal system in order to ensure they have the necessary legal authority to raise their grandchildren. This authority can be found in the legal processes known as foster care, guardianship, legal custody and adoption.

Which legal process to use often depends upon how the crisis arises. If the crisis arises because of the intervention of the Illinois Department of Children and Family Services, then DCFS may itself be the agency contacting the grandparents and asking them to assume foster care responsibilities. In some foster care cases, DCFS may choose to keep for itself the legal custody of the child and use the grandparents for providing day-to-day care. In other cases, DCFS may help the grandparents obtain legal custody, so that the grandparents will have the right to make all parental decisions on behalf of the child. When DCFS is involved, state agencies often will provide financial assistance, medical and dental insurance coverage and counseling and other support services.



Not all cases involve DCFS intervention. An increasing number of cases result from grandparents who on their own resolve a family crisis by assuming responsibility for their grandchildren. In these matters, and particularly in cases in which the responsibility may become long-term or permanent, the grandparents must confront not only the day-to-day responsibilities of raising children but also the problems of school enrollment, medical care and other serious parental decisions. To gain the legal authority needed to face these problems, grandparents have three options available through legal counsel.

First, grandparents can seek a guardianship. Guardianship is a legal arrangement through which a court gives an adult the authority to make parental decisions on behalf of a child. As legal guardians, grandparents have the power to consent to medical treatment, handle school enrollment, obtain documents such as birth certificates and, if necessary, even prevent the birth parent from seeing the child.

Through a guardianship, the rights of the birth parents are not terminated but are severely controlled. Conversely, a court can order the birth parents to pay child support and grant them visitation. Through various governmental programs, a guardian can obtain substantial financial assistance, child care and medical

and dental insurance.

Second, grandparents can seek legal custody. Legal custody is similar to a guardianship in that the court will authorize the grandparent to make all parental decisions. Because legal custody does not terminate the rights of the birth parents, the court also can order the parents to pay child support and, when appropriate, can order visitation between them and the child.

The difference between a guardianship and legal custody is that a guardianship is easier to obtain and is treated as being more temporary because its purpose is to give the parents an opportunity to resolve the conditions that led to the guardianship. A guardianship also has the advantage of eligibility for greater financial assistance. Legal custody, on the other hand, is much harder to obtain and is viewed as a more permanent placement of the child. Often, however, a custodian is not eligible for many of the financial assistance programs.

Third, grandparents can seek an adoption, the nuclear weapon in their arsenal of options. Adoption is the formal legal transfer of all parental rights to the grandparents and the termination of all parental rights of the birth parents. The grandparents become the legal parents for all intents and purposes. Unlike guardianship and legal custody, an adoption is totally permanent and cannot be modified, even if the birth parents resolve the conditions that created the crisis. Moreover, most financial assistance is not available after the adoption is finalized.

How grandparents choose among these options depends greatly upon the nature of the problems and how they might be resolved. Judges and attorneys specializing in this area find great satisfaction in being able to help those in need.



# Internal Revenue Service increases mileage rate

by GARY R. GEHLBACH

The IRS has announced that the standard business mileage rate will increase by three cents beginning Jan. 1, 2005, to 40.5¢ per mile for business miles driven during 2005. This is an increase from 37.5¢ during 2004 and represents the largest increase ever.

While an increase was expected, the IRS data to derive the new rate always lags behind. For example, the new 2005 rate reflects a test year of Oct. 1, 2003 - Sept. 30, 2004.

When driving for charitable purposes, the rate remains 14¢ per mile. The chari-

table rate is not tied to inflation. The rate for computing deductible medical or moving expenses increased from 14¢ to 15¢ on Jan. 1.

The new standard mileage rate of 40.5¢ applies to cars as well as vans and light trucks. The rate cannot be used, however, if

- the business expenses the vehicle under Section 179 of the Internal Revenue Code (which currently allows up to \$100,000 of costs that would otherwise be capitalized to be expensed);

- the business has used MACRS depreciation, which is applicable to tangible personal property placed in service after Dec. 31, 1986, that is subject to the accelerated cost recovery system under Section 168, with certain exceptions;

- the vehicle has been used as a vehicle-for-hire (such as taxicabs) or

- more than four vehicles have been used at the same time.



## In Print and At the Podium

*The Lautum News*, the newsletter of the Illinois Association of Mutual Insurance Companies, recently published an article by **Mrs. Heeg**, in which she analyzed a recent court decision construing the innocent insured defense . . . **Mr. Gehlbach** has been appointed to a subcommittee of the Illinois State Bar Association to review and recommend changes to the recent expansion of the Illinois Real Estate Transfer Tax . . . In his most recent commentaries for the web site of the First Amendment Center, [www.firstamendmentcenter.org](http://www.firstamendmentcenter.org), **Mr. Lee** described a Vermont man's successful appeal of a trial court order denying him access to a county courthouse and discussed the impact of two Pennsylvania Supreme Court rulings that make newsgather-

ing more difficult . . . **Mrs. Heeg** has been invited to serve on the 2004-05 Government Relations Committee of the Illinois Association of Mutual Insurance Companies . . . In October **Mr. Gehlbach** made a presentation on terminating irrevocable trusts for estate planning attorneys in a program presented by the Trusts and Estates Section Council of the Illinois State Bar Association . . . As president of the Dixon school board, **Mr. Lee** assisted in the presentation of a panel discussion at the convention of the Illinois Association of School Boards. The panel described the community-based committee structure the board implemented last year.



## Deals and Decisions

On behalf of the Sauk Valley College Foundation, **Mr. Gehlbach** prepared and negotiated a comprehensive agreement with the College for the development of student housing on land adjacent to the College campus . . . After a contested hearing, **Mrs. Heeg** obtained an order that an employer's worker's compensation insurance carrier was required to cover the costs of a client's future surgery . . . **Mrs. Heeg** recently obtained a bankruptcy court order that a debt owed to a client was not discharged by the debtor's bankruptcy . . . At the behest of an accountant in the Chicago suburban area, **Mr. Gehlbach** is

structuring a Type "D" corporate reorganization for two brothers involved in a substantial farming operation, under Internal Revenue Code Sections 368(a)(1)(D) and 355 . . . **Mr. Gehlbach** is the attorney for several developers in the Dixon area and also represents clients selling property to developers in the Dixon, Rochelle, Sycamore and Naperville areas . . . Defending a corporate creditor against a threatened lawsuit by the bankruptcy trustee, **Mrs. Heeg** successfully convinced the bankruptcy estate that it was only entitled to approximately one-third of the amount originally sought.

