

Moss & Barnett Advocate

Don't Get Caught in the Cold: A Former Auditor's Tax Tips for Snowbirds

By Nathan J. Thompson



Selfies and #Hashtags: Can Your Business Benefit from Social Media Influencers?

By Michael A. Bondi



College Checklist: 1. Laptop 2. Textbooks 3. Health Care Directive

By Nicholas J. Kaster



Paternity Presumptions in the Age of the Modern Family

By James J. Vedder and Brittney M. Miller



ALSO IN THIS ISSUE:

- 3 Five New Attorneys Have Joined Our Team
- 6 We're Proud to Recognize
- 8 Moss & Barnett Congratulates Our 2019 *Super Lawyers* and *Rising Stars*



Don't Get Caught in the Cold: A Former Auditor's Tax Tips for Snowbirds

Are you planning to migrate south to avoid yet another Minnesota winter? Before you pack your sunscreen and sandals, learn how the Minnesota Department of Revenue's residency rules may impact you and how to avoid potential tax pitfalls.

Snowbirds frequently find themselves on the hook for Minnesota income taxes for one of three reasons:

- **Misunderstanding the residency rules**
- **Poor planning**
- **Making mistakes during an audit**

Know the Rules

Complying with the rules is more complex than simply staying outside of Minnesota for more than one-half of the year. This is only one of the two separate tests that you need to pass.

You also need to prove that you actually moved to your sunny side beach home, which involves a 26-factor analysis. You may have heard about some of these factors, including: where you are registered to vote, in which state you have your driver's license, and whether or not you have abandoned your homestead status in Minnesota. However, auditors do not give all of these factors the same weight. A legal professional can help you understand which factors you should prioritize.

Make a Plan

You need to plan your move, which includes creating and documenting a narrative explaining when and why you intend to leave your Minnesota domicile. Auditors look for "that moment" in time when you decided to pick up roots and retire in another state.

Once you make the move, you will need to document your whereabouts. As the taxpayer, you have the burden of proof. Use a calendar to log your meetings, travel, and recreational events.



If you use a software calendar, such as Microsoft Outlook, print a date and time stamped hard copy of your calendar at the end of each year. This will help prove that your calendar entries were not made a few days before you provided it to the auditor.

Tell Your Story

Finally, do not stress if you receive Minnesota's infamous "residency questionnaire," but do not complete it alone. This is your first chance to tell your story. First impressions are important. Use the questionnaire as an opportunity to explain why you moved. The "why" may be as simple as not wanting to endure another winter of below freezing temperatures. Whatever the reason, make your response thorough and detailed. You need to convince the auditor you have actually moved and no longer reside in Minnesota.

Conclusion

Moss & Barnett possesses the experience and insight to help plan for your residency change. Do not go it alone. Please reach out to one of our Wealth Preservation and Estate Planning lawyers for assistance.



Nathan Thompson is a member of our Business Law group and Wealth Preservation and Estate Planning group. He focuses his practice on tax law and navigates clients through the complexity of the tax rules.

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Five New Attorneys Have Joined Our Team

Craig is an experienced litigator who provides employment law advice and counsel to employers and employees. He is certified by the Minnesota State Bar Association (MSBA) as a specialist in labor and employment law and is a former chair of the MSBA's Labor & Employment Law Section. Craig defends employers against discrimination, harassment, retaliation, and whistleblower claims, and often works with clients on non-compete and other contract issues that arise in the employment setting.

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Litigation
Business Law
Employment Law



Peter is an experienced securities and emerging company lawyer for the Greater Minnesota business community. He acts as outside general counsel for his clients, with a focus on serving early-stage companies and the entrepreneurs who build them. His background as a securities lawyer lends itself particularly well to companies selling securities and raising capital to fuel their growth. He also represents (and forms) private investment funds, particularly those investing in private companies at the angel or venture capital stage.

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Business Law, Closely Held Businesses,
Mergers and Acquisitions, Securities



As a litigator and trial lawyer, Bryant represents businesses and individuals in high-stakes disputes. Bryant litigates key business issues concerning partnership and shareholder rights; resolves agribusiness and agriculture disputes; defends class actions; tackles financial services, creditors' rights, and consumer litigation cases; and handles Native American Indian and tribal law issues. Bryant's understanding of the complex challenges faced by businesses today and straightforward approach define his litigation practice, which includes significant first-chair experience in jury and bench trial cases, as well as appellate cases in state and federal courts.

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Litigation
Financial Services
Business Law



Nathan advises clients on federal and state tax matters, including sales, use, and property taxes; residency planning; and multistate income taxes. Drawing on more than a decade of federal and state income tax experience, he effectively navigates intricate tax laws to provide clients with practical solutions. Nathan brings a comprehensive understanding of statutory, regulatory, and case law to his work in tax planning, compliance, and controversy issues. His services also include tax aspects of reorganizations, mergers, and acquisitions; entity formation; and controversy resolution before the Internal Revenue Service and state tax agencies.

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Business Law, Closely Held Businesses,
Mergers and Acquisitions, Securities,
Wealth Preservation and Estate Planning



Jeff practices in construction, commercial, and public procurement litigation. He advocates for and advises clients in all phases of a dispute, from pre-litigation claim and risk analysis through resolution of the case at trial, arbitration, mediation, or appeal. He also advises clients on how to avoid litigation, which often involves drafting and reviewing contracts and negotiating agreements and settlements. Jeff's engineering and project management background gives him a perspective unusual among construction lawyers.

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Construction Law
Litigation



Selfies and #Hashtags: Can Your Business Benefit from Social Media Influencers?

Two recent stories show the value of social media marketing. Cargojet provided the musician Drake with free use of a Boeing 767 jet as long as the company's name was placed on the outside of the jet and Drake made periodic posts to his more than 58 million Instagram followers. It has been speculated that the value of these posts will far exceed the cost of the jet.

Closer to home, the state of Minnesota paid Andrew Zimmern \$57,000 to promote Minnesota tourism. Under the terms of the agreement, Zimmern, a Minnesotan who gained fame for eating giraffe beetles, sautéed bumblebees, and other insects on TV, was required to make two monthly posts to his more than 1 million Twitter and other social media followers.

Even if not selling to millennials, companies should consider the potential value of social media marketing and using social media influencers to attract new customers. Platforms like Instagram, Facebook, Snapchat, and YouTube allow influencers to quickly reach their followers, often in real-time, and endorse a company or specific product.

While the Kardashians are likely the most widely known social media influencers, anyone who is active on social media can be an "influencer." Social media posts by a local meteorologist or even a star high school athlete may be of significant value for a locally owned business.

But before you send free products to a social media influencer or reach for the company checkbook, follow these steps to maximize the value of the marketing opportunity and ensure compliance with appropriate regulations:

First – Research who has social, political, and religious views that are aligned with your company's target customers. Look at recent social media posts and prior actions or statements that could negatively impact the company, including whether this person has previously supported competing products or services.



Second – Discuss the potential relationship with the person to determine if there is a good fit between your company and the social media influencer. Then, discuss compensation and the nature and number of the social media posts.

Third – Because the social media influencer must accurately promote your company's products or services, provide him or her with product samples. These samples are typically retained by the social media influencer as part of his or her compensation.

Fourth – An agreement needs to be signed between the company and the social media influencer. The agreement should include standard terms (e.g., compensation and the conditions under which the agreement can be terminated), but it should also require the social media influencer to disclose that the posts are being made in exchange for compensation.

Fifth – Because social media marketing can backfire if the influencer's comments are negative, the company should review and approve of all social media posts prior to posting.

Similar to other business agreements, working with an experienced attorney is strongly recommended when entering into an agreement with a social media influencer. Please contact Michael Bondi if you have questions about social media marketing.



Michael Bondi is a member of our Intellectual Property group. Michael focuses his practice on the preparation and prosecution of U.S. and foreign patent and trademark applications.

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College Checklist:

1. Laptop
2. Textbooks
3. Health Care Directive



I do not remember much about my high school graduation. I do not remember the “words of wisdom” imparted upon me and my fellow graduates or even receiving my diploma. What I do remember is that midway through my senior year I became an “adult.” I no longer needed a note signed by my parents justifying my tardiness or authorizing me to leave school early. My parents did not need to attend my doctor appointments or co-own my bank account with me. While I was confident in my ability to manage my own affairs, I imagine my parents felt differently about my “adult” status and ability to make my own decisions.

“Children who are 18 years of age should complete and sign powers of attorney and health care directives prior to leaving for college, starting a gap-year, or traveling abroad.”

High school graduation is an important milestone for parents and children alike – it is the platform from which children launch to pursue additional education, employment opportunities, and other adventures. However, regardless of the path they choose, high school graduates are now adults in the eyes of the law. These young adults have independent decision-making authority. They have the ability to own property, enter into binding agreements, and control who has access to their personal information (e.g., medical, academic, and financial records). Absent deliberate steps to preserve the ability to participate in and make decisions on behalf of their child, parents could be excluded and precluded from helping make these decisions.

Regardless of the age of their children, parents plan, work hard, and make countless sacrifices to ensure that their children have the opportunity to succeed. As children embark on new adventures and undertake new endeavors, it is important for them to make sure their parents or other trusted individuals can

participate in important decisions, access information, or make health care decisions in the event of an emergency. To that end, children who are 18 years of age should complete and sign powers of attorney and health care directives prior to leaving for college, starting a gap-year, or traveling abroad.

Power of Attorney

A power of attorney is a document through which a person authorizes another person to act on his or her behalf in a variety of situations. A power of attorney allows a parent to handle financial issues, including banking and insurance matters, on behalf of a child if the child is unavailable or incapacitated.

Health Care Directive

A health care directive allows a child to appoint an agent to act on the child’s behalf if he or she cannot act. For example, if the child is unconscious or otherwise unable to communicate his or her wishes relative to health care, the agent identified in the health care directive will have the authority to make those necessary health care decisions. Such decisions may include selecting medical facilities, a treatment plan, or end-of-life care.

If you or your children have any questions about powers of attorney, health care directives, or the steps to implement these documents, please contact a member of Moss & Barnett’s Wealth Preservation and Estate Planning group.



Nick Kaster is a member of our Business Law group and our Wealth Preservation and Estate Planning group. He focuses his practice on estate planning for simple to complex estates as well as estate and trust administration and business succession planning.

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We're Proud to Recognize

For over 125 years, our lawyers, paralegals, and professional staff have demonstrated dedication and tenacity in serving the needs of our clients. As we look to the future, our dedication strengthens, as does our appreciation for our clients and our community. Quality legal service is our profession, our business, and our privilege.



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"Top Attorneys in Collections"
John Rossman
Attorney

Awarded by *The Collection Advisor*

\$23.7 Million in Committed Capital Great North Labs

Moss & Barnett Client

Long-standing Moss & Barnett client, Great North Labs, a St. Cloud and Minneapolis-based early-stage venture fund focused on cultivating the next generation of tech startups across the Upper Midwest, recently made national headlines as they closed their first fund at \$23.7 million in committed capital. This is one of the largest debut seed funds ever raised in the Midwest. To learn more about Great North Labs, visit greatnorthlabs.com.



Rob Weber and Ryan Weber
Great North Labs Managing Partners and Co-Founders



**2019 Professional Malpractice Law - Defendants
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Thomas J. Shroyer
Attorney

Awarded by *U.S. News – Best Lawyers®*



Minnesota Certified Paralegal
Misty J. Tautges
Paralegal

Certification by the Minnesota Paralegal Association



"5 Under 40 Class of 2018"
Shannon M. Wiger
Business Development Director

Awarded by *The St. Cloud Times*

Paternity Presumptions in the Age of the Modern Family



Establishing a parent-child relationship creates constitutional rights and moral, social, and financial obligations. For this reason, one of the most important legal presumptions in family law cases is the presumption of paternity. But as technology has advanced and family structures have changed, determining who is a child's legal father has become more complicated. Generally, paternity is established in one of three ways:

1) Marital Presumption

The oldest and most common presumption of paternity is the "marital presumption." The presumption assumes that a child born during a marriage is the biological child of the mother's husband. Family courts continue to rely on this presumption because it is an efficient means of determining paternity.

However, the law has not kept pace with changing family structures. For example, it is unclear if the marital presumption applies to same-sex couples. Without the presumption, the non-biological parent must formally adopt the couple's child to ensure that he/she receives the same parental rights as the biological parent.

2) Biological/Genetic Connections

Genetic testing makes it possible to know with almost scientific certainty the identity of a child's biological parents. With advances in technology, it is also easier than ever to take a genetic test in the comfort of your own home. While genetic testing might seem like the perfect solution to paternity determinations, the rise of assisted reproductive technology creates situations in which the biological parent is not necessarily the child's intended legal parent (e.g., surrogacy arrangements). In those cases, genetic testing is not helpful in determining who should parent the child.

3) Intent/Functional

The intent/functional approach to paternity focuses on the actions of the parent seeking to establish the parent-child relationship instead of marital or biological connections. Courts will consider whether the man held himself out as the child's father and intended to care for the child. Fathers can also voluntarily assume parental obligations by signing an acknowledgment of paternity.

Rebutting the Presumption

Once paternity is presumed, a parent or a third party may seek to challenge the presumption of paternity. Depending on the state where the action is brought and the circumstances of the case, a party may be able to rebut the presumption of paternity by:

- Rescinding the voluntary acknowledgment of paternity within the required timeframe;
- Contesting paternity on the basis of fraud, duress, or material mistake of fact;
- Proving that the presumed father and mother of the child never cohabited or engaged in sexual intercourse during the probable time of conception;
- Establishing that the presumed father never openly held out the child as his own; or
- Submitting to a genetic test.

However, even if a party *can* successfully rebut paternity, the court is not required to allow it. The court will look at the length of time that has passed and consider whether or not disestablishing paternity is in the best interests of the child. Given the significant emotional and financial issues at stake, it is important to consult with an attorney prior to taking steps to acknowledge or rebut paternity.

Moss & Barnett's Family Law group is here to assist you with any paternity questions you may have.



Jim Vedder is a member of our Family Law group. He has significant trial and settlement experience in complex marital dissolution matters, including the division of marital and nonmarital assets, the division of closely held businesses, spousal maintenance, child support, and custody issues.

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Brittney Miller is an associate in our Family Law group. She assists clients in all family-related matters, including parenting, support, division of assets, stepparent and same-sex adoptions, antenuptial agreements, and many other issues confronting modern families.

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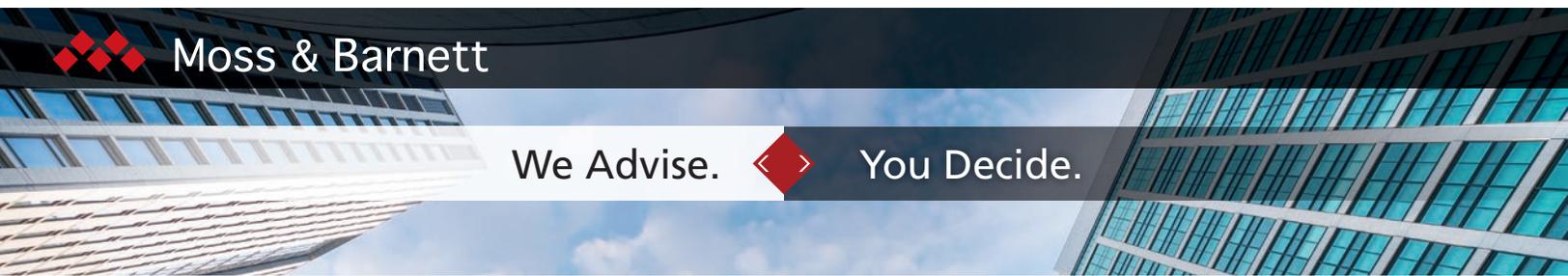
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Moss & Barnett Congratulates

Our Lawyers Listed to 2019 *Super Lawyers* and *Rising Stars**

With special congratulations to **Susan Rhode**, listed on the Top 10, Top 50 Women, and Top 100 Minnesota *Super Lawyers* lists for 2019; **Jana Deach**, listed on the Top 50 Women and Top 100 Minnesota *Super Lawyers* lists for 2019; and **Jim Vedder**, listed on the Top 100 Minnesota *Super Lawyers* List for 2019.

