



News From Giordani, Swanger, Ripp & Phillips, LLP

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ESTATE TAX REPEAL (AT LEAST FOR NOW)

Simply said, Congress did not act prior to December 31, 2009 to extend the estate and generation-skipping transfer ("GST") taxes, so as of January 1, 2010, both the federal estate and GST taxes were repealed. Although it was a widely-held belief among many estate planning professionals that repeal would never happen, it has - even if temporarily. As you may remember, the wheels for repeal were set in motion in 2001 with the passage of the Economic Growth and Tax Relief Reconciliation Act of 2001 (the "2001 Act"). Pursuant to the 2001 Act, the estate and GST tax exemption amounts increased over time to a level of \$3.5 million in 2009. The gift tax exemption amount remained at a \$1 million level between 2001 and 2009. And though the U.S. House of Representatives voted to extend the 2009 estate and GST tax exemption levels and tax rates into 2010, the Senate failed to act, meaning that there is currently no federal estate or GST tax in effect. The gift tax, however, does remain in effect at the \$1 million lifetime exemption amount. In addition, the old rules related to basis adjustments for income tax purposes were also repealed and have been replaced by a new carryover basis regime (but with a \$1.3 million exemption per person and a \$3 million marital exemption that is indexed for inflation). Though there certainly are many people who advocated the repeal of the estate tax and may be applauding the fact that it has actually happened, the bad news is that the 2001 Act will "sunset" at the end of 2010 and the federal estate and GST taxes will be reinstated at substantially lower exemption amounts and with higher rates than were in effect in 2009.

So what now? Should all estate plans be reviewed and possibly changed to reflect repeal, only to be revised again in late 2010 or early 2011? Or should estate planning professionals and their clients follow a "wait and see" approach? While we at GSRP cannot predict with certainty what will happen, we believe that the wait and see approach is appropriate for the vast majority of clients, at least for the early part of 2010. The reason

that we suggest this approach is that many practitioners and professional organizations believe that Congress will act early in 2010 to retroactively reinstate the estate and GST taxes to the exemptions and rates that were in effect for 2009. And while constitutional scholars are already taking sides as to whether a retroactive reinstatement will be constitutional, particularly as applied to those individuals who die in 2010 before reinstatement, there is precedent for retroactive tax changes. On the other hand, if Congress fails to act early in 2010, it may be appropriate for us all to consider making changes to our core estate planning documents. This may be particularly true for clients with children from a prior marriage, where the division of the client's estate between those children and the current spouse is based on a tax-driven formula, as can often be the case, or where a client's estate is to be divided between individuals and a charity or charities pursuant to a formula intended to generate little or no tax. If you have specific questions about your own estate planning situation, we certainly are available to address your questions and concerns.

PLANNING OPPORTUNITIES

Regardless of whether the federal estate and GST tax exemptions in effect for 2009 are extended retroactively into 2010, we know that in 2011 the estate and GST taxes will be in effect, possibly at much lower exemptions and higher rates. Because of this reality, you may wish to consider several planning opportunities that exist in the current low interest rate environment. With the combination of lower values - yes, lower values can sometimes be a good thing - and low interest rates, there are several planning techniques that can be particularly beneficial. It is also important to note that the interest rates crucial to this planning are currently at historic lows, and we anticipate that those rates may begin to increase (perhaps dramatically) in the near future. These strategies are:

1. **Intra-Family Loans** - Family members may make low interest rate loans to one another without incurring gift tax as long as the interest rate charged satisfies a minimum rate established by the federal government. For example, the minimum annual rate for a long-term (more than 9-year term) loan (the "AFR") is currently only 4.11%. Assuming the borrower (typically a child or more remote descendant) can invest in an asset yielding a higher interest rate than the AFR, significant value can be passed from the senior to the junior generation free of any transfer tax.
2. **GRATs** - Under current Treasury regulations, individuals can pursue a useful technique whereby the individual funds a "grantor retained annuity trust" with a low-value asset(s) that the individual expects will rapidly appreciate in the near future. The grantor retains an annuity interest in the trust sufficient to eliminate all or most gift tax liability for funding the trust. Specifically, the grantor must receive annual payments from the trust equal to a percentage of the trust's initial assets. The great benefit of this planning is that any appreciation in the assets that funded the trust in excess of a required minimum rate passes to the trust's remainder beneficiaries free of gift tax.
3. **Installment Sales** - A third technique that can be quite beneficial, especially in a low interest rate environment, is an installment sale to a grantor trust. The grantor establishes a trust that is a grantor trust for U.S. income tax purposes. This means that the grantor is taxed for income tax purposes on any income generated by the trust. Similar to GRAT planning, the grantor then sells an asset to the trust that the grantor expects will significantly appreciate in value in the next few years. The grantor retains a note bearing an interest rate at least equal to the then-applicable AFR. Assuming the note is otherwise properly structured, the value of the asset in excess of the principal plus interest reflected in the note is removed from the grantor's taxable estate. Furthermore, extra benefit is added (and additional value is shifted to the trust's beneficiaries) because the grantor continues to pay the income tax with respect to the trust's assets, and the grantor's payment of the income tax is not treated as an additional gift to the trust. In addition to considering whether the use of one or more of these techniques is appropriate for you and your family, you should also note that there continues to be discussion in Congress and the U.S. Treasury about whether the use of valuation discounts should be allowed for gifts of limited partnership interests and the like, and whether the rules that govern the use of GRATs should be tightened. Many clients and their families have realized substantial gift and estate tax savings by planning with family limited partnerships and GRATs; and, while their use is not appropriate for every family, we are happy to discuss whether these techniques might be appropriate for you to consider at this time.

BEST LAWYERS ANNOUNCEMENT -- DERRY SWANGER

GSRP is very proud to announce that Best Lawyers has named Derry Swanger as the "Austin *Best Lawyers* Trusts and Estates Lawyer of the Year" for 2010 for the ability, professionalism, and integrity he has demonstrated in his practice encompassing traditional and sophisticated estate planning, asset protection, estate and trust administration, and charitable giving. Only a single lawyer in each specialty in each community is honored as the "Lawyer of the Year." Mr. Swanger is board certified in Estate Planning and Probate Law by the Texas Board of Legal Specialization, is a Fellow of the American College of Trust and Estate Council, serves as a legal advisor to the Ballet Austin Foundation, and is an active member of various other professional organizations.



NEW WEBSITE

GSRP is proud to announce the launch of our firm's new and much improved website. GSRP.com provides visitors with the most current news and resources from the firm and third parties, attorney biographies, and explanations of the firm's practice areas. We hope that you find our website a resourceful tool and visit often.

As a strong supporter of local art and art business communities, GSRP has dedicated a special section of the new website to display the beautiful works of art seen throughout our office. As you will see, GSRP's artwork served as the inspiration for the website's design.

www.gsrp.com

RETIREMENT ANNOUNCEMENT -- PENNY DEDMAN

It is with bittersweet emotions that GSRP announces the retirement of Practice Manager, Penny Dedman. Mrs. Dedman's contribution to the firm's practice and her dedication to client service over her 17 year affiliation have been extraordinary and exemplary. In addition to providing superior client service, Mrs. Dedman was a mentor and teacher to many in GSRP's ranks. She will be deeply missed.



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