

CLOSING GRAT WINDOW AND OTHER DEVELOPMENTS

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1. The window is closing on short-term grantor retained annuity trusts (“GRATs”). Proposed GRAT limitations have resurfaced as a key revenue raiser for H.R. 5486, the “Small Business Jobs Tax Relief Act of 2010.” Significantly, this legislation was introduced on June 8 by Sandy Levin, Chair of the House Ways and Means Committee. As introduced, the proposal would:

- Require a GRAT to have a term of no less than 10 years;
- Require the remainder interest of a GRAT to have a value greater than zero; and
- Require that the GRAT annuity amount not decrease over the first 10 years of the GRAT term.

As you may remember from a prior *Tax News You Can Use* (4/1/10), H.R. 4849, passed by the House in late March, included identical GRAT provisions; there has been no further action on that bill—in fact, many of its provisions have been moved to other pieces of legislation.

Now, however, with the introduction of H.R. 5486, the GRAT limitations are once again front and center, estimated by the Joint Committee on Taxation to raise \$5.4 billion over 10 years. According to Chairman Levin, we can expect action on the new legislation—including the GRAT provisions—in the next two weeks.

Implication: Clients who are considering short-term GRATs need to decide now. The new GRAT limitations are proposed to be effective for transfers that occur after the date of enactment, i.e. after the date that President Obama signs the final bill into law. There is still a narrow window of opportunity—but it is closing!

2. “Extenders” on the move . . . The “extenders,” a group of about 50 tax incentives for individuals and business that expired at the end of 2009, are now part of H.R. 4213, “The American Jobs and Closing Tax Loopholes Act of 2010.” This pending legislation, passed by the House of Representatives on 5/28/10, would extend two important charitable provisions through 12/31/10:

- The IRA charitable rollover, available to individuals over age 70 1/2 for amounts up to \$100,000; and

- The enhanced charitable deduction for qualified conservation contributions, including conservation easements.

As we go to press, the Senate is debating pay-fors for this legislation—in particular, new “carried interest” provisions, which would dramatically change the taxation of amounts received by investment fund managers. At present, these amounts are generally taxed as capital gain; the Senate’s proposed “carried interest” provisions (which represent a significant retreat from those passed by the House) would tax up to 65 percent of what is received as ordinary income.

Another important revenue raiser being debated would ensure that certain professional service providers pay self-employment tax on their share of S corporation or partnership income attributable to a “professional service business.” “Professional services,” for this purpose, would include activities in the fields of health, law, lobbying, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, investment advice or management, or brokerage services. According to Max Baucus, Chair of the Senate Finance Committee, the House-passed version of this provision “needs some work.”

- 3. Charitable giving still strong.** On June 9, Giving USA Foundation released its analysis of 2009 charitable contributions, which totaled \$303.75 billion nationwide. Even with the downturn in the economy, charitable giving declined only by an inflation-adjusted 3.2 percent, compared with the revised estimate of \$315.08 billion for 2008. Individual, bequest, and estimated family foundation giving combined were about \$266.61 billion, or 88 percent of the total. Northern Trust administers over 2,000 charitable trusts and foundations for its personal clients.

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