The Guttenberg Press

PRESERVING YOUR ASSETS ... PLANNING YOUR FUTURE

LAW OFFICES OF ARYEH GUTTENBERG • 2835 SMITH AVE. • SUITE 201 • BALTIMORE MARYLAND 21209 • 410-484-7711
www.guttenberglaw.com

Fall 2008

Dear Friend,

Many of our country's financial institutions are in a state of turmoil. There are worries about jobs, a credit crunch, higher gas prices, a volatile stock market and declining home prices. It's a good time to focus on estate planning basics and making sure all your documents are in place and up-to-date, such as your will, life insurance trust, general power of attorney and health-care proxy.

Challenging times create opportunities. Depressed stock and real estate markets present valuable opportunities for shifting wealth to the next generation at a low tax cost– either through tax-free gifts or strategies such as GRATs that thrive in low interest rate environments.

Our eye is now on the presidential election. There appear to be major differences between the candidates, but as we "divine" in the lead article, these differences are unlikely to have a significant effect on federal wealth transfer taxes. But your documents must be up-to-date with appropriate trusts to utilize the projected $1.5 million increase in the federal estate tax exemption in 2009 (to $3.5 million) and to save Maryland estate taxes through a "state-only-QTIP trust."

Wishing you a happy fall season and a Shana Tova. Let's stay in touch!

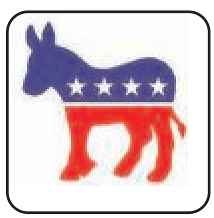
Aryeh

The 2008 Presidential Election and the Future of the Estate Tax: Prognosis and Strategic Planning

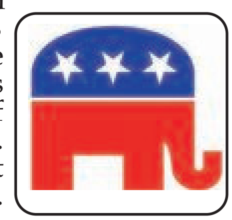
As most of us have come to realize, the law "on the books" affecting the federal estate tax is patently absurd. In 2008, there is a per person federal estate tax exemption of $2 million and a tax rate of 45%. The exemption is scheduled to increase to $3.5 million in 2009 (at the same 45% rate) but is scheduled to be repealed in 2010 and then come back in 2011 with an exemption of $1 million and a 50% rate.

What impact does the presidential election have on the future of the estate tax?

I had occasion to address this issue and speak at a conference in Washington, D.C. in June, 2008 as part of the annual AIPAC meeting. (You can view my PowerPoint presentation on our website.) In addition to speaking, I actually posed the question to Republican and Democratic staffers alike-- some of whom attended my presentation. And I pored through the candidates' written statements and websites.



Here's my take: It's pretty clear that even though who will be the next president is very uncertain at this point, the future of the federal estate tax is clearer now than it has been in many years. That's because both John McCain and Barack Obama are against full repeal of the federal estate tax in 2010. There are, however, differences between them. McCain supports a $5 million exemption with a reduced tax rate of 15% (linking the estate tax with the current capital gains rate), while Obama supports maintaining the increased exemption and rate of 2009 (i.e., $3.5 million exemption and 45% rate). But the differences may not be all that significant for a couple of reasons. First, while George W. Bush made the federal estate tax a central component of his 2000 campaign (and did attempt to repeal the tax), the estate tax does not appear to be high on McCain's agenda. And second, with a Democrat controlled Congress, any sweeping change may be difficult to pass.



Continued on page 2, column 2

IN THIS ISSUE:

FDIC Insurance - Who is insured and for how much?

With all the economic woes of the past few months, one of the most nerve wracking situations to come about is the collapse of a bank. We have all read about the collapse of IndyMac Federal Bank, FSB. This bank was FDIC; nevertheless, its collapse sent shock waves through the economic world and shivers up and down the spines of many investors. It is often difficult to monitor the solvency of a bank. Even the regulators have a hard time. You should be aware that the FDIC insures deposits at banks in case of a failure. (The National Credit Union Share Insurance Fund offers similar coverage to credit unions.) The insurance protection offered by the FDIC is "$100,000." Coverage is not necessarily $100,000 "per person" or even "per account." Our office has received numerous inquiries regarding all sorts of bank accounts, how to title them and how much should be in each of them – in order to secure the $100,000 insurance protection from FDIC. Although we can't go through all possibilities, following are examples of some situations we have encountered. The answers may be somewhat surprising and counterintuitive.

1) John and Mary Doe have $200,000 in their joint savings account. One would think that the FDIC insures this account for $100,000. That is incorrect! It is $100,000 **per account, per name on the account**. Therefore, this account is FDIC insured for $200,000.

2) John and Mary Doe have $800,000 in their joint savings account. They have 4 children and list each of them as POD (payable on death) beneficiary on the account. Again, based on intuitive thinking how much would be insured? $200,000 like the first example? **No.... the entire $800,000 is insured!** John would have $100,000 of insurance for each child and Mary would have $100,000 insurance for each child. (Of course, the POD designation may not be beneficial for one's overall estate plan where the objectives may require that assets pass into testamentary trusts to minimize federal and state estate taxes.)

The federal government has set up a website, www4.fdic.gov/EDIE (rather user friendly) to navigate through and even do some calculations – and arrive at an estimate of insurance. You would be surprised at many of the results.

continued from page 1

So what will likely happen?

It is pretty clear that regardless of who becomes the next president, the federal estate tax will be with us in some form in 2010 and beyond. As Michael Graetz, a Yale Law School Professor, put it: "The only thing we know cannot happen is what the current law says will happen." (Quoted in the Wall Street Journal, July 2, 2008.) It's also likely that Congress will act in 2009 (no matter who is president) to fix the current absurdity of a 1-year repeal and will probably maintain the exemption at somewhere around the $3.5 million mark.

2008-2009: A good cardiologist or a good estate planning attorney?

So, we probably will avoid some bizarre scenarios of people being kept alive on respirators until 2010 solely to escape the estate tax. But let's look at the transition from 2008 to 2009. The increase in exemption by $1.5 million (from $2 million to $3.5 million) could save significant estate dollars for those dying in 2009 rather than 2008. Indeed, the Wall Street Journal ("*Stayin' Alive: How to Cheat the Estate Tax,*" July 2, 2008) wrote half in jest about how "prudent" it was to stay in good health until 2009. The Journal quoted Douglas E. Schoen, a successful political consultant and author, who commented that "it's less important to have a lawyer for sophisticated estate planning than to have a good cardiologist." So, perhaps I'm the wrong person to write this piece! Truth be told, in recent memory, I can't recall such a large increase in the federal estate tax exemption. The projected increase is clearly significant and the goal is to ensure that appropriate strategies and structures are in place for 2009.

Impact of Tax Changes on Wills for Married Couples: The Gloss of the Maryland Estate Tax

Besides staying in good health, as we head into 2009 and the concomitant significant increase in exemption, Wills for married couples should contain the following trusts (or array of trusts) designed to maximize both federal and Maryland estate tax savings and to preserve flexibility in a time of legislative uncertainty.

- *Appropriate trusts to provide for full use of both spouses' exemptions*– effectively sheltering up to $7 million of assets from estate tax in 2009.

- *Special state-only QTIP trust for Maryland domiciliaries.* This is important now, but looms even more important in 2009. That is because use of the full $3.5 million estate tax exemption of the first spouse (to a trust) could engender a Maryland estate tax on the death of the first spouse (due to the gap between the federal estate tax exemption and the Maryland estate tax exemption). That tax could reach $99,600 in 2008 but could be as high as $229,200 in 2009- as the gap between the two exemptions widens! The Maryland-only QTIP trust, which could serve to defer (or in some cases to totally eliminate the Maryland Estate Tax) must be carved out or included in the Wills of virtually every married couple who has assets of greater than $1 million.

- *Flexible trusts that can allow for critical post-mortem planning*. These trusts can either be triggered by a "disclaimer" (called "disclaimer trusts") or trusts that under its terms are divisible and can be bifurcated for maximum estate tax savings, (I refer to them as "divisible trusts"). Use of these trusts afford us a second look at estate planning- even after death.

If your Wills and estate plan do not provide for the above trusts, you should call us to make sure you take full advantage of the available strategies which could result in rather hefty tax savings.

Key Tax Changes in the 2008 Housing Act

The "American Housing Rescue and Foreclosure Prevention Act of 2008" (which we will refer to as "the Housing Act") was signed into law by the President on July 30, 2008. This sweeping measure is designed to shore up the ailing housing market as well as tighten lending practices and reform financial institutions associated with that market. But the new legislation also contains various tax changes that could be of significance or use to our clients. These changes include tax breaks for home buyers and homeowners, relaxed requirements for tax-exempt bonds, eased AMT rules, tax changes for businesses, as well as highly specialized changes affecting low-income housing and special investment vehicles called Real Estate Investment Trusts (REITs).

I'm writing to give you an overview of the selected tax changes in the Housing Act that may affect you, your family, your investments, or your business.

A tax credit—with a twist— for first-time home buyers

The new law gives first-time home buyers a $7,500 tax credit (or, in the unlikely event the home costs less than $75,000, a credit equal to 10% of the home's purchase price). The top credit amount is $3,750 for married persons filing separate returns. The new credit, like other tax credits, reduces a person's tax liability on a dollar-for-dollar basis (and if the credit is more than the tax you owe, the difference is paid to you as a tax refund). However, unlike other Federal tax credits (for example, the child credit), the new credit must be paid back to the Government ratably over a period of 15 years. So, as a practical matter, the new credit for first-time home buyers is the equivalent of an interest-free loan from the Government.

A number of terms and conditions must be met for the credit to apply. The two key rules are that:

(1) you (and if married, your spouse) didn't own a principal residence during the 3-year period before you make the credit-eligible home purchase; and

(2) you must buy a new principal residence after April 8, 2008, and before July 1, 2009.

The credit for new home buyers is available in full only if AGI (adjusted gross income, with some modifications for highly specialized income) doesn't exceed $150,000 if you file a joint return ($75,000 for all other filers). The credit phases out over the $150,000 to $170,000 AGI range for joint filers ($75,000 to $95,000 for all other filers).

In general, you claim the credit on the tax return you file for the year you buy the principal residence. However, if you buy the home after Dec. 31, 2008, and before July 1, 2009, you have the option of claiming the credit on your 2008 tax return instead of your 2009 tax return.

You'll have to start paying back the credit over 15 years as an extra tax amount on your Federal returns beginning with the tax return for the second year after the year in which you buy the new home. First-time home buyers who buy principal residences in 2008, and claim a $7,500 credit, will pay it back (1) starting with the 2010 tax return they file in 2011, and (2) ending with the 2024 tax return they file in 2025, at the rate of $500 per year.

In general, the payback of the credit is accelerated if you sell the principal residence (or stop using the home as your principal residence) before the end of the payback period.

Reduced homesale exclusion for some sellers

After 2008, some home sellers who don't use their properties as principal residences for their entire ownership period may wind up paying more of a tax bill than they would under current rules (or pay tax when none would be owed currently). The tax break affected is the homesale exclusion, which generally allows up to $250,000 of homesale profit to be tax-free if a home was owned and used by the seller as a principal residence (i.e., main home) for at least 2 of the 5 years before the sale. In general, the tax-free break can only be used once every 2 years. The tax-free profit amount is up to $500,000 for married taxpayers filing jointly for the year of sale if several conditions are met. A reduced maximum exclusion may apply to taxpayers who must sell their principal residence because of health or employment changes (or certain unforeseen circumstances) and as a result (1) fail the 2-out-of-5-year ownership and use rule, or (2) previously used the homesale exclusion within two years.

For sales after 2008, the homesale exclusion will be reduced proportionately for the period of time a home wasn't used as a principal residence. The prime example is a vacation home that is turned into a principal residence by its owners, but the new rule also can hit individuals who use a property as a main home for a while, rent it out for a period of time, and then move back in. There are, however, a number of exceptions. For starters, pre-2009 periods of non-principal-residence use don't count, and neither do periods of temporary absence totaling no more than 2 years due to health or employment changes (or certain unforeseen circumstances), or up to 10 years of absence for qualifying members of the military or certain government employees. Finally, non-principal-residence use doesn't count if it occurs (1) in the five years preceding the sale, but (2) after you permanently stop using the home as a main home.

As you can see, the new rule is quite complex and down the road will cause big headaches for some home sellers unless they're careful and get proper advice.

Specialized AMT relief provisions

The AMT (alternative minimum tax) means a higher tax bill only if the "tentative minimum tax" (the tax found by applying the AMT rules) exceeds the regular tax bill. The AMT is a hazard because many tax breaks ("preferences") allowed for purposes of calculating regular taxes are disallowed for AMT purposes, and some types of income exempt from regular tax are added back to arrive at tentative minimum tax.

The new law includes the following specialized relief measures for individuals and businesses:

- The tax rules provide an income tax credit for putting up low-income housing, and another income tax credit for rehabilitating older buildings. Under current rules, these tax credits are allowed in full against regular income taxes, but can't be used to offset the AMT. Under the new law, the low-income housing credit claimed for buildings put in service after 2007, and the rehabilitation credit for post-2007 expenses, can both be used to offset the AMT.

- Interest on certain tax-exempt private activity bonds is taxed for AMT purposes even though it's tax-free for regular tax purposes. The new law exempts from the AMT three special classes of bonds issued after July 30, 2008: (1) certain exempt facility bonds used at least 95% for qualifying residential rental projects; (2) qualifying mortgage bonds; and (3) qualifying veterans' mortgage bonds.

Things We've Been Up to Lately

◗ Our paralegal, Liz Lefkowitz, had a very exciting year and we all share in her joy. Congratulations on the recent marriage of her son, Rafi, to Vered Zafrany which took place in Los Angeles on May 22, 2008. The wedding was followed shortly afterwards by Rafi's graduation from UCLA Medical School. Mazel Tov to Liz also on the high school graduation of her son, Eitan, from Yeshivat Rambam– as co-valedictorian.

◗ Aryeh presented a seminar at the AIPAC policy conference at the Washington Convention Center on June 1, 2008 on behalf of the American Israel Education Foundation. Aryeh's topic was "Successful Transfer Tax Planning in a Time of Legislative Change." Please see our website to view Aryeh's PowerPoint presentation.

◗ Sandy and Aryeh are happy to share with you the joy of the birth of our 5th grandchild, Avi, born to our children, Rikki and Chaim Ambinder. We also take great pride in announcing the graduation of our son, Gary, from Brooklyn Law School as well as the graduation of our daughter, Rikki, from Stern College of Yeshiva University.

◗ We are happy to announce that Erin Stickles has been promoted to the position of paralegal at our office, where she will join Liz as part of our paralegal corps. Erin has already had extensive experience in assisting Amanda in trust and estate administration matters. Erin and Liz are both members of the Paralegal Section of the Maryland State Bar Association.

לשנה טובה תכתבו ותחתמו

Law Offices of
Aryeh
Guttenberg

TELEPHONE: 410-484-7711 • FAX: 410-484-3533
WEB: www.guttenberglaw.com
EMAIL:
Aryeh Guttenberg: aryeh@guttenberglaw.com
Amanda Hunt Franklin: amanda@guttenberglaw.com

ESTATES AND TRUSTS
- Estate and Trust Planning
- Will and Trust Preparation
- Estate and Trust Administration
- Charitable Gift Planning

BUSINESS
- Formation – Corporations, Partnerships, Limited Liability Companies
- Planning and Structuring
- Business Succession Planning
- Business Agreements
- Mergers and Acquisitions

TAX
- Planning and Structuring
- Representation Before IRS and Federal Courts
- Private Foundations

Law Offices of Aryeh Guttenberg
The Atrium at Greenspring
2835 Smith Ave• Suite 201
Baltimore, Maryland 21209

PRSRT STD
U.S. POSTAGE
PAID
BALTIMORE MD
PERMIT NO. 6648