Proskauer

newsletter

Wealth Management Update

April 2014
in this issue

A monthly report for wealth management professionals.

Edited by **Henry J. Leibowitz**

Contributor: **Anat D. Simantob**

As part of our ongoing efforts to keep wealth management professionals informed of recent developments related to our practice area, we have summarized below some items we think would be of interest. Please let us know if you have any questions.

April Interest Rates Hold Steady for GRATs, Sales to Defective Grantor Trusts, and Intra-Family Loans

The April applicable federal rate ("AFR") for use with estate planning techniques such as CRTs, CLTs, QPRTs and GRATs is 2.2%, the same rate as March. The rate for use with a sale to a defective grantor trust, self-cancelling installment note ("SCIN") or intra-family loan with a note of a 9-year duration (the mid-term rate, compounded annually) declined slightly, to 1.81%. Lower rates work best with GRATs, CLTs, sales to defective grantor trusts, private annuities, SCINs and intra-family loans. The low AFR presents a potentially rewarding opportunity to fund GRATs in March. Current legislative proposals would significantly curtail short-term and zeroed-out GRATs. Therefore, GRATs should be funded immediately in order to be grandfathered from the effective date of any new legislation that may be enacted.

Clients also should continue to consider "refinancing" existing intra-family loans. The AFRs (based on annual compounding) used in connection with intra-family loans are .28% for loans with a term of 3 years or less, 1.81% for loans with a term of 9 years or less and 3.32% for loans with a term of longer than 9 years.

Thus, for example, if a 9-year loan is made to a child and the child can invest the funds and obtain a return in excess of 1.81%, the child will be entitled to retain any returns over 1.81%. These same rates are used in connection with sales to defective grantor trusts.

Highlight of Obama's FY 2015 Budget Plan – New Category of Annual Exclusion Gifts

For the first time the fiscal year budget includes a proposal for a new category of annual exclusion gifts. This new category would impose an annual limit of $50,000 per donor on the donor's transfers of property within the category and would eliminate the present interest requirement for such gifts. The new category would include transfers in trust and other transfers of property that, without regard to withdrawal, put, or other such rights in the donee, cannot immediately be liquidated by the donee.

Estate Of Richmond – Tax Court Uses A Net Asset Value Method To Determine Decedent's Interest In A Family-Owned Personal Holding Company and Rejects The Estate's Lower Value Which Used The Capitalization-Of-Dividends Method

The Decedent in this case owned a 23.44% interest in a family holding company, Person Holding Co. ("PHC"). PHC's assets consisted of publicly traded securities. Decedent was one of the three largest shareholders.

In the years before Decedent's death, PHC followed a philosophy of maximizing dividend income. It paid dividends reliably at a rate that had grown slightly more than 5% per year in the years from 1970 to 2005.

The estate engaged an accounting firm to value Decedent's PHC stock. The accountant, who was not a certified appraiser, used the capitalization-of-dividends method and provided an unsigned draft of the valuation report. The estate never asked him to finalize the report and used the unsigned draft on the Estate Tax Return.

The Court stated that the theory behind the income capitalization valuation method is that if an asset produces a predictable income stream, its value can be ascertained by calculating the present value of the future income stream. The Court further noted that such method is entirely appropriate where a company's assets are difficult to value, but not appropriate in the present case because the method ignored the most reliable data of value, i.e., the actual market prices of PHC's publicly traded securities.

The Court thus rejected the estate's value and upheld a large valuation misstatement penalty, finding that the estate failed to demonstrate good faith or reasonable cause for its low value. The Court was particularly concerned in this regard that the estate did not hire a qualified appraiser.

Gaied v. New York State Tax Appeals – The New York State Court Of Appeals Finds That New York May Only Tax Taxpayers Who Maintain a Residence in New York For Personal Use

The New York Court of Appeals reversed a decision of the New York State Tax Appeals Tribunal (the "Tribunal") and rejected years of administrative interpretation regarding New York's statutory resident test. Under New York tax law, New York may impose its personal income tax on the worldwide income of an individual who is domiciled in another state if he or she: (i) maintains a permanent place of abode in New York for substantially all of the tax year and (ii) spends more than 183 days in New York.

The New York State Department of Taxation and Finance had traditionally taken the position that the taxpayer need not actually live in the abode to meet the first prong of the test. The Court of Appeals rejected this interpretation and held that in order to qualify as a permanent place of abode there must be some basis to conclude that the dwelling was utilized as the taxpayer's residence.

Estate of Karter Yu – Australian Court Admits to Probate a Will Created On An iPhone

The Decedent committed suicide in September 2011. Shortly before, he created a series of documents on his iPhone. One document stated, "This is the last Will and Testament"

of the Decedent and referred to his address. The document set out his testamentary intentions regarding his entire estate, named executors, and included the Decedent's name at the end of the document where a signature would typically appear.

Australian law provides that if a Court is satisfied that a person intended a document to form his or her Will, then the document is a Will as long as three conditions are met: there has to be document, it has to purport to state the decedent's testamentary intentions, and the decedent had to intend it to form his Will. The Court concluded that the iPhone Will met all these requirements and admitted the Will to probate.

The Personal Planning Department at Proskauer is one of the largest private wealth management teams in the country and works with high net-worth individuals and families to design customized estate and wealth transfer plans, and with individuals and institutions to assist in the administration of trusts and estates.

If you have any questions regarding the matters discussed in this newsletter, please contact any of the lawyers listed below:

BOCA RATON

Albert W. Gortz
561.995.4700 — agortz@proskauer.com

George D. Karibjanian
561.995.4780 — gkaribjanian@proskauer.com

David Pratt
561.995.4777 — dpratt@proskauer.com

LOS ANGELES

Mitchell M. Gaswirth
310.284.5693 — mgaswirth@proskauer.com

Andrew M. Katzenstein
310.284.4553 — akatzenstein@proskauer.com

NEW YORK

Henry J. Leibowitz
212.969.3602 — hleibowitz@proskauer.com

Lisa M. Stern
212.969.3968 — lstern@proskauer.com

Philip M. Susswein
212.969.3625 — psusswein@proskauer.com

Ivan Taback
212.969.3662 — itaback@proskauer.com

Jay D. Waxenberg
212.969.3606 — jwaxenberg@proskauer.com