



Private Client Alert

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The Grantor Retained Annuity Trust ("GRAT") GOING . . . GOING . . . GONE?

There now appears to be little doubt that one of the most popular—and effective—estate planning techniques—the GRAT—will no longer be available as a means of transferring significant wealth with virtually no gift or estate tax cost. Therefore, IMMEDIATE ACTION is recommended for clients who may be interested in creating a new GRAT or wish to consider "freezing" an existing GRAT that is "in the money."

On June 15, 2010, the House passed a small business tax bill, H.R. 5486 (the "Bill") which is basically identical to the bill it passed on March 24, 2010. The Bill would prohibit (1) GRATs with a term of less than 10 years, and (2) GRATs that have a gift tax value of \$0 (so-called "Zero-ed Out GRATs"). The GRAT proposal is a popular "revenue offset" to numerous pieces of desirable legislation and therefore appears increasingly likely to be enacted by the Senate. President Obama has indicated that he is in favor of this provision, so passage by the Senate is the only remaining impediment to the GRAT changes becoming law. The Bill would become effective on the date of enactment by Congress. This means that a new GRAT must be executed and funded before the date of enactment.

A GRAT is a gift and estate planning technique which uses IRS approved discount factors to make gifts that "leverage"

your \$1 million lifetime gift tax exemption (\$2 million combined with a spouse). Most often GRATs are created with a short term (usually between 2 and 5 years) and are structured in a way that the reported gift tax value of the gift of the remainder interest in the GRAT is \$0 or close to \$0. To view the Private Client Group publication that describes the GRAT technique in more detail please visit <http://www.blankrome.com/siteFiles/PrivateClient-GRATs.pdf>

A GRAT can be funded with virtually any type of asset, including closely held business interests and marketable securities. For a GRAT funded in June 2010, during which the IRS approved discount factor is only 3.2%, any appreciation in the assets transferred to the GRAT in excess of 3.2% can pass to the GRAT's beneficiaries gift and estate tax free. The assets of existing GRATs that are currently "in the money" (i.e., the value of the GRAT's assets exceed the remaining annuity payments), can in many cases be transferred to a new GRAT with a longer term in order to enhance the appreciation that will ultimately pass to the GRAT's beneficiaries.

If you have an existing "in the money" GRAT, or are contemplating creating a new GRAT, you should contact your attorney within the Private Client Group as soon as possible. ■

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