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The Return of GRAT Restrictions

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On June 28, 2011, the Senate introduced Senate Bill 1286 (known as the Trade Adjustment Assistance Extension Act of 2011), which contains the same GRAT restrictions that were introduced in numerous bills in the House of Representatives and Senate in 2010. The comprehensive 2010 tax act enacted in December 2010 did not include any GRAT restrictions. Thus, in 2011, the use of GRATs has not been curtailed or restricted.

The new Senate bill provides that (i) GRATs must have a minimum 10 year term and (ii) the remainder interest of the beneficiaries of a GRAT at the time of the transfer must have a value greater than zero. If enacted, the bill would prohibit “zeroed-out GRATs,” that is, GRATs where the full value of the assets contributed by the Grantor will be paid back to the Grantor in the form of an annuity so that the remainder interest will have a value of zero. No guidance has been offered to provide what the minimum value of the remainder interest must be. One other restriction of note: the annuity payment itself cannot be reduced year-to-year during the 10 year term. Without this restriction, it may have been possible to create the economic equivalent of a short term GRAT.

For those people who are interested in short term GRATs, now may be the time to accelerate the implementation of them if you believe the GRAT restrictions will become law.

It is unclear what the effective date of Senate Bill 1286 would be. The bill provides that amendments made under the section of the bill restricting GRATS would apply retroactively to transfers made after December 31, 2010 but the same GRAT restrictions set forth in the Administration's 2012 revenue proposals provide that the proposal would apply to trusts created after the date of the enactment of the bill.

We will keep you apprised of the developments of this legislation.

Cole, Schotz, Meisel, Forman & Leonard, P.A.

Court Plaza North
25 Main Street
Hackensack, NJ 07601
Phone: (201) 489-3000

900 Third Avenue
16th Floor
New York, NY 10022
Phone: (212) 752-8000

500 Delaware Avenue
Suite 1410
Wilmington, DE 19801
Phone: (302) 652-3131

300 East Lombard Street Suite 2000
Baltimore, MD 21202
Phone: (410) 230-0660

301 Commerce Street
Suite 1700
Fort Worth, TX 76102
Phone: (817) 810-5250