

TAX AND ESTATE PLANNING NEWSLETTER

JULY 1, 2003

The following tax and estate planning news may be of interest to you in your business or personal pursuits. If you have questions about any of these items, please call or e-mail one of the Tax and Estate Planning Attorneys listed below by clicking on the attorney's e-mail address or calling the telephone number.

Andrew M. Wolov
(918) 594-0416
awolov@hallestill.com

Stephen W. Ray
(918) 594-0415
sray@hallestill.com

Clive A. Seymour
(918) 594-0624
cseymour@hallestill.com

Kenneth L. Hunt
(918) 594-0420
khunt@hallestill.com

Michael L. Nemeec
(918) 594-0423
mneec@hallestill.com

W. Deke Canada
(918) 594-0637
dcanada@hallestill.com

HOME SALE EXCLUSION

The IRS has issued Final Regulations explaining how taxpayers qualify for the home sale exclusion. The taxpayer can exclude from income up to \$250,000 of gain (\$500,000 for a married couple) from the sale of a home owned and used as the principal residence for at least two of the five years before the sale. The Final Regs. addressed what is a "principal residence" for this purpose and listed the following relevant factors to decide whether property shall qualify: place of employment; place where family members live; address listed on income tax returns, drivers license, auto and voter registration; mailing address for bills and correspondence; place of maintenance of bank accounts – place of maintenance of memberships, e.g. religious clubs, etc.

These are basically the same factors used by states in determining residency for state income tax purposes.

IRS ISSUES GUIDANCE FOR QUALIFIED PERSONAL RESIDENCE TRUST DOCUMENTS

QPRTs, as they are commonly referred to, can save estate taxes for homeowners. By using a QPRT, you can exclude a home from the taxable estate. A typical QPRT will last ten to twenty years before the home goes to the beneficiary, usually the taxpayer's children. The value of the beneficiary's interest is a gift when the QPRT is created and the taxpayer's \$1 million gift tax exemption usually offsets any gift tax due.

If the taxpayer outlives the QPRT term, the gift tax value of the residence is not in the taxpayer's estate and the same is the case with any appreciation in the residence. The taxpayer may reside in the house after the QPRT term ends if arms-length rent is paid to the beneficiaries.

In a new Rev. Proc. the IRS issued sample trust documents for homeowners to use to qualify for the estate tax savings.

MORE FAMILIES HIDE INCOME AND ASSETS TO QUALIFY FOR EDUCATIONAL FINANCIAL AID

To increase their chances for financial aid, parents are positioning their money so they look more needy. Some of the commonly used strategies, which are legal, are as follows, but generally are frowned upon by colleges:

- Minimize income – up to 47% of parental income is considered eligible to pay for school, so parents defer bonuses to keep their income low; others sell losing stock positions to reduce their income;
- Spend child savings – the more assets the student has, the less aid he or she is likely to receive; families can legally spend custodial accounts on anything that benefits the child's education, including private high school tuition, SAT prep course, computers;
- Keep savings in parents' names – a savings account in the parent's name instead of the child's can increase their chances for getting aid;
- Quit the summer job – student income is assessed at a higher rate than parents, so keep the child out of work the year before the aid is needed;
- Pick the correct assets – the cash value of life insurance, deferred annuities, and personal property, such as coin collections, don't have to be reported on financial aid applications.

FURTHER TAX REFORM

Proponents of additional reform appear to be adopting a plan of trying to make changes in increments and not in one fell swoop on the belief that it is easier to revamp the income tax code step by step rather than in a long, drawn-out debate that will get bogged down. The goal is to end up with a flat tax on wage income with no tax on investment income, and with businesses fully able to write off assets. Some of the specific ideas are:

- Lowering marginal income tax rate until it is a single rate and total repeal of AMT;
- Eliminating the double tax on corporations;
- Accelerating depreciation so a firm can expense assets they buy;
- Exempting personal savings from tax by expanding Roth IRAs to tax-free savings account; and
- Eliminating capital gains tax.

With record growing budget deficits, it seems rather unlikely that these proposals can become law in the near future.