

STRAUSS & MALK LLP Newsletter



The law firm of Strauss & Malk LLP announces our new electronic newsletter. It will be issued periodically; informing you of various matters we believe to be of interest. We want to provide our clients and friends with up-to-date information regarding important topics. We are available to assist you with legal needs in any way possible.

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THE LAST GRAT?

A grantor retained annuity trust (GRAT) is a trust used to transfer wealth to the next generation. You contribute assets and receive an annuity in return. The fixed annuity payment is calculated based on the value of the principal you contribute to the trust, plus interest at the IRS assumed interest rate. To the extent the GRAT assets, including income and appreciation thereon, grow faster than the IRS rate, the excess will pass to designated beneficiaries, without further gift or estate taxes at the end of the GRAT's term. In addition, there is little downside. If the GRAT fails (i.e. does not grow fast enough so that assets remain for the designated beneficiaries after all annuity payments are made), the assets in the GRAT will all be returned to you leaving you where you started (other than the cost of the transaction).

The shortest term generally recommended for a GRAT is two years. Keeping the GRAT short-term allows you to create a series of annually established GRATs, giving you the best chance of transferring significant wealth by compartmentalizing assets so assets which fail to appreciate don't cancel out faster appreciating assets. "ZOGRATs" are GRATs created with a remainder interest valued at zero (or close to zero) based on the IRS assumed interest rate. The benefit of a ZOGRAT is that there is little to no gift tax paid or exemption used at the creation of the GRAT. Low interest rates and the low value of assets right now have contributed to the increased interest in ZOGRATs.

Time may be running out on the most productive types of GRATs. Discussions about how Congress will limit the use of GRATs have been circulating for months now. One possibility is that Congress will eliminate the use of ZOGRATs by mandating a 10% remainder value. Another potential limitation is on GRAT terms. On May 11, 2009 the Treasury issued a legislative proposal that if passed would require that all GRATs have a term of not less than ten years, effective for trusts created after the date of enactment.

Until final legislation is passed, we cannot know what form the laws regarding GRATs will take. We must assume that the changes will limit the value of this technique. Therefore, the time to act is now. If you believe you may have an interest in using a GRAT to transfer wealth, please call Michelle Gooze-Miller, or another of our attorneys, to schedule a time to meet and discuss the options as they relate to you personally.

If you would like to be removed from this list please follow the link below and type REMOVE in the subject line or if you would like to add somebody to the list, follow the link below, type ADD, then add insert contact information.

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"Sometimes when I consider what tremendous consequences come from little things, I am tempted to think there are no little things." - Bruce Barton

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