Legislative Changes Highlighted.

Following are some important highlights and legislative changes:

- Federal Estate Tax Exemption and GST Exemption Increase to $3,500,000. Effective for decedents dying on or after January 1, 2009, the federal estate tax exemption increases from $2,000,000 to $3,500,000. As a result of this increase, a married couple may shelter up to $7,000,000 from federal estate tax, assuming proper ownership of assets. Taxable estates in excess of the exemption are subject to estate tax (on the amount of such excess) at the maximum rate of 45%. The generation skipping transfer ("GST") tax exemption also increases to $3,500,000 on January 1, 2009. As discussed in this Newsletter, the estate tax laws likely will be changed in 2009 to make permanent the federal estate tax exemption of $3,500,000.

- Increase in Gift Tax Annual Exclusion Amount. For gifts made on or after January 1, 2009, the federal gift tax annual exclusion amount (currently $12,000) is increased to $13,000 per recipient. The annual exclusion is applicable to gifts of a present interest, which generally are all outright gifts to individuals and only certain gifts in trust. The federal lifetime gift tax exemption remains $1,000,000 per taxpayer such that aggregate lifetime taxable gifts in excess of $1,000,000 will be subject to gift tax at the maximum rate of 45%.

- Repeal of the North Carolina Gift Tax. North Carolina has eliminated its gift tax effective for all lifetime transfers made on or after January 1, 2009. This repeal is significant, as currently transfers in excess of a resident's $100,000 lifetime specific exemption amount are subject to a graduated gift tax schedule, which tops out at 12% for Class A beneficiaries (parents, children, stepchildren and grandchildren).

- IRA Charitable Rollover Extended through 2009. The Emergency Economic Stabilization Act of 2008, passed in October, extended the IRA Charitable Rollover for 2008 and 2009. Under an IRA Charitable Rollover, a taxpayer who has attained the age of 70 ½ may transfer up to $100,000 from his or her IRA directly to a qualified public charity without recognizing such transfer as a taxable distribution from the IRA (although the taxpayer is not entitled to a charitable deduction).

- Lower Interest Rates Create Opportunity for Low Cost Family Loans. With the credit crisis permeating the financial sector, simple loans between family members utilizing the federal applicable rate should be considered. For the month of November 2008, the annual interest rate for a note with a term of up to three years is 1.63%; for a note with a term between three and nine years 2.97%, and for a note with a term between nine and twenty years 4.24%.

- FDIC Expands and Simplifies Protection for Revocable Trusts. Effective as of October 3, 2008, the FDIC adopted interim rules which simplify and broaden the insurance protection granted to cash accounts to $250,000. Further, the insurance coverage applicable to cash in accounts titled in the name of a revocable trust or held in a payable on death ("POD") account apply with regard to the beneficiaries of such account. Specifically, coverage will be determined by multiplying the number of beneficiaries named under the trust by $250,000, subject to certain limitations. In addition, the increased coverage will be reduced to $100,000 as of December 31, 2009.

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MOORE & VAN ALLEN WEALTH TRANSFER NEWSLETTER

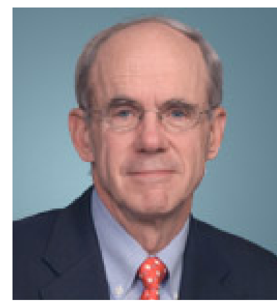
NOVEMBER 2008

Current Developments

Highlights and Legislative changes.

Greetings,

We at Moore & Van Allen realize that 2008 has been a difficult year with much uncertainty for many of you. The economy and our financial institutions have seen unprecedented losses and hardships and those just elected face monumental challenges. Our team remains committed to providing you with pertinent information and guidance as you navigate through these times. This Newsletter marks our first regularly scheduled update giving you highlights relevant to estate and tax planning matters, current information on the latest strategies and techniques that may be helpful as you evaluate your own estate situation, and the latest on the ever-changing tax laws.



In that regard, 2009 is just around the corner and we will inevitably see significant changes in both the income tax and estate tax laws. The members of our team will be on the forefront of these changes updating you with this information and how your current estate plan may be impacted.

In this edition of the Newsletter, we bring to your attention information and perspective on many issues our clients have been concerned with including: expected changes in 2009 for the estate and income tax systems, planning that can be effectively implemented in these market conditions and other updates and information relevant to our clients. We hope that you find this Newsletter both relevant and informative.

On a note a little closer to home, we have had added several members to our Wealth Transfer Team in the past year that we will introduce to you through these Newsletters. Melissa Gray, Matt Kain and Michael Barker are all welcome additions and many of you may have had the opportunity to work with one or more of them already.

As we move into the holidays, we hope that you and our families have a happy and healthy New Year and we look forward to continuing and growing our relationships with all of you in 2009 and beyond!

Neill G. McBryde

New 2009 Tax Proposals

The expansive tax cuts instituted by President George W. Bush in 2001 were set to expire as of December 31, 2009 such that most analysts anticipated either an extension of such tax breaks or new tax proposals with the new administration. With the election of Barack Obama as President, and the current state of the economy and size of the national deficit, we are less likely to see an extension of the current tax rates and taxpayers should be prepared for new tax changes. While we cannot predict what tax laws will be enacted, President-Elect Obama's tax proposals should provide a guide of what most taxpayers can expect in the context of tax reform in 2009, particularly given the increased majority of the Democrats in both the House and Senate as a result of the election. A summary of the proposals is explained on page 3. These proposals may possibly become effective retroactively January 1, 2009.

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spotlight

Habitat for Humanity

Moore & Van Allen recently participated in the 25th Anniversary of Habitat for Humanity in Charlotte "Blitz" Project. 25 homes were constructed in 25 days, with attorneys from Moore & Van Allen working on one of these homes. Members of our Team dedicated their personal time on this important project – hanging dry wall and siding on a beautiful new three bedroom home for a very worthy and appreciative family.

Grantor Retained Annuity Trust.

Why is it so attractive and how can it help me?

We are all too painfully aware of the troubled economic times currently facing us. Uncertainty, instability and volatility abound in the marketplace and the values of real estate and marketable securities are at historic lows.

Yet, ironically, with the decline in interest rates and the universal expectation that the estate tax is here to stay, this situation presents one of the best opportunities for estate and gift tax planning that we have been offered in decades.

One planning technique that is particularly attractive is the Grantor Retained Annuity Trust (the "GRAT"), which is a trust arrangement and technique that is specifically provided for in the Internal Revenue Code. In general, the use of a GRAT is an effective tool for transferring property to beneficiaries (e.g., children) for little or no tax cost if (i) the person setting up the trust (the grantor) lives beyond the term for which he or she has retained the right to receive annuity payments from the GRAT and (ii) the assets transferred to the GRAT outperform the assumed rate of return prescribed by the IRS (e.g., the assumed rate of return is 3.6% for November, 2008) during the term of the GRAT.

Because of the low current assumed rate of return and, in many cases, unnecessarily depressed asset values, the current market environment provides fertile ground for successful GRATs.

In order to create a GRAT, a grantor transfers marketable securities or other property to an irrevocable trust (the GRAT), and retains the right to receive an annuity from the GRAT for a term of years. In general, the GRAT can be structured such that the amount of the taxable gift the grantor will be deemed to have made to the remainder beneficiaries by transferring property to the GRAT may be very close to zero. If the grantor dies during the annuity term, generally all of the GRAT property will be included in the grantor's estate (essentially putting the grantor back into the same position that the grantor would have been if he or she had not implemented the GRAT). However, if the grantor survives the GRAT term, after the last annuity payment has been made to the grantor the property remaining in the GRAT should pass to or for the benefit of the remainder beneficiaries without payment of any additional gift tax or estate tax.

The following example illustrates the GRAT technique. On November 30, 2008, grantor, age 60, creates a GRAT with a two year term naming the grantor's children as the remainder beneficiaries and funds the GRAT with 20,000 shares of stock in a locally headquartered national bank. On the date of funding, the stock has a value of $25 per share, but has traded as high as $50 per share within the past year. Based on the IRS's assumed rate of return for November, 2008 (3.6%) and pursuant to the terms of the GRAT, the grantor will receive annuity payments over the two-year annuity term of the GRAT totaling $534,941 (i.e., $243,155 for the first year and $291,786 for the second year). The grantor will have made a taxable gift created upon funding the GRAT of approximately $0.58. Assuming an annual average rate of income of just over 1% on the stock (i.e. dividends) and an average annual rate of capital appreciation of 25% in the value of the stock (i.e., at the conclusion of the two-year term, the stock would have a per share value of approximately $39), the value of property that would be left at the conclusion of the annuity term to be distributed to grantor's children would be approximately $200,123 on which no additional gift taxes should be payable. To summarize the example, grantor transfers stock having a value of $500,000 to the GRAT in exchange for the right to receive annuity payments totaling approximately $534,941. At the conclusion of the two-year term, assuming an income rate of return of 1% and appreciation in the value of the stock of 25%, grantor's children would receive property of approximately $200,123 and grantor would have made a taxable gift of less than $1.

In addition to current market conditions making GRATs a particularly attractive technique, there is speculation that with the new Congress and administration GRATs may be abolished or materially modified (potentially, retroactively to January 1, 2009). Now is the time to take advantage of this planning opportunity and we would be happy to discuss GRATs and other planning options with you.

New 2009 Tax Proposals (cont'd from page 1)

Barack Obama has proposed, in many instances, a return to the income tax provisions in place prior to President Bush's tax reform, particularly for individuals earning more than $200,000 (or married couples earning more than $250,000). Specifically, it is anticipated that:

- The 36% and 39.6% tax brackets will be restored, re-instituting the highest marginal rate to 39.6% (from the current 35%);
- The maximum capital gain tax rate will return to 20% (from 15%) for those earning more than $200,000 ($250,000 for married couples);
- The limitations on the phase-out of personal exemptions and itemized deductions for those earning more than $200,000 ($250,000 for married couples) will be dropped, impacting those taxpayers with significant itemized deductions (in the form of state tax payments, mortgage interest payments, charitable contributions and payments for financial planning and related services) to reduce, and in some cases eliminate, the tax benefit of such expenses; and
- The cap on the payment of Social Security taxes for those earning more than $200,000 ($250,000 for married couples) will be eliminated over a ten year period, resulting in the imposition of additional payroll taxes on those with wage income in excess of these amounts.

However, President-Elect Obama has indicated in his proposed tax plan a number of items that would reduce income taxes, including:

- Making the expansion of the 10%, 15%, 25% and 28% tax brackets permanent;
- Allowing penalty-free withdrawals of up to 15% from retirement accounts;
- Completely eliminating income taxes on senior citizens earning less than $50,000/year;
- Reducing the capital gain tax rate to 0% for investments in small businesses and start ups;
- Offering a refundable tax credit to employers for the health care premiums paid by employers for employees; and
- Extending and indexing the 2007 alternative minimum tax (AMT) patch likely on an annual basis.

With regard to estate taxes, Barack Obama's plan proposes to make the applicable estate tax exemption $3,500,000 per individual and cap the maximum estate tax rate at 45%. This proposal would effectively make the estate tax provisions scheduled to become effective as of January 1, 2009 permanent. However, many analysts speculate that a number of current estate planning strategies and techniques may be eliminated, including the use of discounts to determine the fair market value of entities without an active business and grantor retained annuity trusts (GRATs).

Preliminary Year-End Planning

Given these potential changes in our tax laws, you should consider the following planning ideas in 2008: (i) implementing a GRAT or other estate planning technique, (ii) transferring assets to trusts to minimize estate taxes and shift taxable income to children over the age 18 who may be at a lower tax bracket, (iii) recognizing capital gains early in order to "lock in" a lower tax rate, particularly if you are planning on recognizing the capital gain in the near term anyway, and (iv) accelerating income into 2008 (rather than 2009), with the result of potentially lower income taxes, lower employment taxes and greater benefit from itemized deductions and personal exemptions.

SPOTLIGHT

Melissa Gray

Melissa joined our Team in May 2007 and has been a very welcome addition. Originally from Rochester, New York, Melissa received her Masters of Law in Estate Planning from the University of Miami School of Law (Class of 2005). In addition to being licensed in North Carolina, Melissa also holds licenses in California, New York, Florida and Massachusetts. Having settled in the Dilworth area of Charlotte, Melissa enjoys spending time with her family and friends and is very active in the community participating in and supporting a number of charitable projects.