

Rosen Seymour Shapss Martin & Company LLP

Certified Public Accountants & Profitability Consultants

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LIFELINES BLAST

Greetings!

Welcome to the Fiduciary Services Group's Lifelines Blast! (a publication of Rosen Seymour Shapss Martin & Company). Here is where you will receive periodic updates on all your trust and estate needs.

We welcome your questions or comments about topics discussed or related ones. Please feel free to contact us at 212-303-1012 or e-mail us at awillinger@rsmcpa.com and let us know how we can be of assistance.

Sincerely,

Alan M. Willinger, CPA, JD
Partner-in-Charge of Fiduciary Services

The New Long-Term GRAT

On July 11, 2008 the Internal Revenue Service issued final regulations dealing with the inclusion in the decedent's estate of a Grantor Retained Annuity Trust (GRAT). Until this final regulation, the estate of a decedent who did not survive the term of the trust would be required to include 100% of the trust assets in his estate. The final regulations provide that inclusion in the decedent's estate will be limited to the portion of the trust needed to produce income equivalent to the annuity amount.

Currently most GRATs are created for a short-term in order to avoid estate tax inclusion if the Grantor does not survive the term. These new regulations may provide the estate planner with a different approach that can be used independently or in conjunction with a short-term GRAT.

How it works

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Assume a grantor creates a 35 year GRAT with \$10,000,000 of assets discounted by 25% and providing for an annuity of 5.50412% (\$412,809) payable to him or if he does not survive the term to his estate. Because of the term and the annuity rate there is no taxable gift.

Assume the grantor dies in year 20. Assuming a 3% growth rate and 3% annual income the amount in the trust in year 20 would be \$17,085,673. Under current law the entire fair market value of the GRAT would be included in the estate. Under the new regulations, the amount included would be the portion of the trust necessary to yield the annuity of \$412,809 using the Sec. 7520 rate in effect at the date of death. The following table shows the amount includable in the Grantor's estate using various Sec. 7520 rates.

Sec.7520 Rate	Estate Inclusion	Trust Corpus	Amount Passing Estate Tax Free
3.5%	\$11,794,543	\$17,085,673	\$5,291,130
4.0%	10,320,225	17,085,673	6,765,448
4.5%	9,173,530	17,085,673	7,912,143
5.0%	8,256,180	17,085,673	8,829,493
6.0%	6,880,150	17,085,673	10,205,523
7.0%	5,897,271	17,085,673	11,188,402
8.0%	5,160,113	17,085,673	11,925,560

The term of the GRAT and the annuity amount would be dependent on the age of the Grantor, the type of assets in his estate and the estimated yield of the asset being transferred.

The long-term GRAT would not be used in place of the short-term GRAT but would be an additional means of transferring wealth to the next generation at a reduced estate tax cost. The Grantor must be willing to have the assets held in trust for an extended period of time and should have sufficient other assets with which to pay his estate tax liability.

New Rules on CRTs Having Unrelated Business Taxable Income

In December 2006, President Bush signed into law the Tax Relief and Health Care Act of 2006 (TRHCA) which altered the tax treatment of unrelated business taxable income received by a CRT in tax years ending after 2006. TRHCA, for tax years beginning after 2006, a CRT UBTI does not lose its exemption. Rather, it is subject to an excise tax equal to the amount of UBTI.

The new UBTI rules create new tax planning opportunities; e.g. gifts

of interest in pass through entities like LLCs and Partnerships, especially when an interest is to be sold soon after its contribution. Under most state principal and income statutes reported UBTI could be included in trust accounting income if it is received in the form of cash. An examination of the trust agreement and the state principal and income statutes should be reviewed to determine whether the excise tax should be paid from income or principal.

Under prior law CRTs have been tax exempt as long as the CRT did not receive Unrelated Business Taxable Income (UBTI) as defined in IRC 512. An activity generally is an unrelated trade or if it is not substantially related to the exercise or performance of the charitable, educational or other purpose that is the basis for the exemption. If a CRT received UBTI its tax exemption is lost and is taxed to the full extent of its entire net income, not only its UBTI, as a non exempt complex trust. A complex trust could avoid tax by distributing and claiming a deduction for income distributed to income beneficiaries in conformity with the terms of the trust agreement.

FIDUCIARY SERVICES GROUP

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RSSM's Fiduciary Services Group offers a wide range of fiduciary services. We assist and guide fiduciaries as they perform their duties and fulfill their obligations. In appropriate circumstances, we can also serve as trustee, and/or executor for you and your family. We will provide your family with protection and security by helping you plan for the future with incapacity protection, probate avoidance, planning for minor children, distribution planning and estate tax planning. Our team approach allows us to provide you with the most basic protection and our experience enables us to assist you with the most complex arrangements, including charitable giving and sophisticated estate tax strategies.

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