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Maybe Steinbrenner Can Force Congress to Act

On July 13, 2010, former New York Yankees owner, George M. Steinbrenner III, passed away, leaving behind his wife, four children and an estate estimated to be worth $1.1 billion (*Forbes*). Based on this estimate, Steinbrenner's estate is potentially saving approximately $500 million dollars due to the fact that "The Boss" died in 2010 (no Federal estate tax), rather than in 2009 ($3.5 million exemption) or 2011 (scheduled $1 million exemption). Florida, Steinbrenner's state of residence at the time of his death, does not have a state estate tax.

Steinbrenner's representative filed a Will and Codicil and commenced the probate process in Hillsborough County on July 22. According to the *New York Post*, the Will provides great flexibility in determining whether Federal estate tax should be paid at the time of George's death or at the time of his widow, Joan's death. Fortunately, through proper planning, Steinbrenner's estate plan provides for flexibility as well as privacy because, according to the Will, the assets of his estate are to be held by a trust, which is not a public document and, if funded, also avoids probate.

However, Steinbrenner's beneficiaries should not get too excited just yet.

First, in order to supplement the lack of estate tax revenue, the Economic Growth and Tax Relief Reconciliation Act of 2001 also provides for a lapse of stepped-up basis[1] in 2010, which means that the beneficiaries of Steinbrenner's estate will inherit assets with a carryover basis.[2] The result of this change will be that when such assets are sold, the owner will owe capital-gains tax on the entire difference in value from the date of purchase to the date of sale, rather than the difference in value from the date of inheritance to the date of sale. Of course, while this tax could take a significant toll on the assets of Steinbrenner's estate, it is not nearly as painful as the Federal estate tax.

Second, as mentioned in past newsletters, Congress is still considering enacting Federal estate tax legislation that is retroactive to January 1, 2010. While the likelihood of retroactive legislation grows less likely with each passing day, a $500 million windfall might be just what it takes to get Congress to take action. According to *Forbes*, Steinbrenner is the fourth American billionaire to pass away in 2010 (Mary Janet Cargill - 2/5/2010, Dan L. Duncan - 3/28/2010, and Walter Shorenstein - 6/24/2010).

A Federal estate tax return (Form 706) is generally due nine months after the date of death, which means that the first returns of those who died in 2010 would be due on October 1st if there was an estate tax in force. Thus, Congress has approximately 60 days

to take action if it wants to impose a retroactive tax without creating a situation that is extremely messy—trying to impose a retroactive tax *after* the estate tax return due date has passed for some estates.

1 - Stepped-up basis means that the recipients cost is considered to be the value of the asset on the date of inheritance or receipt.
2 - Carryover basis means that the decedent's cost basis (original price paid) "carries over" to the recipient.

10-Year Minimum GRATs Added to COBRA Legislation

With the Federal estate tax legislation stalled, Senator Robert Casey (D-PA) has added a provision to the "Extend COBRA Premium Assistance Program Act of 2010" to require a minimum 10-year term for Grantor Retained Annuity Trusts (GRATs). The bill was referred to the Committee on Finance on June 29, 2010.

A GRAT is an advanced planning method which consists of the Grantor making a gift of assets likely to grow to the GRAT. The Grantor is then paid an annuity from the income and/or principal of the GRAT, with the balance passing to the beneficiaries of the GRAT at the end of the term. The keys to a successful GRAT are that (a) the assets grow beyond the applicable rate provided by the IRS and (b) the Grantor survives the term of the GRAT. If the Grantor does not survive the term, then the assets of the GRAT are included in the Grantor's estate.

GRATs have been targeted by the Obama Administration since May 2009, when a 10-year minimum term was proposed in the 2010 fiscal-year budget. By imposing a 10-year minimum term, the use of GRATs in estate planning will be significantly diminished, reducing the appeal of late-life GRATs and eliminating the availability of "Rolling GRATs."[3]

3 - "Rolling GRATs" are a series of short term (2-3 year term) GRATs used instead of long-term GRATs to increase the likelihood that the Grantor will outlive the GRAT and benefit from the transfer of wealth out of his or her estate.

Closing Date Extension of Homebuyer's Credit Passed

On July 2nd, President Obama signed into law a bill that extends the original homebuyer's credit deadline for closing a sale.

Previously, the law stated that the contract had to be entered into by the end of April 30th with the closing to take place by June 30, 2010. However, the "Homebuyer Assistance and Improvement Act of 2010" extends the closing date deadline to October 1, 2010. The bill does not extend the credit itself because the contract still has to have been entered into no later than April 30, 2010.

Definition of the Month: *Intestate*

An individual who dies without a Will is referred to as dying intestate. Each state provides its own intestate succession law, which determines how the assets of a decedent who dies intestate will be distributed.

Under Illinois' intestate succession law ("Descent and Distribution"), assets pass in the following manner:

a. If the decedent has a surviving spouse and one or more surviving descendants, then ½ of the assets pass to the spouse and ½ of the assets pass to the descendants, *per stirpes* (see Newsletter #1);

b. If the decedent has a surviving spouse, but no surviving descendants, then all assets pass to the spouse;

c. If the decedent has one or more surviving descendants, but no surviving spouse, then all assets pass to the descendants, *per stirpes*;

d. If the decedent does not have a surviving spouse or descendant, then the assets pass to the parents and siblings of the decedent in equal parts; then

e. ½ of the assets pass to the paternal grandparents of the decedent, *per stirpes*, and ½ of the assets pass to the maternal grandparents of the decedent, *per stirpes*; then

f. ½ of the assets pass to the paternal great-grandparents of the decedent, *per stirpes*, and ½ of the assets pass to the maternal great-grandparents of the decedent, *per stirpes*; then

g. the assets pass to the "nearest kindred of the decedent in equal degree"; and then

h. the real estate owned by the decedent will pass to the county or state depending on the type of property.