

GUTTER CHAVES JOSEPHER RUBIN FORMAN FLEISHER P.A.

TAX AND BUSINESS UPDATE

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An Electronic Newsletter of Gutter Chaves Josepher Rubin
Forman Fleisher P.A.

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1. STATE TAX BURDENS

Bloomberg just published an article that does a state-by-state analysis of state tax burdens.

The 5 states with the highest state tax burdens are Connecticut, New Jersey, New York, Massachusetts, and Maryland (interestingly, all in the Northeast).

The 5 with the lowest burdens are Mississippi, South Carolina, Tennessee, Alabama, and Alaska. Many of these states nonetheless have both an income and sales tax.

ABOUT OUR FIRM

We are a boutique law firm that seeks to protect and enhance the

individual, family and business wealth of our clients in the following

principal practice areas:

Planning to Minimize

Taxes (U.S. &

International) - Probate &

Trust Litigation - Estate

Planning, Charitable,

Marital & Succession

Planning - Business

Structuring &

Transactions - Trusts &

Estates Administration -

Tax Controversies -

Creditor Protection.

Florida (our state) is considered a tax haven because it lacks an income tax and an inheritance tax. It apparently did not make the lowest 5 due to the significant real property taxes collected. The article noted the following about Florida:

Retirees have good financial reasons to flock to Florida. It has no state tax on Social Security, no tax on capital gains, and no inheritance tax. Revenue must come from somewhere, though, so property taxes per capita rank in the nation's top 10. Florida Governor Rick Scott pushed for major cuts to the corporate income tax rate and to state fees during the last fiscal year. The legislature passed more than \$300 million of the cuts, including lower fees for a driver's license and car registration.

You can read the full report at <http://goo.gl/fdJvm>.

2. THE FUTURE OF TRANSFER TAXES (WITH A DEMOCRAT CONTROLLED CONGRESS AND WHITE HOUSE)

For a view on what may happen to federal estate and gift taxes should President Obama be reelected and the Democrats win enough seats in Congress, take a look at the recently introduced "Sensible Estate Tax Act of 2011." A wish list of tax increases, the Act proposes:

- raising the maximum estate and gift tax rate, and the GST rate to 55%;
- lowering the applicable exclusion amount to \$1 million. This would include indexing for inflation after 2012, but with adjustments going back to 2000;
- restricting valuation discounts on investment assets;
- restoring the state death tax credit;
- eliminating GST exemption benefits after 90 years;
- requiring a minimum 10 year term for GRAT's.

Of course, the first of these items will occur automatically in 2013 under current law even without the passage of a new law.

MORE ABOUT OUR FIRM

The firm and its attorneys have been recognized in numerous peer rating guides, such as U.S. News & World Report law firm rankings, Best Lawyers, Martindale-Hubbell, Chambers, Who's Who in American Law, Florida Trend's Legal Elite, Superlawyers, and South Florida Legal Guide Top Lawyers.

3. EXPIRING 2011 TAX PROVISIONS-ON THE BUBBLE

There are a number of favorable business and individual tax provisions that will expire or be substantially reduced after 2011. Perhaps Congress may extend some or all of them, or perhaps not.

There is still one month left to make use of these items, so relevant taxpayers may want to get moving on these items, if they are of interest or relevance.

We have created an abbreviated list, in both map and list format, that highlights the most important of these items. Go to <http://db.tt/4MKpQQj8> to access it in your browser.

4. WHAT SPOUSES ARE GOOD FOR IN 2011 AND 2012

Lots of things, obviously! In context of tax and business, a number of specific items (not exhaustive), including:

- a. Creditor protection via the special protections afforded by property held jointly as tenants by the entireties (in those states recognizing such tenancies and protections, such as Florida);
- b. Use of gift splitting to double annual exclusion gift amounts to a specific beneficiary;
- c. Use of two unified credit amounts to make larger gifts; and
- d. Decontrolling entities for valuation reduction purposes.

But there is nothing special about those items for 2011 and 2012. What is special for these two years is the \$5 million unified credit amount for gift and estate tax purposes. This is the highest amount by far ever permitted, and it is scheduled to revert to \$1 million on January 1, 2013.

Many high net worth families will want to take advantage of all or a part of this high amount to make gifts free of estate tax before 2013. If such amounts are used to establish long-term trusts for family members and are properly structured for generation-skipping tax exemptions, dynasty trusts that can pass assets through several generations without incurring estate, gift or generation-skipping tax can be established.

Many parents are not eager to establish trusts for children or grandchildren. It may be because they want to hold on to the subject assets in case needed for their own future living expenses if their circumstances change, or perhaps they don't want to "spoil" their lineal descendants with a large trust for them while they are young.

The benefit of being married is that each spouse can create a gift trust, naming the other as the current beneficiary, instead of (or in addition to) a younger generation beneficiary. This trust need not require current distributions, so it can grow over time and eventually pass to the children or younger generations

when the parents die. Importantly, the parents will have access to the funds if needed during lifetime, as beneficiary of each other's trust.

The trusts can be grantor trusts, so that the spouses will be directly taxed on the income of each trust and allowing the trusts to grow in an income-tax free environment. The trusts can also use a formula funding clause and variable dispositive provisions based on QTIP treatment, to allow partial QTIP treatment and division, if funded with difficult-to-value assets. This avoids the risk of the IRS successfully challenging the values to create a taxable gift over the remaining unified credit if that credit amount is exceeded. It may also allow for more aggressive valuation planning on in-kind funding of the trust.

Care must be taken, however, to avoid the application of the reciprocal trust doctrine. This is not difficult to accomplish, as long as one is conscious of the need for such planning.

This type of planning is not without its drawbacks, but all-in-all it provides significant benefits. It should be considered by those families with spouses in the older generation that are planning to use all or a portion of the enhanced unified credit in 2011 and 2012.

5. GIFT CARDS AND CELL PHONES MAY HAVE TO BE DECLARED AT THE BORDER

Travelers entering or leaving the U.S. with more than \$10,000 in "monetary instruments" have to file a Currency and Monetary Instrument Report (CMIR) with U.S. custom officials.

Due to concerns that prepaid cards are being used for money laundering and other criminal uses, new proposed rules will extend the definition of "monetary instruments" to include prepaid cards and gift cards, gift cards, and potentially even cell phones to the list of "monetary instruments" whose value must be declared upon entering or leaving the country. When the total exceeds \$10,000, the individual would have to file a special report with customs officials.

Interestingly, the rules may be extended to cell phones that can be used to accomplish digital fund transfers.

Credit cards and debit cards, which are considered more visible to law enforcement, are exempt from the rule.

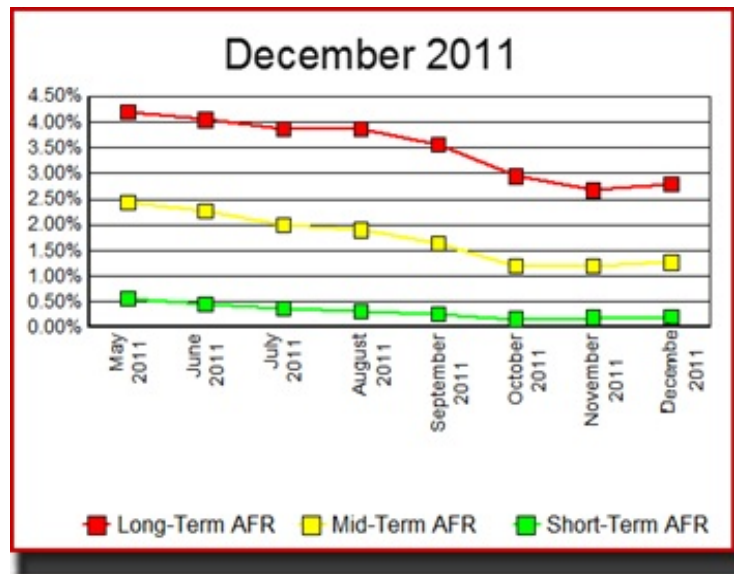
6. NEW ALTERNATE VALUATION DATE PROPOSED REGULATIONS

Taxpayers are permitted to use a value for estate tax return purposes that is six months after the date of death, instead of the date of death value (or at times, at dates after death but before six months). Code §2032. In 2008, the IRS published proposed regulations. Due to numerous issues raised with the proposed regulations, the IRS went back to the drawing board and has now issued new proposed regulations.

For those of you that would rather not read through them, a shortened summary can be downloaded at <http://goo.gl/nRu01> (download from the box.net page that opens).

7. APPLICABLE FEDERAL RATES-DECEMBER 2011

APPLICABLE FEDERAL RATES	
Annual Compounding	
Short-Term AFR	
May 2011	0.56%
June 2011	0.46%
July 2011	0.37%
August 2011	0.32%
September 2011	0.26%
October 2011	0.16%
November 2011	0.19%
December 2011	0.20%
Mid-Term AFR	
May 2011	2.44%
June 2011	2.27%
July 2011	2.00%
August 2011	1.90%
September 2011	1.63%
October 2011	1.19%
November 2011	1.20%
December 2011	1.27%
Long-Term AFR	
May 2011	4.19%
June 2011	4.05%
July 2011	3.86%
August 2011	3.86%
September 2011	3.57%
October 2011	2.95%
November 2011	2.67%
December 2011	2.80%



8. FIRM ANNOUNCEMENTS

Our attorneys are available for speaking engagements at Bar, accountant, and other professional organization meetings and seminars (schedules permitting). Feel free to contact us with any requests.

We are proud to announce our inclusion in both the national and South Florida rankings as a best law firm in the 2011-12 edition of the U.S. News & World Report rankings, in the following practice areas:

- Tax law
- Trusts & estates law
- Litigation - tax
- Litigation - trusts & estates.

Not bad for an eight-attorney firm!

Happy holidays to all our readers!

DAILY TAX AND BUSINESS UPDATES AVAILABLE. View prior articles, updates that we didn't have room for in this newsletter, or read the above postings when they are first published, by visiting <http://www.rubinontax.blogspot.com>. To read this issue, or past issues, online, visit <http://www.floridatix.com/Resources.html> (and scroll to the bottom of the page).

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