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NEW PROPERTY TAX “UNCAPPING” EXEMPTIONS UNVEILED

BY KEVIN M. HUSS, ATTORNEY

Last year, Governor Snyder signed Public Act 310 of 2014, which expanded the available exemptions from property tax “uncapping” in the State of Michigan. The effect of this new law provides additional planning opportunities not originally contemplated in prior law. Beginning December 31, 2014, certain transfers to and from trusts, from probate estates, and within families will not be considered transfers of ownership, and therefore will not trigger an uncapping of the property’s taxable value.

Generally speaking, whenever a “transfer of ownership” of real property occurs, the taxable value of that property “uncaps” in the year following the transfer to 50% of the property’s true cash value. Michigan law, however, provides several exemptions to the definition of the term “transfer of ownership.” Until now, some transfers into trusts were subject to uncapping and all transfers from trusts and probate estates were subject to uncapping.

The new law provides critical new definitions and clarity to the exemptions

to protect transfers to a defined group of family members. The group of family members now consists of:

- Spouses
- Parents (including parents of a spouse)
- Siblings (including siblings of a spouse)
- Children (including adopted children and children of a spouse)
- Grandchildren (including grandchildren of a spouse)

In this article, we will refer to individuals who fall within the five classes of people above as a related person.

Beginning December 31, 2014, the new law provides that the following transfers will no longer be subject to uncapping:

1. A transfer of residential property into a trust by the settlor of the trust or the settlor’s spouse provided that the sole present beneficiary or beneficiaries of the trust are all Related Persons.

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Meet Rachael Roseman

Please join us in welcoming one of our newest attorneys, Rachael M. Roseman.

Rachael assists clients in a variety of probate matters, including contested probate proceedings, establishment of guardianships and conservatorships, and trust administration. She recently succeeded in a contested guardianship proceeding and was able have the durable powers of attorney suspended and a new guardian appointed.

Rachael can be reached at roseman@shrr.com or 616-458-0384.



Capital Gains Proposal Update

BY TIMOTHY M. WHITE, LL.M.

Ahead of President Obama's State of the Union address in January, the White House released a summary of the President's tax reform proposals. The President gave only passing mention to "closing loopholes" in the speech. However, a closer examination of the President's proposal reveals that it covers several areas, including reforming the taxation of capital gains. The capital gains proposal includes closing the **stepped-up basis** loophole and increasing rates on capital gain income for high-income taxpayers, while including protections for middle-income taxpayers and family-owned or closely-held businesses.

Under the President's proposal, assets held at death would no longer get a step-up in basis at death; instead, if a taxpayer bequeathed or gave property to another (other than a charity), the transfer would be treated as a realization event (like selling the property). This means the person making the gift, or that person's estate, would have to pay tax on the built-in capital gain. In addition, the President's proposal raises the capital gains rate for high-income households to 28%.

The White House contends that this proposal would close the stepped-up basis loophole, whereby wealthy families have been able to avoid tax on appreciated assets by holding them until death, while middle-income taxpayers are far more likely to liquidate assets during their lives to fund retirement and the expenses of aging. The White House also argues that by eliminating the stepped-up basis, the tax code would also reduce incentives to **lock-in investments** and hold assets for generations even when the resources could be reinvested more productively elsewhere.

In order to protect middle-income taxpayers from paying too much in capital gains on death, each person would be able to pass \$100,000 (\$200,000 per couple) of capital gains to their heirs, and a \$250,000 (\$500,000 per couple) exemption for gain from a principal residence without paying tax. This tax-free gain would, in most cases, equate to a significantly larger amount of assets being passed tax-free.

Additional protections would apply to small family-owned or closely-held businesses. First, no tax would be due on inherited small, family-owned and operated businesses – unless and until the business was sold. Second, any closely-held business would have the option to pay the tax on gains over 15 years.

There is a lot more to the President's tax proposal, including new tax credits for families, reforms to retirement incentives, fees on financial institutions and more. However, the capital gains proposal is by far the most significant. The elimination of the stepped-up basis on death would be a dramatic change to the tax planning environment for individuals and businesses. It would require a complete shift in thinking from the professionals who advise them.

Perhaps such a proposal is a political non-starter, but perhaps not. While no legislative proposal can make it through Congress unscathed, what if the proposal was paired with the repeal of the Federal Estate Tax, a long-time Republican priority (or at least another increase in the exemption amounts)? Would Republicans in Congress possibly trade a 40% tax on the value of assets for a 28% tax those assets perviously untaxed gain? Tax



reform is on both parties' agenda for the current Congress and it's easy to see opportunity and incentive for negotiations.

For now, it is a wait-and-see game. That said, with higher estate and gift tax exemptions the importance of income tax planning has been amplified. One important part of that planning includes tracking basis. If the step-up in basis is available for assets upon death, great; but assuming that will always be the case would be a mistake. In addition, there are many reasons that a person would liquidate assets during his or her life. The current capital gain rate structure provides incentives to actively manage the realization of capital gains and the best way to do that is with good information. Tracking basis and maintaining records is much better than risking the possibility that the IRS will take the position that their estate or their heirs have a \$0 basis in highly appreciated assets.

If you have questions about the contents of this article or other legal or tax matters, please contact the author or the other attorneys of Smith Haughey.



Contact Tim White at
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The Party of Your Life:

Incorporating Burial and Funeral Planning into Your Estate Plan

BY RACHAEL M. ROSEMAN, ATTORNEY

I sometimes ask people what they think an estate plan should be used for. I always get the traditional responses: to name a guardian for my kids; to avoid probate; to make sure my family is taken care of. Rarely do people say, “to plan my funeral!”

Of course, the primary goals of an estate plan are to provide financially for your family, to identify the proper guardians for your children, to minimize tax implications and so on. But an estate plan can do more.

Not only can you control how your money is distributed, but you can also control where your body goes after you have passed away and how your funeral is carried out. We always ask our clients if they have any specific wishes as to their funeral plans or how their remains ought to be disposed. Surprisingly, few clients take full advantage of this last opportunity to make an exit with a bang or to create one last memory for their loved ones.

Gone are the days where funerals have to be quiet, somber and sad events. Many have taken to demanding their loved ones celebrate their lives with a bar and a band. For some, that means a funeral that is more like a wedding celebration. In your estate plan, you have the freedom to tap into your inner party planner. Bring out all of the bells and whistles for this last affair. You can dictate the attire, the theme, the food, the beverages and much more.

A Hawaiian luau, a sports-themed bash, or an outdoor adventure in memoriam—anything you can imagine. Memorial party favors can be a hit too — a copy of your favorite song or book; a seedling of your favorite plant; or memorabilia from your favorite sports team. And cremation



jewelry may be the perfect gift for those family members who want to keep you close to their hearts.

For more traditional folks, your plan can detail all of the specifics of a traditional funeral: the obituary, the music, the eulogy, the pallbearers, the charity to which donations can be made, the location of the affair and the scriptures to be read. All of these details can be incorporated into your estate plan.

In addition to planning your funeral, you can plan your burial. Will you be cremated? Will you be buried in a traditional plot? Will you be buried near a loved one? Will your remains be donated to science? These are all things that have to be sorted out upon your passing. But a burial plan can inform your loved ones as to your wishes.

If you choose cremation, your loved ones should know how to dispose of your ashes, how to divide your ashes or where to keep your ashes. If you wish to donate your body to science, your estate plan can identify the organization to which you wish to be donated. If you wish to have a traditional burial, you can identify your burial plot, choose your casket, select your outfit and design your monument.

All joking aside, everyone should seriously consider burial and funeral planning to get

the most out of an estate plan. Ultimately, the primary goal for most estate planning clients is to ease the transition after you have passed away—both financially and emotionally. Planning a funeral can be exhausting. Deciding what your loved one would have wanted is challenging. Using an estate plan for this purpose can ease the stress experienced by many loved ones following a death in the family and can help avoid family conflict.

By planning some of these details in advance, you leave your loved ones with one less hurdle to overcome. You leave them with peace of mind knowing that everything is the way you would have wanted it. You can leave them with one final, happy memory of you.

If you would like to start planning your funeral, contact me or another estate planning attorney at Smith Haughey Rice & Roegge.



Contact Rachael Roseman at
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2. A distribution of residential real property from a trust provided that the recipients of the property are all related persons.
3. A change in the sole present beneficiary of a trust that owns residential real property, so long as all of the new beneficiaries are related persons.
4. A distribution of residential real property under a will or by intestate succession to a related person.

In addition, the act clarifies the provisions concerning direct transfers of residential real property during lifetime. Beginning December 31, 2014, a transfer of residential real property to a Related Person is not subject to uncapping. A transferor no longer needs to evaluate whether the transferee was related to the transferor “by blood or affinity to the first degree,” as was required under prior law. The transferor now only needs to confirm that the transferee falls into one of the classes of related persons as outlined above.

However, whenever transfers are planned, family members must be aware that the residential property cannot be used for any commercial purpose following the conveyance in order to take advantage of the new uncapping exemptions. Also, a new administrative burden may

arise in which the local assessor or the Michigan Department of Treasury can request verification of compliance with the requirements outlined above. Failure to comply with such a request within 30 days results in a fine of \$200, so it is important to assure that follow up on this type of request is completed.

If you would like to learn more about Public Act 310 of 2014 and how it can be used to transfer your residential real property, please contact the attorneys of Smith Haughey Rice & Roegge.



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