

Legal Update



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Estate And Gift Taxation During Repeal And New Temporary Legislation

By: AnnMarie Palermo-Smits, Esq.

Who said that there is nothing certain in life other than death and taxes? I do not know who originated this statement, but it continues to ring true. We went through almost twelve months of the repeal of the Federal estate tax and, at the last minute (December 15, 2010), the House and the Senate agreed to a compromise on the estate and gift tax until the end of 2012. I do think that we can comfortably continue to use this statement, as it seems that the estate and gift tax are not going away any time soon.

Unified Credit

The Federal unified credit shields property from tax, regardless of whom such property passes to. The amount shielded by the unified credit is known as the "applicable exclusion amount." For 2009, the applicable exclusion amount was \$3,500,000. The estate tax was repealed on January 1, 2010. On December 15, 2010, Congress enacted new legislation which provides a \$5,000,000 applicable exclusion amount with a 35% Federal tax rate for 2011 and 2012. It also provided an option for 2010 which is

discussed below. It is advantageous for property to pass tax free as part of the applicable exclusion amount because the applicable exclusion amount escapes Federal estate tax at death. So we must plan for this amount, even if it is currently temporary until the end of 2012 and will change again.

The new legislation also reunified the gift tax exemption with the applicable exclusion amount. Our clients can now transfer up to \$5,000,000 during their lifetime without paying a gift tax. This has opened up lifetime planning opportunities for many of our clients who had exhausted the old lifetime giving limit of \$1,000,000.

Issues Ahead

We believe that the estate tax will remain for the foreseeable future for both Federal and State estate tax purposes. We also believe that a limit on lifetime giving will remain in effect as well. Therefore, there is still a need to address the estate tax in your lifetime planning and in the documents which take effect at death. Now, more than ever, you should focus on

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Business Succession Planning For Your Family Business

By: Lisa R. Aljian, Esq.

Your business is your life's work. Who will run it when you retire or if you die unexpectedly?

Many family businesses don't survive the transition from founder to second generation, primarily because of family discord and tax issues. A good business succession plan ensures a smooth continuation of the business after your departure, and maximizes your return. It's an investment in the future, for you, and

also for your employees, customers, lenders, and vendors, because good planning shows a commitment to the long term growth of the business.

Family Business Planning is Complicated

Talking about death and money is hard, and family business planning is especially complicated because of the nature of the relationships and emotions involved. A business succession plan governs how changes in ownership and management of the family business will occur. During

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Do's And Don'ts Of Refinancing

By: James J. Delia, Esq.

With all of the bad economic news we have faced in recent years, one glimmer of hope remains: The lowest mortgage rates in our lifetime. A 30 year fixed rate mortgage is attainable for under 5%. With such low rates, there has been an increase in refinances. According to the Mortgage Banker's Association, a national organization representing the real estate financing industry, nearly 80% of recent loans are attributable to homeowner refinances. This article will explore the do's and don'ts of refinancing and offer some tips on whether refinancing is for you.

1. **The first step is to understand how a mortgage loan is repaid.** Each month you pay down your mortgage, you also pay interest. At the beginning of the loan, most of your payment is applied towards interest. As time goes by, less is applied to interest and more goes towards principal. The point is, you may be several years into a loan payment with significant amounts of interest paid. Upon refinance, you would have a new loan and your payment clock starts once again, with interest heavy payments. You will want to explore if it makes economic sense to start all over again.

2. **Keep your eye on rates.** Mortgage rates continue to be a moving target. People who applied for mortgages in early autumn were able to secure a 4% fixed rate on a 30 year mortgage. That rate has consistently crept up and, at this writing, is in the area of 4.875%, which is still comparatively low. None of us can predict the trend in rates, so be watchful and shop around.

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this planning to take advantage of the estate and gift tax exclusion amounts. The following are some of the issues the foregoing changes have caused:

- During 2010 when the tax was repealed, there was no estate tax but there was also no step-up in the cost basis of the assets passing through an estate for income tax purposes. Therefore, the estate saves the Federal estate tax, but the beneficiaries of the estate will have to pay capital gains on all assets sold after death, to the extent the sale value exceeds the asset's cost basis. This can be costly and is administratively cumbersome to keep track of.
- The new legislation now provides an option for 2010 to use an applicable exclusion amount of \$5,000,000 with a Federal tax rate of 35%, instead of the Federal tax repeal with no step-up in the cost basis of the assets. The Executor of an estate will need to analyze this option carefully with his, her or its advisors. There could be benefits and downfalls with each option.
- After all the changes mentioned above, many states have created their own independent estate tax which is assessed on top of the Federal estate tax (which is an option in 2010 and is back in 2011 and 2012). The state tax for New Jersey is assessed on estates with a value in excess of \$675,000. The tax rate starts

at 6% and increases with the value of the estate. New York taxes estates with a value over \$1,000,000 but their tax rate starts a little higher. The state tax may not sound like much on its own but, when added to the Federal tax of 35% on all assets in an estate over \$5,000,000, our clients' beneficiaries will be losing a portion of every dollar passing to them. If you add in the income tax bite of retirement assets, such as IRAs and retirement plans, the amount beneficiaries receive will be even be less.

- This is an unfortunate consequence that came about due to the economic difficulties many states in our area were and are experiencing. While the Federal tax was being phased out to repeal and then sunset, the changes also eliminated the tax that the states collected from each estate. Therefore, many states including New Jersey, New York and Connecticut, among others, permanently decoupled from the Federal tax laws and created their own independent estate tax which remains in effect after the Federal estate tax returns.
- Finally, legislators are attempting to raise additional funds due to a tremendous budget deficit. Therefore, we are now facing possible legislation and uncertain terms on lifetime planning techniques such as Grantor Retained Annuity Trusts (GRATs) and the

continuation of valuation discounts in family entities, such as family limited partnerships, limited liability companies, s-corporations and fractional interest discounts in real property. GRATs will be discussed in more detail in another article in this publication. Given the low interest rate environment, GRATs can be a big "win" for a client's estate plan.

Many clients have been much more receptive to attending to their estate planning even though many uncertainties exist in the law. Our clients now realize that it is very unlikely that the estate and gift tax will be fully repealed and that perhaps certain doors of opportunity in lifetime giving are closing. The dramatic market downturn in 2008 and 2009 caused some clients to adopt a wait and see approach, due to the trauma of watching their life's work decline in value. No matter what you decide to consider in connection with your estate planning, some planning is better than no planning at all. Even if you decide to put "just" the basic documents in place, you are ahead of those who did not consider planning at all. In the end, you save your hard-earned money for your children, grandchildren, more remote generations or other beneficiaries!

AnnMarie Palermo-Smits is a Partner at WJ&L and serves as the Chairperson of the Tax, Trusts and Estates Department.

Health Care Reform - Additional Taxes On High Income Earners

By: Jill F. Rosenfeld, Esq.

Health Care Reform is here. The law enacted last year is comprised of two acts, The Patient Protection and Affordable Care Act, which was signed into law on March 23, 2010 and the Health Care and Education Reconciliation Act, which was enacted on March 30, 2010. Both acts are commonly referred together as "Health Care Reform" and cover a broad spectrum of health care issues amongst others. The law is lengthy, complicated and includes a variety of measures, which may not necessarily be limited to health care. Additionally, in order to pay for this global reform, the government needs to assess additional fees and taxes on corporations, insurance companies, health care providers, employers and individuals. The

taxes on certain "high income" individuals will become effective in 2013.

Additional Hospital Insurance Tax

The Medicare Hospital Insurance Tax (Medicare Tax) is scheduled to increase in January 2013 for certain high income earners. Currently, both employers and employees are subject to a 1.45% tax each on wages paid to an employee. The employee's portion is withheld each pay period and paid with the employer match by the employer to the IRS. Starting January 2013, an additional 0.9% will be assessed on the amount earned in excess of the following thresholds:

Married Filing Jointly	\$250,000
Single Filers	\$200,000
Married Filing Separately	\$125,000

This additional assessment also applies to

self-employed workers.

New Tax on Investment Income

Also beginning in 2013, there will be a new 3.8% tax (Investment Tax) assessed on investment income earned by individuals whose income from wages and investments exceed the above thresholds. Investment income includes interest (except municipal bond interest), dividends, rents, royalties, capital gains on sales of investment instruments and bonds, taxable portion of insurance annuity payouts (unless from a company pension plan), passive income from rents and businesses the taxpayer does not actively participate in and taxable gain on the sale of a home over the \$500,000 exclusion (\$250,000 for single filers).

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Business Succession Planning For Your Family Business

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the planning process, you will evaluate and consider many aspects of your life and business, including: equity, management, taxes, estate planning, insurance, and most importantly - family.

The first thing to do is to find the right team of advisors. Securing the right lawyers, accountants, financial planners, and bankers is crucial to the survival of your business. Good advisors work together in your best interest, know that each situation is unique, and there is no “canned” plan that works for everyone.

Tough Questions

When you begin the process, you'll need to look at your business (and family) realistically, and answer some tough questions, like, who *wants* to run the business? Who *do you want* run the business? Who is the *most capable* of running the business? And though you will struggle with this decision, leaving equal shares to your children simply may not be appropriate.

The three main considerations of the business succession plan are ownership, management, and taxes, and it's important to remember that ownership and management are separate issues. You can transfer ownership and designate management duties as you deem appropriate. For example, you may decide that your chosen successor, who is active in the business, has a larger share than

inactive family members, or you may give both management duties and ownership to your chosen successor and make other financial arrangements for your other children. Sometimes, you may determine that a sale of the business to a third party is the best solution.

You never know what happens in life, so planning early will help your family deal with unexpected circumstances, and give you time to contemplate these important decisions. You should start the process at least 5 years before you want to retire, but starting earlier (10 years) is recommended. Including the affected family members in these discussions should avoid conflicts later on, and will no doubt be a learning process for everyone involved.

Buy/Sell Agreement

A good buy/sell agreement is an important part of most family business succession plans. The buy/sell should ensure a smooth continuation of the business after certain “triggering events”, including death, disability, retirement, divorce, or termination of employment. You need a buy/sell if you don't want outsiders in the business, if you don't want owners to be forced to work with a partner's spouse, if you don't want to own the business together with a bankruptcy trustee or creditor, if you don't want your heirs to inherit a business for which they cannot get a fair price, and especially, if you want to minimize the possibility of future disputes among your heirs.

The buy/sell can be a stand alone agreement, or an integral part of an LLC operating agreement or stockholders' agreement. It documents the terms and conditions of a future sale and purchase of a departing owner's share, and controls when owners can sell, who can buy their interests, and at what price their interests can be purchased. The buy/sell can consider tax consequences as well, and since funding (like insurance) is usually arranged when the agreement is signed, money should be there when it's needed, and your estate will have the liquidity it needs for expenses and taxes.

There are many other planning strategies and options to discuss with your estate and business attorneys who should work closely with your financial and insurance advisors to put the right plan in place for you

Remember that once your plan is established, you are bound by it unless you change it, so because circumstances (and people) change, it's important to review and update your business succession plan from time to time.

Lisa Aljian is Of Counsel to our firm and works in the Business, Corporate and Commercial Departments. She is also the founder and host of the American Grownup podcast series (www.americangrownup.com).

Commercial Property Owners Beware - Municipal Annual Demand For Income Is For Real

By: Sylvia Hall, Esq.

New Jersey Property owners, who have income producing properties such as commercial establishments, may desire to file a municipal tax appeal in these difficult economic times. A taxpayer, however, prior to doing so, must examine its records and be sure to respond to any and all mailings received from the municipal tax assessor's office. Failure to comply with the tax assessor's demand for income and expense data, can subject an otherwise successful appeal to be dismissed. Case in point, if a taxpayer receives an *Annual Statement of Income Producing Properties or Income and Expense Statement* from a municipality via certified mail, the income form must be completed and returned in a timely manner.

These forms are generally distributed in the late summer or early fall, so that the tax assessor will have appropriate property income information for the upcoming assessment valuation date of October 1st. The income form is mailed pursuant to the tax assessor's public records, so it is not a defense that the landlord did not provide it to the tenant in cases where the leasehold pays the property taxes.

Municipal tax assessors use the information they receive from the property owner to determine the “fair assessment” of taxes for the property in question and those type of properties in that class. If the taxpayer does not complete the income form, the tax assessor may use that action to have the otherwise meritorious tax appeal

dismissed under New Jersey Chapter 91 laws. The completion of the income form can actually benefit the taxpayer in the instance where there are actually less tenants or a decrease in the income generated from the property from the prior year.

Routine forms from any government agency may be annoying and seem to be without significant benefit to the property owner. The Annual Statement of Income, however, is not one to ignore.

Sylvia Hall is an Associate at WJ&L and actively practices in our Litigation Department.

N.J. Affordable Housing

By: Andrew S. Kohut, Esq.

It appears that the state of flux concerning New Jersey's affordable housing obligation will continue. On October 8, 2010, the Appellate Division invalidated crucial components of the revised third-round rules implemented by the Council of Affordable Housing in 2008. These revised rules were in response to the Appellate Court's 2007 decision which invalidated COAH's original third-round rules.

Growth Share Methodology Invalidated

One of the key components of the court's decision was the rejection of COAH's growth share methodology. As was the case in the 2007 decision, the court invalidated the growth share methodology because it enabled a municipality to avoid its affordable housing obligation by adopting land use regulations that discourage growth. By discouraging growth, the need for affordable housing decreases. In essence, the growth share methodology impermissibly gave municipalities the ability to determine their own obligation. The Appellate Division directed COAH to adopt revised affordable housing obligations as established by the first-round and second-round affordable housing cycles.

The court also struck down regulations pertaining to municipally-sponsored affordable

housing projects. Under the proposed third-round rules, a municipality could obtain substantive certification by proposing municipally-sponsored 100% affordable housing projects without setting forth a plan that provides the location of the project, site suitability, source of funds to construct and operate the project or the identity of the entities that will construct and operate the project. The court found that this amounts to nothing more than speculation of compliance and, therefore, does not provide a realistic opportunity for the construction of affordable housing.

Incentives Critical

Another important holding in the court's decision dealt with the manner in which COAH incentivized private developers to construct affordable housing. These incentives come in the form of increased densities and decreased costs. Without these incentives the projects would not be financially feasible. The court continues to recognize that adequate affordable housing will not be created unless these projects make financial sense to those developing them. The court found that the third-round's proposed minimum densities, coupled with the maximum affordable housing setbacks, did not provide enough incentive for the construction of inclusionary developments.

The court has ordered COAH to adopt revised regulations which comply with their decision within five months. The court declined to issue a blanket of proceedings before COAH or the courts pending the adoption of revised rules. However, any interested party may apply for a stay which should be decided in light of the status of the individual municipality's compliance with its affordable housing obligations and all other relevant circumstances.

Still a Moving Target

New Jersey's affordable housing obligation continues to be a moving target. Our firm will continue to monitor the impact this case, as well as pending litigation proposing to abolish COAH, will have on the development community. It is important to note that this is a synopsis of the court's holding. The decision is an in-depth analysis of the state's current affordable housing obligation which discusses issues beyond the scope of this article. Therefore, if you have any questions or concerns relating to the state of affordable housing, it would benefit you greatly to contact our office to discuss the matter in greater detail.

Andrew S. Kohut is an Associate Attorney at WJ&L who works actively in our Land Use practice.

Site Remediation In New Jersey

By: James E. Jaworski, Esq.

The landscape continues to change around the new Site Remediation Reform Act ("SRRA"). You may recall prior Legal Update discussions about SRRA and the total overhaul of the regulations governing environmental clean-ups. Certain aspects of the SRRA are already in flux. The comment period for these regulatory revisions, published on October 4th, closed on December 3rd. In keeping with the original intention of the SRRA to make environmental clean-ups simpler and faster, the rule amendments propose easing deadlines established in the interim rules. Deadlines for submission of preliminary assessments, immediate environmental concern controls and installation of free-product removal technologies have all been relaxed a bit. These rule amendments have a worthy goal of reducing the possibility of triggering the dreaded mandatory direct oversight by

NJDEP. After all these years of NJDEP oversight, under SRRA, that is the absolute last thing any property owner wishes to occur. Some additional minor amendments deal with adjustments to vapor intrusion investigations methodology and timing.

Overall, SRRA continues to be moving in the right direction to facilitate the goal of efficient clean up of contaminated sites. The amendments seem to further that goal. We will continue to monitor changes to this moving target, hopefully in further positive directions.

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It's About Time

By: Stuart D. Liebman, Esq.

Imagine that you are back in school. You have taken a particular class or course for the whole year, semester or whatever, and you have prepared thoroughly for your final exam. You carefully selected this course, paid your tuition, invested countless hours studying, bought books and materials, and attended classes. On exam day, you get up, get dressed, and confidently walk into the classroom to finish what you have started. Now imagine that when you walk in, you find that the school has changed the course from English Literature to Biology!

Burcam vs. Medford

Unfair? Cannot happen? There must be something wrong with this? This has been the rule of law when it comes to land use and development applications in New Jersey. In 1995, Home Depot made an application for a new store in Manalapan, and after the application was filed, the town zoning ordinances were changed to preclude the type of store that they wanted to build. The New Jersey Appellate Courts have described the rule as follows: "In the area of land use,

a municipality may change its regulating ordinances after an application has been filed and even after a building permit has been issued and, as long as the applicant has not substantially relied upon the issuance of the building permit, it is subject to the amended ordinance. This is so even where the municipality amends its ordinance in direct response to the application." (Burcam Corp. vs. Planning Board of Medford, 168 NJ Super 508, 512 App.Div. 1979).

Municipalities say that they need this ability to change zoning in response to an application for development in order to protect the town's land use planning. Land owners and the development community say that they are entitled to rely upon the land use planning that the town has already done when they wrote their ordinances, and that the rules should not be changed at the last minute.

New Statute

Our State Assembly and Senate have passed a Bill to amend the Municipal Land Use Law (MLUL) to provide that "...those

development regulations which are in effect on the date of submission of an application for development shall govern the review of that application for development and any decision made with regard to that application for development. Any provision of an ordinance, except those relating to health and public safety, that are adopted subsequent to the date of submission of an application for development, shall not be applicable to that application for development."

In our practice, we represent land owners and developers, as well as municipalities. We see both sides of the argument, however, we believe that it is not fair to turn English Literature into Biology overnight. Clear and certain land use regulations are always helpful to both sides. The NJ MLUL is a statutory scheme which, if followed by the municipalities, makes sense of this new "Time of Submission" Bill. It's about time!

Stuart D. Liebman, who practices actively in the Land Use area, is the Managing Partner of our firm.

Employment Manuals

By: Darrell M. Felsenstein, Esq.

Employment manuals or handbooks can be a sword or shield, depending on whether you are an employee or employer but, no matter, employment handbooks are essential for all businesses. In these difficult economic times, many employers try to forsake putting together a handbook, in the hope of saving some money, while others, who have an existing one, will forego reviewing and updating the handbook for the very same reason. In each scenario, employers put themselves at risk, increase their chances of ending up in court and potentially costing the company more in the long run.

Written Guide

The employment handbook is a written guide that should be given to the employee on their first day. It should set forth the consistent procedures and policies that each employee is expected to adhere to and that the company will apply. There is no value in writing one thing in the handbook and then proceeding in a different fashion. Initially, it

is extremely important to have both management and human resources meet with counsel to ensure that the goals of the company are in line with the ever changing laws and regulations in the employment law area. There are many basics that need to be included from the policies on family leave and sick leave, vacation time, substance abuse policy, working hours, non-discrimination and harassment policy, compensation, benefits, holidays, etc. Two of the many other topics that also need to be addressed, in a handbook, are a zero tolerance approach to workplace violence and computer use policies.

Workplace Issues

Workplace violence has become more prevalent and can range from an inappropriate remark to actual physical harm. Any threat must be taken seriously and appropriate protections and assessments must be made. As for workplace computers, clear guidelines must be in place regarding the limitations on computer use for any non-company matter. Employees should be aware that there is no

expectation of privacy on a company computer.

One other issue which has been mentioned in prior articles is that the handbook must make clear that it is not to be considered a contract and that it does not change an employee's status; i.e., "at will." Clear, prominent, conspicuous and bold language and disclosures must appear within the handbook.

Handbooks are an important tool in ensuring that everything runs as smoothly as possible not only during the employment relationship but in the event of termination. The above is certainly only a sampling and the tip of the iceberg on the issues in play. We can certainly assist as you review your current policy or begin to implement a new one.

Darrell M. Felsenstein is a Partner at WJ&L and is active in our Litigation and Employment law practices.

**E-mail
Your Attorney**

You can E-mail directly to your attorney's desktop computer. Address E-mail by using the first letter of the first name with the last name, followed by "wellslaw.com." Documents can be attached to your E-mail.

As an example: E-mail to Tom Wells should be sent to "twells@wellslaw.com."

Attractive Wealth Transfer Option in a Depressed Economy

By: Nicole E. Russak, Esq.

Now is an opportune time for individuals to take advantage of low interest rates when reviewing their estate plans. One option that is available now, but may become limited by legislation pending in Congress, is known as a "Grantor Retained Annuity Trust" or a "GRAT". A GRAT is a trust into which a client/grantor transfers assets and retains a right to receive, at least annually, an annuity payment for the term of the GRAT. At the end of the GRAT's term, the remaining assets pass to designated beneficiaries, tax-free.

Low Interest Rate

Since the interest rate used to value the transfer to the trust, known as the "7520 rate," is currently 1.8 %, the GRAT is an attractive option for clients looking to transfer wealth to younger generations. The low interest rate results in a lower threshold for the productivity of the assets. If the assets in the GRAT grow at a rate greater than the 7520 rate, there will be assets at the end of the GRAT's term to pass to the beneficiaries and, therefore, gift and estate tax savings during the client's life and at the

client's death. To put it simply, the lower the 7520 rate, the larger the potential tax-free gift at the end of the GRAT's term. The 7520 rate changes monthly, and as stated above, for December 2010 is 1.8 %.

GRAT terms can run for any duration, but generally, the longer the term of the GRAT, the smaller the gift. The risk, however, is that the grantor could die during the GRAT term. If this occurs, all trust property will likely be included in the grantor's estate for estate tax purposes. Notwithstanding, if the grantor did in fact pass during the term, he or she would be no worse off than if the grantor did nothing. Hence, nothing ventured, nothing gained.

Setting up a GRAT can trigger a taxable gift which will require a gift tax return to be filed to report the gift. We try to minimize the gift associated with the transfer by adjusting the duration and annuity amount. It is possible to have a close to "zeroed out GRAT" which means that the value of the gift to the GRAT is de minimis.

Excellent Wealth Transfer Option

To summarize the above, a GRAT is an excellent wealth transfer option in a low

interest rate environment because it is easier to outperform the 7520 rate than in a high interest rate environment. However, there is pending legislation in Congress which if passed, would have the result of limiting some of the advantages of the GRAT. The proposed legislation would impose a requirement of a minimum ten year term on the GRAT, thus making it a less viable option for sick or elderly clients. Additionally, the proposed legislation would require that the "gift" element of the trust be greater than zero, thus eliminating the close to "zeroed-out GRAT".

Since the proposed legislation may soon become law (the House of Representatives has already passed the bill limiting the GRAT), anyone considering a short-term GRAT should act fast.

Please feel free to contact us for more information.

Nicole E. Russak is an Associate Attorney at WJ&L whose practice is in the Tax, Trusts and Estates area.

Do's And Don'ts Of Refinancing

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- 3. Crunch the numbers.** Although you may be struggling to make payments on your current mortgage loan, see if it makes economic sense to refinance. Know that when you close your loan, there will be closing costs and escrows which you will need to pay to the lender. They could add up to a few thousand dollars. Have a frank discussion with your officer to try to "uncover" all closing expenses. These expenses should be considered to determine whether you will save money in the long run. You may also want to consider increasing the principal amount of your loan to cover closing expenses, and perhaps to borrow extra funds for a "rainy day".
- 4. Watch out for official-looking junk mail you receive.** There are several lenders (some unsavory ones) competing for your business. They will mail you official looking materials, offering you an opportunity to reduce your current

mortgage payments. Be careful and selective, and start with your current lender to determine its refinance rates (or outright modification of your existing loan). Be careful who you provide your personal information to also, in this day and age of identity theft.

- 5. Be careful with Adjustable Rate Mortgages ("ARM's").** An ARM often has an incredibly low up front rate that will change at a date in the future. With rates as low as they are now, a fixed rate is your best option. You know what you will pay each month for the life of the loan.
- 6. Assist your lender to get you to the finish line.** Be ready to provide your lender with all relevant information they may need. The sooner you do that, the sooner you will be able to close your loan. The written approval of your loan application (the "Commitment") will have deadlines including a period of time that your approved rate will not change (a "rate

lock"). You do not want to lose your rate due to the untimely delivery of information to your lender.

- 7. Know that you can walk away.** You have gone through all the steps to get your refinance in place. You close your loan. You wake up the next day and have second thoughts about what you just did. Each and every refinance has a 72 hour rescission period. If you have changed your mind (or found a better rate with a different lender) you can rescind (undo) the loan. While this rarely happens, this is something you may well avail yourself of.

In a nutshell, you have an opportunity to create savings for yourself through a refinance but make sure it is and will be a true savings in the long run.

James J. Delia is a Partner at WJ&L who practices in the Land Use and Real Estate areas.

Municipal Property Tax Appeals: It Must Be On Your Financial Planning Radar Each & Every Year

By: *Kenneth A. Porro, Esq.*

If you were to make a pie chart of your fixed expenses, municipal real estate taxes would more than likely encompass a sizable portion of that pie. However, with State and Federal governmental grants to the municipality on the decline, local government has no choice but to turn to its municipal property tax assessment to keep its police, fire, schools and essential municipal services running, so taxes are likely going up.

There is, however, help. The mechanism is the filing of a municipal tax appeal. A municipal tax appeal is a legal proceeding in which property owner(s) challenge their respective property valuation and thereby, the resulting real estate tax payment obligation due. Even though your real estate tax payment is made to the municipality, the municipality must distribute those funds to the local school board, County, and even State in some instances. Thus, the tax assessment challenge is solely defended by the local municipality.

Uniformity

The New Jersey State Constitution mandates that properties be assessed uniformly. In fact, New Jersey case law uses the term that properties must be assessed at "fair market value." The challenge is that fair market value, candidly, can change quickly. For example, the value of a home in 2005 or 2006 would be different from that of the value in 2010 or 2011. New Jersey, as most states, addresses the changing annual values by permitting the property owner to file a tax appeal each and every year. The magic valuation date in New Jersey is October 1st of the pre-tax year. For example, the value of your property as of October 1, 2010 sets the value for the 2011 tax year. A property owner thereafter has until April 1st

to challenge that annual assessment. It is wise for any New Jersey property owner, whether they be a residential, commercial or industrial owner, to review their property assessment on an annual basis.

How Do I Know If I Have The Basis For A Municipal Tax Appeal?

The simplest way to determine whether you have the basis for a municipal tax appeal is to look at your property assessment and make a candid analysis of whether or not you could sell your property for that municipality assessed value. There are other factors involved, such as the State equalized ratio, burden of proof and municipality's assessment presumption of validity, but the fair market value opinion is a good quick and dirty approach. Thus, for example, if your property is assessed at \$1,000,000 and in this economically challenged market, you feel you would be able to sell your property for \$800,000, you have the basis for a municipal tax appeal. The best way to conclusively determine whether you have a basis for a tax appeal is to retain a licensed appraiser to determine the value of your property as of October 1st of the pre-tax year. An appraiser would use such tools as comparable sales analysis, income approach, and/or cost to-build approach in determining the fair market value of your property.

When Should I Get Started?

After October 1st of the pre-tax year, it is timely to evaluate whether or not a tax appeal exists. Our firm would provide a free preliminary analysis of your municipal tax assessment to determine whether there is a basis to file an appeal. The property owner should be aware that the municipality cannot unilaterally change your municipal assessment, unless the municipality conducts a town-wide revaluation or a neighborhood

reassessment. The purpose of a revaluation/reassessment is to create uniform assessments based upon recent sales data with appropriate property inspections. A revaluation/reassessment is generally disfavored by municipalities because of the cost to conduct same and the reality of offending taxpayers' status quo tax payments. Taxpayers tend to balk whenever their municipal tax obligation changes. The exception, to prohibit selective spot assessing, however, is if a property owner files a municipal tax appeal. The municipality may thereafter file a counter-claim against the property owner's municipal assessment challenge. The municipal counter-claim would seek to increase the challenged property tax assessment as according to the municipality, the assessment is currently too low. Therefore, property owners need to be aware, that you should not file a municipal tax appeal, just for the sake of filing an appeal.

Sound Financial Planning

In closing, it is sound financial planning and strategy to analyze your municipal property tax assessment on an annual basis. As noted above, the valuation date for property in New Jersey is October 1st of the pre-tax year, and property owners have until April 1st to file a challenge to their municipal tax assessment. Our firm, as a courtesy to clients, performs a free preliminary analysis to determine whether there is a basis to file an appeal, setting reasonable expectations in an extremely volatile real estate market.

Kenneth A. Porro is a Partner of WJ&L, who practices in the Litigation area. In the past year, he has handled tax appeals lowering assessments by more than \$25 million.

Health Care Reform - Additional Taxes On High Income Earners

Continued from page 2

When applying the additional Medicare Tax and the new Investment Tax to a hypothetical married couple filing jointly who earns \$400,000 of income (\$200,000 from wages and \$200,000 from investments) in 2013, we see that although that couple would not owe any additional Medicare Tax, because their wages are within the threshold, they would owe an additional income tax [\$400,000 AGI - \$250,000 threshold =

\$150,000 x 3.8%]. If another married couple filing jointly earned \$500,000 of income in 2013 (\$300,000 from wages and \$200,000 from investments), they would owe an additional \$9,950.00 in taxes. [\$300,000 - \$250,000 = \$50,000 x 0.9% = \$450 for the Medicare Tax and \$500,000 - \$250,000 = \$250,000 x 3.8% = \$9,500.00 for the Investment Tax].

If the additional Medicare Tax is not withheld by an employer, an employee is

liable to pay it with the 1040 filing. Both the additional Medicare Tax and the Investment Tax should also be taken into account when determining whether or not an employee should pay estimated taxes, to avoid penalties and interest.

Jill F. Rosenfeld is an Associate Attorney at WJ&L who practices in the Business, Corporate and Commercial area, as well as in Tax, Trusts and Estates.

NOTEWORTHY

Taking teaching to the extreme, our own **Of Counsel, Lisa Aljian**, launched "American Grownup," a reality radio broadcast series (www.AmericanGrownup.com).



The lawyers of W J & L remained busy, both personally and professionally, in the last year.

Let's start with education.

Almost every one of our lawyers spent at least a little time in front of the classroom, teaching other lawyers or other interested parties, about their areas of specialty. Particularly busy in this area was **Partner, AnnMarie Smits**, who made presentations to the National Business Institute, to the Garden State Paralegal Alliance Convention, and regularly does seminars at Wells Fargo Bank branches, usually for CPAs and business people.

Paramus Rotary Career Day is always an event at our office (the program was started back during **Partner, Tom Wells'** Presidency of the Paramus Rotary Club). This year the torch was passed to **Associate, Nicole Russak**, to run the program at our office for us. Taking her love of law to an even younger group, she also spoke to a middle school in Elmwood Park during the past year, as did **Partner, Darrell Felsenstein**.

Partner, Stuart Liebman, as he has for so many years, continues to Chair the Annual Bar Association training for local Planning Board and Board of Adjustment members. **Partner, Darrell Felsenstein**, who continues to be a Trustee at the Bergen County Bar Association, also spoke at the New Jersey State Bar Foundation.

Taking teaching to the extreme, our own **Of Counsel, Lisa Aljian**, launched "American Grownup," a reality radio broadcast series (www.AmericanGrownup.com). American Grownup is a talk show about all kinds of things, including legal matters. **Lisa** tells us these are "real guests with real matters," each with something to teach, or to share. If you want to hear both **Lisa** and **Partner, AnnMarie Smits**, listen to the podcast that **AnnMarie** did on the 2010 Estate Tax, or lack thereof, and her ideas on "gifting" for estate planning. **Lisa** was also recently appointed to the District Ethics Committee, the Committee on which **Partner, Tom Wells**, also served a number of years ago. The Committee handles complaints of unethical conduct by lawyers.

On the civic front, we continue to have three active Rotarians; **Partners, Stuart**

Liebman, Jim Jaworski and **Tom Wells. Partner, Darrell Felsenstein**, continues to be active in the Glen Rock Baseball Association; and **Partners, Jim Delia** and **Tom Wells**, remain on the Board of Directors and the Board of Trustees respectively of the Ridgewood YMCA. **Jim** is on deck to be President of the Board of Directors next year. Associate, **Jill Rosenfeld**, is active with the Paramus Education Foundation.



On the international front, our firm's efforts in Haiti continue. **Partner, Jim Delia**, went back this year for his third year, running the Soccer Summer Program for the YMCA d'Haiti. Brian DePalma, son of secretary, **Michele DePalma**, went along as one of the coaches. **Partner, Tom Wells**, through the Ridgewood YMCA World

Service Committee, which he Chairs, and the Wells Mountain Foundation, undertook a clothing drive for Haiti after the earthquake that resulted in twelve 40 ft. ocean-going containers of clothing and supplies. This February, **Tom** and his wife, Carol, and daughter, Ciera, lead a group of sixteen volunteers working on sorting and distribution of the clothing, and retrofitting of the containers into new classrooms and YMCA-type buildings.

On the personal side, firm Associate, Nicole Cleenput, became Mrs. Nicole Russak on August 28, 2010. Congratulations to Nicole and her new husband, Brad. Nicole's e-mail is nrussak@wellsllaw.com.

Readers might find it interesting to know, that together with all the teaching, the lawyers of our firm together with the lawyers all over the State of New Jersey, now have to go back to school as well. New Jersey, like many other states, now has mandatory Continuing Legal Education as a requirement for attorneys to maintain their license to practice law. Attorneys must now take a minimum of twenty-four hours of Continuing Legal Education each year to make sure they keep abreast of the new developments in their areas of expertise.

Here is your copy of Legal Update from:



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