S & G Law Update

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Estate & Gift Tax Update

Tax Rate Adjustments

1. Annual Gift

2011	$13,000
2012	$13,000
2013	$13,000+

2. Federal estate tax exemption

2011	$5,000,000
2012	$5,120,000
2013	$1,000,000*

*The 2013 proposed budget increases the federal estate tax and GST tax exemption to $3,500,000.

3. Illinois estate tax exemption

2011	$2,000,000
2012	$3,500,000
2013	$4,000,000

continued on page 2

New Traffic & Vehicle Laws

Took effect January 1, 2012

Here are a few new laws that may affect you:

Seat Belts

Adult passengers in the back seat of a vehicle are required to wear a seat belt.

Commercial Driver's Licenses

CDL holders must now comply with federal physical qualification requirements.

Motorcycles and Red Lights

Motorcyclists stopped at a red light may proceed through the intersection if, after waiting a reasonable length of time, the red light fails to change to green.

Hayrides?

Passengers are now prohibited from riding in trailers, semitrailers, farm wagons, or any other vehicle while it is being towed upon a public highway, unless it is due to an emergency situation.

Other New Illinois Laws

Took effect January 1, 2012

Andrea's Law

Creates a database showing the location of convicted murders, similar to the registered sex offender database.

continued on page 3

Inside This Issue

1 Estate & Gift Tax Update

1 New Laws

3 Child Labor and Agriculture

continued from page 1

4. GST exemption

2011	$5,000,000
2012	$5,120,000
2013	$1,000,000

Illinois Estate Tax

At the end of 2011, the Illinois legislature amended the Illinois Estate and Generation Skipping Transfer Tax Act. Beginning in 2009, the Illinois estate tax exemption has been decoupled from the federal exemption. In general, the Illinois estate tax is equal to the full credit calculated under Code §2011, as in effect on December 31, 2001. However, the exclusion amount has been limited. For deaths in 2011, the Illinois exemption was limited to $2,000,000. This resulted in an Illinois resident with $5,000,000 of Illinois assets having no federal tax but an Illinois tax of $352,158.

The 2011 amendment now adjusts the exemption as follows:

(1) $3,500,000 for persons dying on or after January 1, 2012, and prior to January 1, 2013; and

(2) $4,000,000 for persons dying on or after January 1, 2013.

The new legislation will reduce the additional taxes owed in Illinois. Interestingly, the legislation was intended to reduce the difference between the Illinois exemption and the federal exemption. However, the legislation also includes a $4 million exemption for 2013. Unless Congress amends the federal law, the federal exemption will be reduced to $1 million for 2013, which may result in an Illinois exemption higher than the federal exemption.

Illinois Gifts in Estates

Commentators and planners have indicated that when completing tax planning for an Illinois resident, reducing one's estate below the Illinois estate tax exemption amount will eliminate Illinois inheritance taxes. However, the Illinois estate tax computation also takes into account prior taxable gifts by the decedent by required inter-related calculations. Therefore, while gifting can reduce taxes, they are not eliminated.

Stepped-up basis at the time of death is lost if a gift of appreciated property is made.

Portability Election

One of the new provisions included in the 2010 legislation is the ability for the unused federal estate and gift tax exemptions from a decedent's estate to be transferred to the surviving spouse's estate.

The portability provision allows for greater flexibility in planning between spouses with regard to asset ownership. For example, assume a wife owns $5 million in assets and a husband owns $1 million of assets. Without portability, it is generally advisable to have the assets equalized in value between the spouses since it is uncertain which spouse will pass away first. However, with the portability option, this need has been reduced. In the above example, if the husband with $1 million dies in 2012, it is now possible for the husband's unused federal exemption ($4,120,000) to be "shifted" to the surviving spouse, which means that she can have a taxable estate of $9,240,000 (under current law) and not pay any federal estate tax.

While portability is helpful, planners should also still consider the following:

(1) This rule is not applicable for Illinois taxes;

(2) The assets owned by the surviving spouse remains subject to inflation, claims of creditors, divorce and remarriage; and

(3) The federal laws may be changed.

(4) Portability applies only if both spouses die before December 31, 2012, unless extended by Congress.

(5) An election must be filed with the IRS after the first spouse's death even though an estate tax return in not required to be filed.

Call us with questions

The lawyers of Stumpf & Gutknecht are always ready to answer your estate planning questions. Call us for an appointment at 281-7626. ■

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Holding Joint Title to Real Estate

Two or more persons may own real estate together, an arrangement known as co-tenancy. A co-tenancy is created by a conveyance of property to two or more persons, usually by deed. The three most common types of co-tenancy are tenancy in common, joint tenancy, and tenancy by the entirety.

Each form of co-tenancy has its advantages and disadvantages. For instance, a distinguishing characteristic of joint tenancy and tenancy by the entirety is the right of survivorship. This means that when a joint tenant or tenant by the entirety dies, the surviving joint tenant or tenant by the entirety will automatically become the owner of that portion of the property that was owned by the deceased. The property interest of a joint tenant or tenant by the entirety may not be given away by will and will not pass to the heirs of the joint tenant or tenant by the entirety upon death. There are circumstances, however, under which a joint tenancy and a tenancy by the entirety may be destroyed, thereby destroying the right of survivorship. A tenant in common enjoys no right of survivorship. Upon the death of a tenant in common, the property interest of the deceased tenant in common will be distributed to his/her heirs or devisees (those who receive property under a will).

Choosing a co-tenancy is a decision that can affect your ability to use, protect, and dispose of your property. Please call our office for more information on this important decision. The lawyers of Stumpf & Gutknecht are always ready to answer your legal questions and to explain the law to you. Call us for an appointment at 281-7626.

For more information on the types of co-tenancies, see the chart on page 5. ■

This Newsletter

This newsletter is provided as a service to our clients and friends. It is intended to provide timely general information of interest, but should not be considered a substitute for legal advice. Be sure to consult with an attorney before taking action based on the contents.

We welcome comments and questions. We also welcome topic suggestions for future newsletters.

Finally, please be advised that this may constitute advertising material as defined under the Illinois Rule of Professional Conduct.

continued from page 1

Gold Star Families

The father or mother of an Illinois veteran killed in the line of duty is entitled to admission to an Illinois Veterans' Home if beds are available.

Internet Threats

A school may now suspend or expel a student who has posted on the internet a threat against a teacher or another student.

Jury Duty

Persons with total and permanent disabilities are now exempt from serving jury duty.

Beneficiary Deeds

A residence may now be transferred to one or more beneficiaries by a transfer-on-death deed.

Radon Reporting

Landlords are now required to provide tenants with the results of radon tests indicating hazardous levels.

Synthetic Cannabis

Five types of synthetic cannabis are now "controlled substances."

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Call us for Speaking Engagements

If you need a speaker for a civic group or other organization, please give us a call.

Title Insurance: What Buyers and Sellers Should Know

How do you know that the person who contracts to sell you a piece of real estate actually owns it? How do you determine whether there are liens against the real estate you are purchasing? Is there a way to make sure that you will be reimbursed if there is a problem with the title to real estate?

If you're like most people, a home is the largest purchase you will ever make. Making sure that your interests are protected is important. Selling real estate can also be a risky undertaking. No matter which side of the transaction you're on, title insurance is one of the many details you'll have to contend with.

In a typical transaction, the contract for sale requires the seller to provide the buyer with proof that the seller owns the property and that there are no unacceptable defects in or liens against the property. This proof is often in the form of a *title insurance commitment*, which is a promise to issue a title insurance policy once certain conditions are met.

A *title insurance policy* is a contract of indemnity: it protects against loss and pays the insured in the event of loss. If a covered defect exists with the title to a piece of property, the title insurer, while unable to guarantee that the defect in the property can be eliminated, will reimburse the insured owner for the loss that results from the defect.

There are two main types of title insurance policies: owner's and lender's. An owner's policy usually covers the new owner for an amount equal to the sales price of the property; the premium is generally paid by the seller. A lender's policy protects the lender against possible defects in title and insures the priority of the lender's lien; the premium is generally paid by the buyer.

Title insurance is retrospective rather than prospective. This means that your title insurance policy covers title insurance policy covers title problems that arose prior to the effective date of the policy but not after. Possible defects in the title to property include an outstanding unpaid mortgage from a predecessor in title, a lien against the property, unpaid taxes, or the forgery of a deed.

An owner's title insurance policy indemnifies the insured owner under the following circumstances:

- if title to the property is not vested in the insured owner;
- if there is any defect in or lien or encumbrance on title;
- if title to the property is unmarketable; that is, the insurance company will indemnify an insured owner if there is a covered problem with title that would allow a buyer to get out of a contract with an insured owner who is trying to sell the property;
- if there is no legal right of access to and from the property.

It is important to remember that the title insurance policy will make exceptions to and place conditions upon the coverage discussed above. We would be happy to review your title insurance commitment or policy with you so that you fully understand the extent of your coverage. In fact, if you're buying or selling real estate, call our office before you sign any documents or make any agreements. Call us for an appointment at 281-7626. ■

Child Labor and Agriculture

On September 2, 2011, the Department of Labor's Wage and Hour Division proposed new child labor in agriculture regulations. The Wage and Hour Division (WHD) worked with the National Institute for Occupational Safety and Health to craft the first proposed update to child labor regulations for agriculture in over forty years. The WHD is proposing the following changes, *none of which would apply to children working on their parents' farms*:

- Strengthening current child labor prohibitions regarding agricultural work with animals, timber operations, manure pits, storage bins and pesticide handling.
- Prohibiting youth in both agricultural and nonagricultural employment from using electronic devices, including communication devices, while operating power-driven equipment.
- Prohibiting hired farm workers under the age of 16 from operating almost all power-driven equipment. A similar prohibition has existed as part of the nonagricultural child labor provisions for more than 50 years. A limited exemption would permit some student-learners to operate certain farm implements and tractors (when equipped with proper rollover protection structures and seat belts).
- Preventing children under 18 years of age from being employed in the storing, marketing, and transporting of farm-product raw materials. Prohibited places of employment would include country grain elevators, grain bins, silos, feed lots, stockyards, livestock exchanges, and livestock auctions. ■

Type of Co-tenancy	Definition	Rights of Possession and Use	Survi-orship
Joint Tenancy	A form of ownership whereby two or more persons own an equal undivided interest in property with each owner having the right of survivorship. Example: A and B each own a one-half interest in property. If A dies, B will own the whole property and vice versa.	• A joint tenant enjoys the following rights with respect to the possession and use of the property: - to possess and enjoy the entire property - to collect a proportionate share of income and profits from the property; - to repair the property and make common improvements; -to receive contribution and reimbursement for common expenses from other cotenants; -to sell, convey, or mortgage his/her interest in the property without the consent of cotenants; and -to sue to sever the cotenants and divide the property. • A creditor of a joint tenant may create a lien upon the interest of the joint tenant and this lien may be foreclosed during the life of the joint tenant.*	Yes***
Tenancy in Common	A form of ownership whereby two or more persons own an undivided interest in property, but their interests in the property may be unequal. Example: A owns a one-quarter interest and B owns a three-quarter interest in the property.	• A tenant in common enjoys the same rights of possession and use as a joint tenant. A tenant in common also has the right to dispose of his/her interest in the property by will. • A creditor of a tenant in common may create and foreclose a lien upon the property interest of a tenant in common.	No
Tenancy by the Entirety	A form of ownership that can exist only between a husband and wife and only so long as the property is the primary residence of the husband and wife. Tenants by the entirety own the whole property jointly and they enjoy the right of survivorship. Example: H and W own their primary residence jointly. If H dies, W will own the whole property and vice versa.	• A tenant by the entirety may not sell, convey, or mortgage his/her interest in the property unless his/her spouse consents or joins in the conveyance or mortgage. • Tenancy by the entirety property may not be sold to satisfy a judgment entered after October 1, 1990, against only one spouse.**	Yes***

*Because a joint tenant has a right of survivorship, a lien creditor who fails to foreclose during the lifetime of a joint tenant may lose his/her lien when the debtor joint tenant dies, making the nondebtor joint tenant the sole owner of the property.

**The death of the nondebtor spouse will destroy the tenancy by the entirety protection, making the debtor spouse the sole owner of the whole property and making the property subject to sale by judgment creditors. Statutory changes and court decisions may affect the status of tenancy by the entirety property, making it subject to a creditor's foreclosure action.

***The property interest of a joint tenant or tenant by the entirety may not be given to a third party by will and will not pass to the heirs of the joint tenant by the entirety upon death.

Ten Things to Consider When Purchasing Rental Property

Owning residential rental property can significantly supplement your income. Investing wisely, the rents received will cover all or most of the cost of owning and operating the property, including the mortgage, property taxes, insurance, utilities, and maintenance. However, there can be problems, too. Here are ten important things to consider:

1. Costs. What costs are associated with owning and renting the property?

2. Occupancy Trends. Is the property fully occupied? What is the average vacancy rate? Do current tenants hold short-term or long-term leases? On average, how many tenants are evicted each year for non-payment of rent?

3. Tenant History. How long have the current tenants resided there? Are they reliable? Are they current with their rent?

4. Tenant Complaints. What complaints have the tenants made in the past year? Did those complaints concern the facility or other tenants? How were those complaints addressed? If the complaints concerned the facility, did the owner or an outside contractor correct the problems?

5. Vacancy Rate. What is the vacancy rate at other rental properties in the area? What is the average monthly rent for a unit of this size?

6. Condition. What is the condition of the building? Is the foundation solid? Is everything operational? What major repairs have been made in recent years? How soon will the heating/cooling system require replacement? How old is the roof? Do the windows meet current state and local energy standards?

7. Real Estate Taxes. What is the most recent property tax assessment? How does that compare to similar rental properties in the area?

8. Zoning. Does the property meet zoning and building code requirements? Has it ever been cited for noncompliance? Has the property ever been the subject of litigation, liens, or other adverse actions?

9. State and Local Laws. What state and local laws affect rental properties and/or landlords? Will those laws have an impact on operational costs?

10. Parking. Is there off-street parking? If not, are there any restrictions on street parking?

Call us with your questions. 281-7626 ■

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ADDRESS CORRECTION REQUESTED

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