

UPDATE ON ESTATE AND GIFT TAXES FROM IRS'S VIEWPOINT

- I. New Structure
 - A. Handout # 1 – Group 3 personnel

- II. Overview of new law (H.R. 1836)
 - A. Handout # 2 – Checklist (by year)

- III. Classification of returns
 - A. Handout # 3 – Where to file documents

- IV. FLP's and discounts
 - A. A major misconception – background of the problem

 - B. Actions by IRS to provide consistency in treatment
 - 1. Coordination at the National Level

 - C. Recent Court Opinions
 - 1. Reichardt
 - 2. Church
 - 3. Kerr
 - 4. Shepherd
 - 5. Knight
 - 6. Strangi
 - 7. Jones

 - D. Guidance from Court cases:
 - 1. Message

 - 2. Qualified appraisers
 - a. Knight
 - b. Scanlan
 - c. Jones
 - d. Auker

3. Common mistakes by appraisers

- a. Jung
- b. Gross
- c. Wall
- d. Jones
- e. Halas
- f. Auker
- g. Knight

4. A prediction for the future

- a. Curry
- b. Strangi
- c. Knight

E. IRS Strategy on Family Limited Partnerships

- 1. Litigation Strategy
- 2. Legislative Solution
- 3. Coordination of District Counsel and Chief Counsel
- 4. Conclusion

V. Comments on the new law.

HANDOUT # 1

EMPLOYEE	Title	Office Phone	Extn.
<i>New Orleans:</i>			
Herzog, Fred	Supervisory Atty. (Est. Tax)	504-558-3245	3245
Housey, Mary K.	Attorney (Estate Tax)	504-558-3244	2576
Nance, Liz	Attorney (Estate Tax)	504-558-3244	2371
Stewart, Toby	Attorney (Estate Tax)	504-558-3244	2261
Stump, Shelli	Attorney (Estate Tax)	504-558-3244	2579
Williams, Ruth	Group Secretary	504-558-3244	2944
Woods, Jerry	Attorney (Estate Tax)	504-558-3244	2577
<i>Lafayette:</i>			
Miller, Dusty	Attorney (Estate Tax)	337-262-6626	101
<i>Shreveport:</i>			
Bullock, Don	Attorney (Estate Tax)	318-869-6322	
<i>Birmingham:</i>			
Daniels, Ed	Attorney (Estate Tax)	205-912-5670	5670
Gould, Gale	Attorney (Estate Tax)	205-912-5668	5668
<i>Jackson:</i>			
Farris, James	Attorney (Estate Tax)	601-292-4792	4792
Smalley, Dave	Attorney (Estate Tax)	601-292-4797	4797

Law School Extern: Caroline Higgins

2412

HANDOUT # 2

Overview of H.R. 1836 E&G Provisions

- Increases the "unified" credit
 - Reduces top marginal tax rate
 - Replaces state death tax credit with a deduction
 - Expands availability of conservation easement exclusion
 - Gives GST relief for mistakes in exemption allocation
 - Expands availability of §6166 installment payments
 - Extends time for old §2032A refunds
 - Repeals estate tax for year 2010
 - Sunsets all changes 12/31/10
-

Provisions Effective for Year 2001

- Conservation Easements
 - Eliminates geographic restrictions
 - Changes date for 30% test
 - GST
 - Changes rules to create more deemed allocations
 - Allows retroactive allocations for certain out-of-order deaths
 - Allows more severances
 - Modifies valuation rules
 - Allows for Section 9100 Relief
 - Adds a "substantial compliance" rule
 - Section 2032A
 - Allows refunds from closed years for cash leasing cases
-

Provisions Effective for Year 2002

- 5% Surtax is repealed
 - Top marginal rate drops to 50%
 - Applicable exclusion amount ("unified credit") increases to \$1,000,000
 - State death tax credit is reduced by 25%
 - Section 6166
 - Increases number of shareholders/partners from 15 to 45
 - Makes installment plan available to lending and finance businesses
 - Clarifies the holding company rule
-

Provisions Effective for Year 2003

- Top marginal rate drops to 49%
 - Applicable exclusion amount remains at \$1,000,000
 - State death tax credit is reduced by 50%
-

Provisions Effective for Year 2004

- Top marginal rate drops to 48%
 - Unified credit is "dis-unified"
 - Applicable exclusion amount remains at \$1,000,000 for gifts
 - Increases to \$1,500,000 for estates
 - GST exemption increases to \$1,500,000
 - State death tax credit is reduced by 75%
 - Section 2057, QFOBI, is repealed
-

Provisions Effective for Year 2005

- Top marginal rate drops to 47%
 - "Dis-unified" credit same as 2004
 - State death tax credit replaced with deduction
-

Provisions Effective for Year 2006

- Top marginal rate drops to 46%
 - Applicable exclusion amount for estates increases to \$2,000,000
 - GST exemption increases to \$2,000,000
-

Provisions Effective for Year 2007

- Top marginal rate drops to 45%
-

Provisions Effective for Year 2008

- No changes
-

Provisions Effective for Year 2009

- Applicable exclusion amount for estates increases to \$3,500,000
 - GST exemption increases to \$3,500,000
-

Provisions Effective for Year 2010

- Estate and GST taxes are repealed for decedents dying after 12/31/09
 - Gift tax is retained with top rate of 35%
 - Carryover basis applies, with exceptions
-

Provisions Effective for Year 2011

- All changes in the act sunset
- Applicable exclusion amount is \$1,000,000
- All pre-Act rates (including 5% surtax) return

Carryover basis regime

- Basis in property "acquired from a decedent" is the lesser of
 - the adjusted basis of the decedent
 - the fair market value on date of death
 - Basis increases allowed
 - Every U.S. decedent allowed \$1.3 million of additional basis
 - \$1.3 million is increased for unused built-in losses and loss carryovers
 - Property passing to surviving spouse eligible for additional \$3 million basis increase
 - Basis increases allowed
 - Property passing to surviving spouse eligible for additional \$3 million basis increase
 - Includes property passing outright and
 - QTIP-type property (no election)
 - Basis allocated by executor on return
 - Basis cannot be increased beyond fair market value on date of death
-

[Next page should be page with shape drawing, but it is the last page in this document]

Instructions for shape drawing:

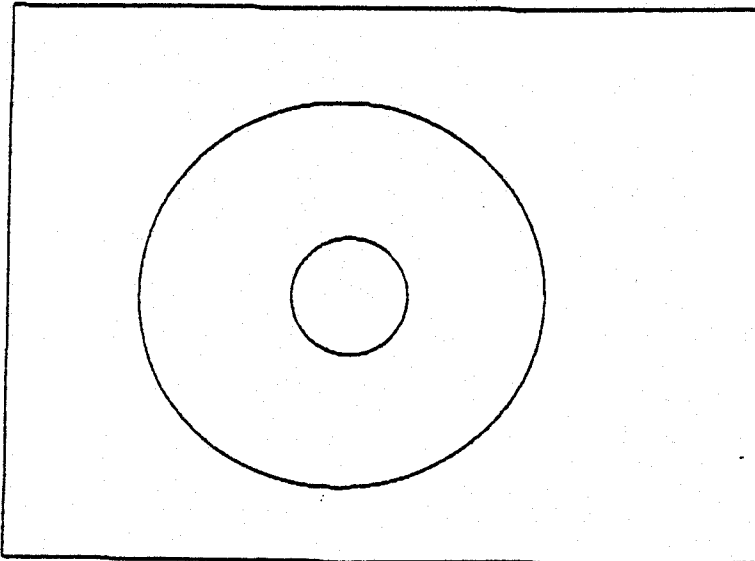
Label the rectangle: all property

Label the outer circle: property acquired from the decedent

Label the inner circle: property owned by the decedent

Property to which basis cannot be allocated

- Property acquired by decedent by gift within 3 years of death
- Stock of FPHC, DISC, former DISC, FIC, PFIC
- IRD items



CINCINNATI SERVICE CENTER ADDRESSES AND CONTACTS

All Estate and Gift Tax Returns filed for Louisiana taxpayers in 2001 and thereafter will be filed at the Cincinnati Service Center. The US Postal Service address is:

**Cincinnati Service Center
Cincinnati, OH 45999**

The address for FedEx or other courier service is:

**Cincinnati Service Center
201 W. Rivercenter Blvd.
Covington, KY 41019**

Source: Internal Revenue Bulletin No. 2001-28, July 9, 2001.

A contact at the center is:

**Richard T. Spies
Estate Tax Attorney – Cincinnati Service Center
201 West Rivercenter Blvd. Stop 824-T
Covington, KY 41019
Tel. (859) 669-2766 Fax. (859) 669-3501**

Questions concerning closing letters, service center notices, penalty matters, etc. should be sent first by FAX with a request that Mr. Spies phone you. This will enable him to research the matter first in our computer system to better inform himself before he discusses the problem with you.

COURT OPINIONS CITED IN SPEECH

Estate of Reichardt v. Commissioner, 114 T.C. 155

Estate of Elsie J. Church v. U.S., 2000 U.S. Dist. Lexis 714

Blain P. Kerr v. Commissioner, 113 T.C. 449

J.C. Shepherd v. Commissioner, 115 T.C. 376

Estate of Strangi v. Commissioner, 115 T.C. 478; appeal by government on July 11, 2001

Estate of W.W. Jones, II v. Commissioner, 116 T.C. No.11

Ina F. Knight v. Commissioner, 115 T.C. 506 (Nov. 30, 2000)

Estate of Scanlan v. Commissioner, T.C. Memo. 1996-331, aff'd. without published opinion 116 F. 3d 1476 (5th Cir. 1997)

Auker v. Commissioner, T.C. Memo. 1998-185

Estate of George S. Halas, Sr. v. Commissioner, 94 USTC 570 (1990)

Estate of Mildred H. Jung v. Commissioner, 101 T.C. 412

Walter L. Gross and Barbara H. Gross v. Commissioner, T.C. Memo. 1999-254

John E. Wall v. Commissioner, T.C. Memo. 2001-75

Estate of Bernard Curry v. U.S., 706 F 2d 1424

Estate of Harper v. Commissioner, 79 TCM 2232 (2000)