

KTBH TAX DEPARTMENT TO BE OR NOT TO BE? REACTIONS TO ESTATE TAX REPEAL

Without so much as the stroke of a pen, the federal estate tax and generation-skipping transfer tax (“GST tax”) have been repealed for 2010.

With Congress focusing on healthcare reform, lawmakers took no action in 2009 to address the 2010 federal estate tax and GST tax. As a result of that inaction, there is no estate tax or GST tax for the estates of people who die in 2010.

This is the case regardless of the size of the estate or the identity of the beneficiaries. Further, the assets of these decedents may not receive a full income tax basis step-up. Instead, subject to some exceptions, the decedent’s cost basis may carry over.

The estate tax is currently scheduled for reinstatement in 2011 with an exemption amount of \$1 million per taxpayer (\$2 million for a married couple) and a top tax bracket of 55 percent. The federal gift tax remains in effect in 2010 with a \$1 million per person lifetime exemption, a \$13,000 per donee annual exclusion and a top gift tax rate of 35 percent.

We believe that permanent estate tax repeal is highly unlikely in the foreseeable future. Although there is no way of knowing, we believe that the estate tax exemption amount will likely be set at \$2 to \$5 million (\$4 to \$10 million for a married couple) for years after 2010 (and may even be made retroactive for portions of 2010). We expect a substantial tax rate – possibly between 30 percent and 50 percent – for estates in excess of the exemption amount.

Immediate action is not necessary in nearly all situations. We do not recommend that our clients revise their current estate plans strictly in reaction to the present state of the estate tax law. Most problems generated by this recent development are of limited duration – one year, at most. More importantly, existing plans created by Katz, Teller, Brant & Hild should continue to “work” as intended in this no-estate-tax environment.

Regardless of whether the possible one-year repeal impacts you, you should continue to plan for your future. You should complete an estate plan if you have not already done so. Further, if you have an existing plan that has not been reviewed in several years or you have had substantial recent changes in your personal or financial circumstances, you should consult with your estate planning attorney to determine whether modifications are needed.

In addition, planning opportunities remain available to minimize estate taxes. Estate tax savings vehicles such as Grantor Retained Annuity Trusts, Charitable Lead Trusts and Valuation Freezes are particularly effective in this low-interest-rate environment. **There is some urgency in determining whether these tax savings vehicles may benefit you, because interest rates may rise or Congress may**

limit or eliminate the use of one or more of these vehicles. The inset below provides more details on these techniques.

Please contact Bob Brant, Bill Russo, Jody Brant or Whitney Maxson if you have any questions about your estate plan.

ESTATE TAX MINIMIZATION TECHNIQUES

Grantor Retained Annuity Trust (“GRAT”)

A GRAT is an irrevocable trust in which the grantor retains the right to a fixed annuity from the trust for a term of years. A GRAT resembles a loan to the trust with equal annual repayments with a low interest rate. If the grantor survives the term, the remainder in the GRAT (if any) passes to the grantor’s beneficiaries without any gift or estate taxes. If the GRAT earns more than the IRS-mandated interest rate (3.2 percent for March), there will be excess assets going to the beneficiaries free of gift tax.

Charitable Lead Trust (“CLT”)

A CLT is similar to a GRAT, but instead of the grantor of the trust keeping the annuity, the grantor designates a charity or charities (which may include a donor-advised fund or private family foundation) to receive the annuity. At the end of the fixed CLT term, the remainder in the CLT passes to the grantor’s non-charitable beneficiaries (usually the grantor’s family). The CLT can be designed so the grantor receives an immediate charitable income tax deduction on the creation of the trust.

If you are currently making annual gifts to charity, you can use a lead trust to continue those annual gifts and pass the principal of the trust to your beneficiaries largely free of gift and estate tax. CLTs may make it possible to leave your family more money than they would receive if you did no planning, while also making a charitable gift that is funded 100 percent out of estate tax savings.

Valuation Freezes

This estate tax minimization technique allows you to remove an asset from your estate at its current value. This can be achieved by selling the asset to a newly created trust at its current fair market value. The purchase price can be paid over time, mainly with the income generated by the asset sold to the trust. This method does more than just freeze the value of the transferred asset. It can allow an asset to “disappear” from the taxpayer’s estate over a period of years with little or no gift or estate tax cost.

Please contact us if you wish to discuss any of these estate tax savings strategies in more detail.

KATZ TELLER ATTORNEYS WELL-REPRESENTED (AGAIN) IN OHIO SUPER LAWYERS AND RISING STARS, BEST LAWYERS IN AMERICA AND CINCY MAGAZINE LEADING LAWYERS PUBLICATIONS

A number of Katz Teller attorneys earned recognition as Super Lawyers and Rising Stars in Ohio, while 17 attorneys were recognized as among the Best Lawyers in America. In addition, **Mark Jahnke, Wijdan Jreisat, Bob Pitcairn and Bill Russo** were listed in *Cincy Magazine* as Leading Lawyers in Cincinnati after being nominated and selected for inclusion by their peers.

Super Lawyers

Each year, *Law & Politics* solicits nominations from over 28,000 Ohio attorneys, in search of “Super Lawyers.” These nominations are then reviewed by a panel of industry leaders, and peer voting commences for the nominated individuals. Only the top 5 percent of all attorneys are selected by their peers to be “Super Lawyers,” and Katz Teller is proud to announce that 10 of its attorneys made the list:

- Andy Berger
- Jody Brant
- John Gierl
- Guy Hild
- Mark Jahnke*
- Jim McCarthy
- Bob Pitcairn**
- Bill Russo
- Jerry Teller
- Dan Utt

Katz Teller had over 65 percent of its attorneys on the list of *Best Lawyers in America*.

**Mark Jahnke achieved “Top 50 Super Lawyer” status in Cincinnati and “Top 100 Super Lawyer” in Ohio.*

***Bob Pitcairn also achieved “Top 50 Super Lawyer” status in Cincinnati and was named a “Top 10 Super Lawyer” in the state of Ohio for the fourth year in a row.*

Rising Stars

Law & Politics also selects “Rising Stars” – attorneys who represent the top 2.5 percent of those nominated as “up-and-coming attorneys.” This year, Katz Teller’s **Matt Rich** and **Sheri Auttonberry** were recognized as “Rising Stars” in Ohio.

Best Lawyers in America

Less than 3 percent of all attorneys practicing in the United States make the list of *Best Lawyers in America* published by Woodward/White, Inc. Katz Teller had over 65 percent of its attorneys on the list, with the following 17 attorneys receiving recognition:



Andy Berger



Jody Brant



Joe Brant



Bob Brant



Tedd Friedman



John Gierl



Brad Haas



Bill Hayden



Guy Hild



Mark Jahnke



Reuven Katz



Steve Kisling



Jim McCarthy



Bob Pitcairn



Bill Russo



Jerry Teller



Dan Utt

INSIDE KTBH

Happy Birthday to, well, us.

That's right, Katz Teller turned 30 this January. We look forward to many more years of serving this community and sharing in our clients' successes.



Wijdan Jreisat has become a member of the Cincinnati Academy of Collaborative Professionals and the International Academy of Collaborative Professionals, both of which require specialized training in negotiation skills and conflict resolution techniques to help parties achieve an agreed resolution of their financial issues and parenting arrangements without the use of adversarial court action.



IN OHIO, EMPLOYER CREDIT CHECKS IN CONNECTION WITH HIRING COMING UNDER FIRE

Under current Ohio law, an employer may request – as a condition of consideration for hiring – that a prospective employee consent to a credit check. This credit check allows the employer to better understand the candidate by giving insight into how that employee manages his or her creditors.

Recently, however, this practice has come under attack in Ohio and in other states, and there is a movement afoot to curb it or curtail it altogether. In the spring of 2009, Ohio Senator Ray Miller, a Democrat from the 15th District (Columbus), proposed an amendment to Ohio Revised Code § 4112.02, which is the Ohio discrimination statute. Under Senator Miller's amendment, as reflected in Senate Bill 91, it would be an unlawful discriminatory practice to "use a person's credit rating or score or consumer credit history as a factor in making decisions regarding that person's employment, including hiring, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment."

Whereas Ohio law has traditionally mirrored federal discrimination protections, under Senate Bill 91 there would be a new protected category – employees with bad credit. For those employees, any information regarding negative credit ratings or scores could not be a basis for employer action. Further, on the face of the Bill, it would also prohibit an employer from favoring employees with good credit. Given that, it would likely be better for an employer to know nothing about its employees' credit histories than to have that information and be accused of relying on it in connection with employment decisions. Thus, the credit check practice could become obsolete.

Senate Bill 91 has not yet been subject to a vote. Katz Teller will continue to monitor this legislation, and will update you by way of this newsletter or with an electronic mailing should the law change.



MEET KTBH'S NEWEST ATTORNEY | DUSTIN THACKER



Dustin grew up two hours southeast of Cincinnati in the town of Ashland, Kentucky. Like every young eastern Kentucky boy, Dustin had dreams of becoming a basketball player for the University of Kentucky. Unfortunately, his body had much less glamorous dreams. So Dustin chose to pursue a career in which a short, relatively unathletic individual could flourish. He chose to become an attorney.

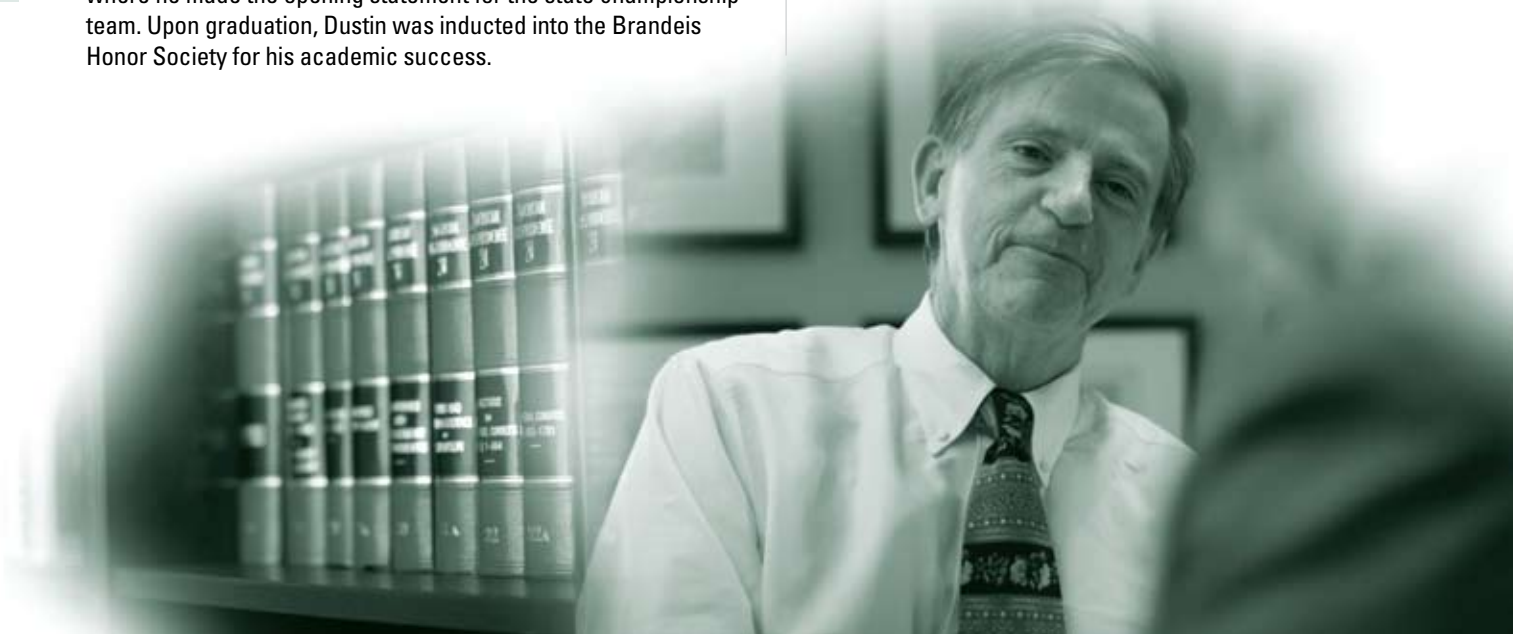
Dustin attended law school at the University of Louisville's Brandeis School of Law, where he was a member of the University of Louisville Law Review and had his article on labor and employment law selected for publication. During law school, Dustin also participated in the Kentucky Mock Trial Tournament, where he made the opening statement for the state championship team. Upon graduation, Dustin was inducted into the Brandeis Honor Society for his academic success.

Dustin moved to Cincinnati and began working as an associate at Katz Teller in the fall of 2009. Since joining the firm, Dustin has provided a broad range of services to Katz Teller clients, including drafting commercial leases and contracts and handling commercial litigation matters.

Dustin enjoys living downtown, which allows him to walk to work and frequent some of the great downtown restaurants. Outside of work, he is an avid runner, having finished the 2007 Louisville Marathon first in his age division. He is considering taking on the challenge of the Flying Pig Marathon next, as a sort of painful introduction to Cincinnati.

Katz Teller is excited to have Dustin on board and expects great things from him in the years to come.

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