

**TAX AND LEGISLATIVE UPDATE
STATE AND FEDERAL**

Robert L. Perez
Retired Partner
KPMG LLP

Justin P. Ransome
Partner
National Tax Office
Grant Thornton, LLP
Washington, DC

September 17, 2007

TAX AND LEGISLATIVE UPDATE
STATE AND FEDERAL

Robert L. Perez
Retired Partner
KPMG LLP
909 Poydras Street, Suite 2900
New Orleans, Louisiana 70112
(504) 523-5000

Mr. Perez is a Retired Tax Partner in the New Orleans office of KPMG LLP. He is a certified public accountant and a member of the American Institute of Certified Public Accountants, the Society of Louisiana Certified Public Accountants, and the Louisiana State Bar Association. He has been awarded the Personal Financial Specialist (PFS) designation by the AICPA and the Accredited Estate Planner (AEP) designation by the National Association of Estate Planners. He has been awarded the LCPA Outstanding Discussion Leader Award and the 2006 LCPA Distinguished Service Award. Mr. Perez often appears as a speaker at various tax institutes and lectures sponsored by these organizations and KPMG.

TAX AND LEGISLATIVE UPDATE
STATE AND FEDERAL

Robert L. Perez

I.	Recent Developments	Page 1
A.	Provisions of Pension Protection Act of 2006	Page 1
B.	Discounts for Family Limited Partnerships	Page 2
C.	Transfers of Life Insurance Policies	Page 3
D.	Payment of Debt Not an Obligation of Estate	Page 4
E.	Commingled Assets in Decedent's Estate	Page 5
F.	Post-Death Events and Estate Tax Values	Page 6
G.	Treatment of Annuity Contract	Page 7
H.	Division of Trust - QTIP Election	Page 8
I.	Sections 2036 and 2039	Page 9
J.	Estate Tax Deferral Election	Page 10
K.	Denial of Estate's Charitable Deduction	Page 11
L.	Inter Vivos Charitable Lead Annuity Trust Forms ..	Page 12
M.	Personal Residence Trust Transaction	Page 13
N.	Family Limited Partnerships (FLPs)	Page 14
O.	Stock Aggregation in Determining FMV	Page 16
P.	Valuing S Corporation Stock	Page 17
Q.	Importance of Quality Appraisals	Page 18
R.	Basis of Inherited Property	Page 19
S.	Defined-Value gifts	Page 20
T.	Private Annuities	Page 21
U.	Deducting Investment Advisory Fees	Page 22
V.	Form 706 - Procedure and Administration	Page 22
W.	EGTRRA Changes in 2007	Page 22
X.	Annual Inflation Adjustments	Page 23
Y.	Preparer Penalties: Notice 2007-54	Page 23
II.	Pending Legislation	Page 23
III.	Recent Legislation	Page 23

Appendix I - Notice 2007-54 - Preparer Penalties Transitional Relief

Appendix II - H.R. 3170 - Capital Gains and Estate Tax Relief Act of 2007

Appendix III - Louisiana 2007 Act 371 (SB 90)

TAX AND LEGISLATIVE UPDATE
STATE AND FEDERAL
Robert L. Perez
September 17, 2007

I. Recent Developments.

A. IRS Releases Notice Regarding Miscellaneous Provisions of Pension Protection Act of 2006.

In Notice 2007-7, 2007-5 I.R.B. 1, the IRS provides guidance in the form of questions and answers with respect to certain provisions of the Pension Protection Act of 2006 (the "Act") that are effective in 2007 or earlier. With regard to individual taxpayers this guidance includes:

- **Rollovers for non-spouse beneficiaries.** Section 829 of the Act adds section 402(c)(11) which allows a direct trustee-to-trustee rollover of funds from a qualified retirement plan of a deceased plan-participant to an "inherited" individual retirement account ("IRA") for the benefit of the plan's non-spouse beneficiary. The notice provides that the rollover must be made to an IRA established on behalf of the designated beneficiary that will be treated as an inherited IRA pursuant to section 402(c)(11). The notice reflects that the minimum required distribution ("MRD") rules in section 401(a)(9)(B) applicable to inherited IRAs for purposes of direct rollovers from a decedent's IRA to an inherited IRA are applicable to direct rollovers from a deceased plan-participant's qualified retirement plan to an inherited IRA. The notice makes clear that the MRD rules set forth in section 401(a)(9)(B) for inherited IRAs as well as the MRD rules of the qualified retirement plan are applicable in determining an inherited IRA's MRDs.

- **IRA Distributions to Charity.** Section 1201(a) of the Act adds section 408(d)(8) which allows an individual who has attained his or her "required beginning date" (i.e., age 70 1/2) to direct the trustee of his or her IRA to make a distribution of up to \$100,000 in years 2006 and 2007 to a public charity (which excludes private foundations) and not have such distribution included in his or her gross income for federal income tax purposes. The notice makes clear that if an individual has more than one IRA, the maximum total contributions from all IRAs to public charities for any given year is limited to \$100,000. The notice further confirms that supporting organizations described in section 509(a)(3) and donor-advised funds described in section 4966(d)(2) are not "public charities" for purposes of section 408(d)(8). While Roth IRAs are

also eligible to take advantage of section 408(d)(8), the notice states that SEP IRAs and SIMPLE IRAs to which employer contributions are made are not eligible. The notice further provides that the distribution from the IRA may not be taken as a charitable contribution deduction but can be taken into consideration in determining whether the owner of an IRA has satisfied his or her MRD requirements.

B. IRS Issues Settlement Guidelines on Discounts for Family Limited Partnerships.

On January 29, the IRS released a redacted copy of settlement guidelines for family limited partnerships ("FLPs") (including limited liability companies) and family corporations that will be used at the appeals level for audits involving these types of entities (see 2007 TNT 20-21 (Jan. 30, 2007)). The settlement guidelines outline three issues which the IRS will review at the appeals level in determining whether to settle audits regarding FLPs or family corporations: (1) the size of discounts related to transfers of interests in FLP or family corporations to related parties; (2) whether the date of death value of assets transferred to an FLP or family corporation during the taxpayer's lifetime should be included in the taxpayer's gross estate under sections 2036 or 2038; and (3) in certain cases where the facts warrant, whether there was an indirect gift of the assets transferred to an FLP or family corporation due to the timing of the transfer and the formation of the FLP. The settlement guidelines also address whether an accuracy-related penalty under section 6662 is warranted in these situations.

The settlement guidelines outline recent successes by the IRS in court regarding each of the issues and sets forth how the issues should be addressed on appeal. The conclusions in the settlement guidelines are redacted; however, the unredacted portions give some insight as to how the IRS might address the issues on appeal. Regarding discounts, the IRS is focusing on the size of discounts associated with FLPs or family corporations that hold passive or portfolio assets. As to inclusion of assets transferred to an FLP or family corporation in a taxpayer's gross estate, the IRS is focusing on the relationship between the taxpayer and the asset transferred to the FLP or family corporation after the transfer. As to indirect gifts, the IRS is focusing on when a transfer was made to the FLP or family corporation, when the entities were formed under state law and when a gift of the interest in the entity took place. As to whether to impose an accuracy-related penalty, the settlement guidelines conclude that such penalty may be warranted where the value of a transfer is not supported by an appraisal or the taxpayer unreasonably relies on an appraisal that takes an egregious discount.

C. IRS Addresses Transfers of Life Insurance Policies Between Disregarded Entities.

In Rev. Rul. 2007-13, 2007-11 I.R.B. 1, the IRS addresses two scenarios involving the transfer of life insurance policies that are not subject to transfer for value rule under section 101(a)(2). In general, section 101(a)(1) provides that gross income does not include amounts received under a life insurance contract, if such amounts are paid by reason of the death of the insured. Section 101(a)(2) provides, however, that if a life insurance contract, or any interest therein, is transferred for a valuable consideration, the exclusion from gross income provided by section 101(a)(1) is limited to an amount equal to the sum of the actual value of the consideration paid and the premiums and other amounts subsequently paid by the transferee (the "transfer for value rule").

In the first scenario, there is a transfer of a life insurance policy for value between two wholly-owned grantor trusts that have the same grantor. The IRS determines that the transfer for value rule does not apply because, pursuant to Rev. Rul. 85-13, 1985-1 C.B. 184, the two wholly-owned grantor trusts are disregarded entities for income tax purposes. Thus, for income tax purposes, the transfer is not recognized. In the second scenario, a non-grantor trust transfers a life insurance policy for value to a wholly-owned grantor trust of the insured. The IRS determines that the transfer for value rule applies; however, this type of transfer is excepted from the transfer for value rule under section 101(a)(2)(B) which provides that the transfer for value rule does not apply to a transfer of a life insurance policy to the insured.

The revenue ruling codifies into authority (on which a taxpayer may rely) the result reached by the IRS in several private letter rulings which it has issued over the past four years. These rulings mainly dealt with transfers to or between irrevocable life insurance trusts ("ILITs") that were wholly-owned grantor trusts and, thus, disregarded entities for income tax purposes but not disregarded for gift tax purposes. Because ILITs are irrevocable, a grantor cannot change the terms of the ILIT's governing instrument. However, the grantor can create a new ILIT and have the old ILIT sell the life insurance policy to the new ILIT. The transfer for value negates the gift tax consequences of the transfer while the ILIT's disregarded entity status shields the transfer from the transfer for value rule and, thus, the recognition of income.

D. Estate Not Entitled to Refund for Payment of Debt not an Obligation of Estate.

Gottzman v. United States, Docket No. 05 Civ. 8212 (S.D. NY Jan. 12, 2007), reminds taxpayers that only enforceable claims against a decedent's estate are deductible in determining an estate's estate tax liability. In *Gottzman*, the decedent (Jim Henson, creator of the Muppets) divorced his wife in 1987. As part of the property settlement between the couple, the decedent's wife was to transfer stock she owned in the decedent's company to the decedent in return for a lump sum payment (payable in installments).

One of the provisions of the property settlement stated that if the decedent sold or his estate received value for the stock of the decedent's company, the decedent's wife was entitled to a share of the proceeds. The stock was placed in escrow as security for performance of the settlement agreement. Upon the decedent's death, his will left his entire estate to his children.

Decedent died in 1990 without having sold his company and his estate filed its estate tax return the next year reflecting its ownership of the company's stock. In 2000, the children sought to sell the decedent's company. The company's stock was still being held in escrow in 2000 even though the provision of the property settlement agreement regarding the company stock was not longer enforceable.

Not believing they had clear title to the company stock still being held in escrow, the children entered into an agreement with the decedent's wife to pay her \$10,000,000 in return for her release of any claim she may have to the company stock held in escrow. As a result of the agreement, the decedent's estate filed for an estate tax refund claiming a deduction under section 2053(a) for the amount paid to the decedent's wife to release her claim against the company stock. Pursuant to section 2053(a), in determining the value of a decedent's taxable estate, a deduction is allowed for enforceable claims against the estate.

The District Court dismissed the estate's claim for refund ruling that the payment made to the decedent's wife was not a valid and enforceable claim against the estate. The court noted that the provisions of the property settlement agreement were no longer enforceable once the decedent died and the company stock not having been sold. The court stated that decedent's estate passed to the decedent's children who were not bound by the property settlement agreement. The court noted the children's belief the property agreement was still valid and enforceable did not create a valid and enforceable claim against the estate for purposes of section 2053(a).

The court's ruling ends here, but query whether the story ends here. If the children made a payment to their mother that they were not otherwise required to pay (i.e., not for valuable consideration), does not the payment give rise to a gift?

E. Commingled Assets Included in Decedent's Estate.

In *Estate of Hester v. United States*, Docket No. 5:06-cv-0041 (W.D. Vir. Mar. 2, 2007), the decedent's wife created a trust which provided that the decedent would receive a qualifying income interest for life upon her death. About 3 1/2 years after the death of the decedent's wife, the decedent breached his fiduciary duty as trustee of the trust and transferred all of its assets to himself. The assets of the trust were commingled with other assets the decedent owned in a brokerage account in the name of the decedent.

Upon the decedent's death, the decedent's estate included the assets of the trust in the decedent's gross estate for estate tax purposes. Upon realizing the error, the decedent's estate later filed a claim for refund after amending its estate tax return to exclude the assets of the trust created by the decedent's spouse. The IRS denied the claim for refund.

The Tax Court dismissed the arguments of the decedent's estate and held in favor of the IRS. The court dismissed the argument that the decedent held no interest in the assets of the trust because the decedent exercised dominion and control over the assets as if they were his own and failed to hold them separate and apart from his own assets. It further dismissed the argument that the decedent's estate was entitled to a corresponding deduction equal to the value of the assets of the trust as a claim against the decedent's estate (under Sec. 2053) for breach of fiduciary duty because the estate tax return failed to list such claim and the statute of limitations had run for a viable claim to be filed against the estate.

It is hard to determine from the facts of this case the events which led to this litigation. The facts do not state whether the estate of the decedent's wife claimed an estate tax marital deduction for the assets passing under the trust. If it had, the assets would have been included in the decedent's estate under Sec. 2044.

The Tax Court also looked at "subsequent events" to determine that the claim for breach of fiduciary duty was worthless because the statute of limitations within which a claim could be asserted had run at the time the claim for refund had been filed. Courts have failed to establish the circumstances in which "subsequent events" may be considered in determining date of death values for estate tax purposes. Even the Tax Court has failed to establish such a test.

Ultimately, this case serves as a warning of the consequences that can occur when an estate plan is not executed properly. Even the best estate plans that money can buy are worth nothing if they are not properly executed by the parties involved.

F. IRS Issues Proposed Regulations Regarding Post-Death Events and Estate Tax Values.

The IRS has published proposed regulations (REG-143316-03) providing guidance under section 2053 regarding the extent to which post-death events may be considered in determining the value of a taxable estate. Pursuant to section 2053(a), the value of a taxable estate is determined by deducting amounts (such as funeral and administration expenses) from the value of the gross estate. Section 2053(a)(3) allows a deduction for claims against a decedent's estate.

Neither section 2053(a) nor the regulations thereunder contain a method for valuing a claim against an estate for estate tax purposes and there has been little consistency among the courts regarding the extent to which post-death events are to be considered in valuing such claims. In general, the court decisions have floated between one line of cases that follows a date-of-death valuation approach and another line of cases that restricts deductible amounts to those amounts actually paid by the estate in satisfaction of the claim.

The proposed regulations reflect that the IRS rejects the date-of-death valuation approach and adopts rules based on the premise that an estate may only deduct amounts actually paid in settlement of claims against the estate. Thus, the proposed regulations "clarify" that events occurring after a decedent's death are to be considered when determining the amount deductible under all provisions of section 2053 and that such deductions are limited to amounts actually paid by the estate in satisfaction of deductible expenses and claims.

The proposed regulations also provide that an estate may file a protective claim for refund for some contested or contingent claims that are unresolved as of the date of filing a decedent's estate tax return. Other provisions provide guidance for specific circumstances, including claims with multiple defendants and unenforceable claims.

The proposed regulations also update provisions regarding the deduction for some state death taxes to reflect amendments to section 2053(d) and section 2058 by the Economic Growth and Tax Relief Reconciliation Act of 2001. These regulations apply to the estates of decedents dying on after the date the final regulations are published in the Federal Register.

G. IRS Rules on Treatment of Annuity Contract.

Pursuant to section 72(e), amounts received under an annuity contract, but not as annuity, are generally included in gross income to the extent allocable to income on the contract. Section 1035(a)(3), however, provides that no gain or loss is recognized on the exchange of an annuity contract for another annuity contract. In order to qualify for non-recognition treatment, Treas. Reg. section 1.1035-1 requires that contracts exchanged must relate to the same insured, and the obligees under the contract received in the exchange must be the same as those under the original contract.

Rev. Rul. 2007-24, 2007-21 I.R.B. 1, addresses whether a check received from one life insurance in the name of the annuity owner and endorsed to another life insurance company qualifies for non-recognition treatment under section 1035(a)(3). The facts state that the annuity owner requested that the life insurance company issue a check directly to another life insurance company as consideration for a new annuity contract to be issued by such insurance company. The life insurance company refused to do so and issued a check to the individual, who did not deposit the check but endorsed it to the second insurance company as consideration for the new contract.

In previous revenue rulings, the IRS ruled that assignments of annuity contracts issued by one insurance company to another in exchange for a variable annuity contract from the second company or the deposit by the second company of the assigned contract's cash value into a preexisting annuity contract owned by the same taxpayer qualified as a section 1035 tax-free exchange. The IRS, however, distinguished these previous rulings from the present facts because there was neither an actual exchange or assignment of annuity contracts nor a direct transfer of the cash value of the old contract in exchange for the new contract. The IRS determined that neither section 1035, nor the regulations thereunder, make any special provision for the purchase of an annuity contract with amounts distributed to the policyholder under another contract. As a result, the IRS ruled that the annuity owner did not qualify for section 1035 non-recognition treatment.

Many companies that issue annuity or life insurance contracts refuse to transfer funds directly to another annuity or life insurance company. While many companies claim this policy is for the owner's benefit, in actuality, they are simply trying to make it as difficult as possible to switch from one company to another company. Thus, when advising clients who are purchasing annuities, make sure they are advised to inquire as to the company's policy regarding transfers to other companies.

H. Proposed Division of Trust Will Not Invalidate QTIP Election.

Priv. Ltr. Rul. 2007-17-016 (Dec. 19, 2006) presents a possible planning technique that allows a surviving spouse to transfer part of a trust for which a qualified terminable interest property ("QTIP") election has been made to remainder beneficiaries without causing the entire trust to lose the estate tax deferral benefit of the election. In the ruling, the surviving spouse proposes to divide the QTIP trust into two identical trusts (QTIP A and QTIP B) having the same provisions as the original QTIP trust and further divide the QTIP B trust into two separate identical trusts for the benefit of the surviving spouse's two children upon her death or in the event of her disclaimer of her interest.

In general, a QTIP election is made for a trust in which the surviving spouse has the sole income interest during her life in order to get the benefit of the marital deduction under section 2056(a) for property in the trust for estate tax purposes. To the extent a trust's QTIP election is still in effect at the death of the surviving spouse, the trust is includable in the surviving spouse's estate for estate tax purposes under Sec. 2044.

If a surviving spouse disposes of *all or part* of her income interest in a QTIP trust during his or her lifetime, section 2519 provides that such transfer is treated as a transfer of all interests in property in the QTIP trust for gift tax purposes. Thus, if a surviving spouse transfers all or part of his or her income interest in a QTIP trust, Sec. 2519 provides that the surviving spouse is treated as transferring both the income interest and the remainder interest (which he or she may or may not own) in the QTIP Trust.

The IRS ruled that the proposed divisions of the trust would not invalidate the QTIP election as to the original QTIP trust and the resulting QTIP A and QTIP B trusts. The IRS further ruled that if the surviving spouse renounced her income interest in QTIP B trust: (1) QTIP B trust would be subject to section 2519 for gift tax purposes; (2) QTIP B trust would not be includable in her estate under section 2044 for estate tax purposes; and (3) QTIP A would not be subject to section 2519 (i.e., would continue to enjoy the benefits of the QTIP election). The result is that the surviving spouse was able to divide the original QTIP trust and renounce her interest in one of the resulting trusts without causing the entire original trust to lose the benefit of the QTIP election (which would have resulted in the entire original trust being subject to gift tax).

Section 2519 specifically states that the entire trust for which a QTIP election has been made will be subject to gift tax

if the surviving spouse disposes of all or part of his or her interest in such trust. This is, in fact, what occurred and it is surprising that the IRS allowed the taxpayer to skirt section 2519 by first dividing the QTIP trust into multiple trusts and then having the surviving spouse dispose of her income interest as to one trust (subjecting it to section 2519) without the other trusts losing the benefit of the QTIP election. While this is a great planning technique to allow remainder beneficiaries of a QTIP trust to enjoy part of the assets of a QTIP trust without having to wait for the surviving spouse to die, depending on the value of the trust at the time the technique is contemplated, a taxpayer might want to obtain a private letter ruling given the gift tax burden that might result if the IRS asserts that section 2519 is applicable to the entire amount of the original QTIP trust.

I. IRS Issues Proposed Regulations Addressing the Application of Sections 2036 and 2039 to Certain Types of Annuities.

Section 2036 provides for the inclusion in a decedent's estate certain transfers the decedent made during his or her lifetime of which the decedent retained certain rights in the property. Section 2039 provides for the inclusion in a decedent's estate the value of any annuity receivable by a beneficiary by reason of surviving the decedent if such annuity was payable to the decedent.

These provisions may overlap in the case of certain estate planning techniques a decedent executed during his or her life that were still in place at the time of the decedent's death. The determination of value for estate tax purposes can vary significantly depending on whether a decedent's estate applies section 2036 or section 2039 in these cases. The IRS has issued proposed regulations (REG-119097-05 (June 6, 2007)) under sections 2036 and 2039 to provide for the uniform application of section 2036 (over section 2039) in these cases.

The proposed regulations provide that, if a decedent transfers property during life to a trust and retains the right to an annuity, unitrust, or other income payment from, or retains the use of an asset in, the trust for the decedent's life, the decedent has retained the right to income from all or a specific portion of the property under section 2036. These transfers involve transfers to a charitable remainder trust ("CRT") or a grantor retained (annuity/unitrust/income) trust ("GRT"). The portion of the trust corpus includible in the decedent's gross estate is that portion of the trust corpus, valued as of the decedent's death, necessary to yield that annual payment using the appropriate section 7520 interest rate. The proposed regulations provide both rules and examples for calculating the amount of the trust to be included in a decedent's gross estate under section 2036 in such a case.

The IRS acknowledges that while both section 2036 and section 2039 may be applicable to a CRT or GRT, it believes it is appropriate to provide a regulatory rule under which only one of these sections is to be applied in the future in the interest of ensuring similar tax treatment for similarly situated taxpayers. The IRS gives two reasons for the choice of section 2036. First, section 2039 appears to have been intended to address annuities purchased by or on behalf of the decedent and annuities provided by the decedent's employer. Second, the interests retained by grantors in a CRT or GRT are more similar to the interests addressed under section 2036 rather than those most clearly addressed under section 2039.

The position taken by the IRS in these proposed regulations is taxpayer-favorable in that the application of section 2036, in some cases, may result in a smaller amount of the CRT's or GRT's assets being included in the estate of a decedent than the value that would otherwise be includable under section 2039. Whereas the application of section 2039 will generally result in the inclusion of the entire value of the trust in the decedent's estate, the application of section 2036 may result in an amount that is less than the entire value of the trust being included in the decedent's estate. This position is contrary to the position the IRS had taken previously in prior rulings on the issue. See Tech. Adv. Mem. 2002-10-009 (Nov. 19, 2001) and Priv. Ltr. Rul. 93-45-035 (Aug. 13, 1993).

J. Estate Tax Deferral Election Ineligible for Extension.

Priv. Ltr. Rul. 2007-12-006 (Feb. 14, 2007) reminds taxpayers the importance of making a timely section 6166 election (and the consequences of making an untimely election). Section 6166 allows a decedent's estate to elect to pay the estate tax related to an interest in a closely-held business included in such estate in two or more equal annual installments (not exceeding ten installments). Section 6166(d) provides that the election must be made no later than the time prescribed for filing a decedent's federal estate tax return (generally within nine months of the date of the decedent's death, including extensions).

The facts of the letter ruling reflect that the taxpayer made a section 6166 election on an untimely filed estate tax return. The taxpayer requested relief under Treas. Reg. section 301.9100-3 for an extension of time to make a timely section 6166 election or, in the alternative, that the taxpayer had substantially complied with the requirements for making the election.

The IRS denied the request noting that the time for filing the election was prescribed by statute and, thus, was a "statutory election" for which relief could not be granted. The IRS further ruled that the substantial compliance doctrine was not

applicable to an election that was required to be made on a timely filed return when the return was not timely filed.

Treas. Reg. section 301.9100-3 is only available to request relief from a "regulatory election" (i.e., an election whose due date is prescribed by regulation). This regulation does not apply when the election is set by statute (i.e., a statutory election) because the IRS is of the opinion (and rightly so) that it has no power to grant relief for an extension of time for a statutory election unless the IRS is granted such permission by statute.

K. Third Circuit Affirms Denial of Estate's Charitable Deduction.

In *Galloway v. United States*, Docket No. 06-3007 (3rd Cir. June 21, 2007), the Third Circuit highlights the adverse estate tax consequences of making split-interest gifts (a transfer of the same property to a charity and to a non-charitable entity). The decedent created a revocable trust during his lifetime that became irrevocable upon his death. Upon his death, the trust provided that the residue of the trust would pass in four equal shares - one share each for the decedent's son and granddaughter, and the other two shares for two charities. The beneficiaries of the trust were to receive a distribution of their shares on two separate dates - 50 percent of their share in 2006 and the rest in 2016.

The estate of the decedent took an estate tax charitable deduction pursuant to section 2055(a) for the value of the two shares that were bequeathed to the charities. The IRS disallowed the deduction under section 2055(e)(2) because the bequests to the charities were bequests of a split-interest and the bequests did not meet one of the exceptions in section 2055(e)(2). The estate argued that the legislative history of section 2055(e)(2) made the statute ambiguous and that section 2055 was not meant to exclude the type of split-interest transfer described in the trust's governing instrument occurring at the decedent's death.

The Third Circuit agreed with the IRS (and the District Court (Docket No. 05-50 (W.D. Penn. 5/9/06)) noting that the language of section 2055(e)(2) was clear and unambiguous and, therefore, there was no need to look to legislative intent. It further ruled that it was clear that the trust's governing instrument described a single trust that was to be distributed evenly to both charitable and non-charitable beneficiaries. Thus, the transfers fell clearly within the parameters of section 2055(e)'s disallowance.

Comment: Many individual taxpayers as well as their tax advisors fail to recognize that the income tax, gift tax and estate tax generally disallow a charitable deduction for the contribution of

property that is less than the donor's entire interest in the contributed property. There are limited exceptions to this general rule and taxpayers as well as advisors must make sure that they meet one of these exceptions if they are going to claim a deduction for a contribution of property that creates a split-interest.

L. IRS Releases Sample Inter Vivos Charitable Lead Annuity Trust Forms.

A charitable lead trust (CLT) is a trust in which an income (or lead) interest (in the form of an annuity or unitrust amount) is paid to one or more charitable beneficiaries and the remainder interest either reverts to the grantor or is paid to one or more non-charitable beneficiaries at the termination of the trust. CLT's are a type of estate freeze technique designed to pass appreciating property to an individual's heirs with minimal transfer tax costs.

A CLT may be established as an inter vivos trust during the life of the grantor or as a testamentary trust which becomes effective at death. Inter vivos CLTs may either be grantor or non-grantor.

For the first time, the IRS has released sample forms for both inter vivos and testamentary charitable lead annuity trusts ("CLATs") (see Rev. Proc. 2007-45, 2007-29 I.R.B. 89, and Rev. Proc. 2007-46, 2007-29 I.R.B. 102). The revenue procedures provide sample trust instruments (along with annotations) for inter vivos grantor and non-grantor CLATs (Rev. Proc. 2007-45) and testamentary CLATs (Rev. Proc. 2007-46) with a term of years. The revenue procedures also provide samples of certain alternate provisions that may be contained in the trust instruments.

The revenue procedures state that if a trust instrument:

- (1) is substantially similar to one of the sample trust instruments or properly integrates one or more alternate provisions into a trust instrument substantially similar to one of the sample trust instruments;
- (2) is a valid trust under applicable local law;
- (3) operates in a manner consistent with the terms of the trust instrument; and
- (4) satisfies all other deductibility requirements,

the value of the charitable lead interest will be deductible under section 2522 and/or section 2055.

The revenue procedures further state that trust instruments that depart from the sample trust instruments will not necessarily be ineligible for a charitable deduction but also will not be assured of qualification for the appropriate charitable deduction. Finally, the revenue procedures state that the IRS generally will not issue a letter ruling on whether a CLAT qualifies for a charitable deduction; however, it generally will issue letter rulings relating to the tax consequences of the inclusion in a CLAT of substantive trust provisions other than those contained in the revenue procedures.

Comment: Conceptually, a CLT is the opposite of a charitable remainder trust (CRT) where the non-charitable beneficiary receives an income interest and the charitable beneficiary receives the remainder interest. However, unlike a CRT which is specifically sanctioned in section 664, there is no reference to a CLT in the Code or the regulations thereunder. The provision for these estate planning techniques are contained in the applicable charitable deduction provisions of the Code (i.e., sections 170, 2055, and 2522).

M. IRS Rules on Proposed Personal Residence Trust Transaction.

Sec. 2702 was designed to eliminate the windfall to junior family members under normal gift tax rules regarding transfers in trust by senior family members who retained an income interest in the trust. In many instances, the gift tax valuation rules overvalued the interest retained by the senior family members which resulted in a windfall to the remainder beneficiaries (i.e., the junior family members).

Sec. 2702 does not apply to a "personal residence trust" (as defined in Sec. 2702(a)(3)(A)(ii)) to which a senior family member transfers a personal residence and retains the power to live in the residence for a certain period of time. The transfer of the remainder interest to junior family members, however, will still be subject to normal gift tax rules. In general, the term of the senior family members' interest in the trust is expected to expire before the senior family members die because any interest held by the senior family member at death will be includable in his or her estate for estate tax purposes under section 2036.

Priv. Ltr. Rul. 2007-28-018 (Mar. 19, 2007) sets forth a transaction that has the benefit of minimizing the gift and estate tax consequences associated with the creation of a personal residence trust. The taxpayers proposed to transfer their vacation home to a personal residence trust retaining the right to use the home for the rest of their lives. In a

related transaction, a trust for the benefit of the taxpayer's descendants purchased the remainder interest in the trust from the taxpayers at its fair market value.

The IRS first ruled that the vacation home was a personal residence within the meaning of section 2702(a)(3)(A)(ii). It next ruled that the transaction would be treated for gift tax purposes as a transfer by the taxpayers of their remainder interests in the vacation home coupled with the retention by each, under the terms of the trust, of a life interest in the vacation home. Finally, the IRS rules that assuming the trust is a personal residence trust within the meaning of Treas. Reg. section 25.2702-5(b) and the taxpayers received adequate and full consideration for their remainder interests in the trust, the transaction would not result in gift tax.

The ruling request does not request a ruling on the estate tax consequences of the transaction. However, without further planning, the personal residence trust will be includable in the estates of the taxpayers upon their deaths under section 2036 since their interests in the trust do not terminate prior to their deaths. One of the exceptions to section 2036 is a transfer that is a bona fide sale. This structure leaves the door open for future planning to avoid the application of section 2036 (while minimizing the purchase price of the remainder interest). This future planning could include the purchase by the trust for the benefit of the taxpayers' descendants of the taxpayers' remaining interest in the personal residence trust, the purchase by the taxpayers of the remainder interest in the personal residence trust, or the sale of interests in the personal residence trust by the taxpayers to other related parties.

N. Family Limited Partnerships (FLPs).

The IRS has successfully argued for including assets transferred to family limited partnerships (FLPs) in a transferor's gross estate under Sec. 2036(a)(1). Successful cases invariably have involved transferors (usually terminally ill or in poor health) who transferred almost all of their assets to an FLP, but still continued to enjoy access to the transferred property (or its income). One factor that the courts have found as indicative of continued access to the transferred assets is the transferor's retention of insufficient assets to meet his or her living expenses after the transfer, coupled with substantial disbursements from the FLP to the transferor. What if the disbursements were classified as loans and evidenced by a written note? The Tax Court analyzed the factors required to evidence a true debtor-creditor relationship in *Rosen (Estate of Rosen, TC Memo 2006-115)*.

Rosen: *Rosen* had all the typical facts of a successful Sec. 2036(a) case: an elderly decedent (age 88) suffering from a terminal illness (Alzheimer's) at the time of the FLP's formation; virtually all of the decedent's assets transferred to the FLP; insufficient funds (less than 5% of total assets) retained by the transferor; and FLP disbursements to the transferor to pay for living expenses. However, the disbursements during the decedent's lifetime were classified as loans and evidenced by a single note—unsecured, payable on demand, with interest accruing at the Federal blended rate. On the decedent's death (four years after the FLP's formation), the IRS sought to include the entire value of the FLP's assets in the decedent's estate. The estate argued: (1) that the transfer met the bona-fide-sale exception, citing several nontax reasons (management of assets, creditor protection, ease of gifting); and, alternatively, (2) that even if the bona fide sale exception was not met, the decedent did not continue to "enjoy" the assets post-transfer, as any disbursements she received were the result not of distributions from the FLP but of loans—i.e., the clear obligation to pay back the amounts precluded a finding that she enjoyed the funds.

The court stated that, while a written note weighs toward a true debtor-creditor relationship, it was not sufficient to create a true debtor-creditor relationship. The other factors the court cited in determining if there was no genuine debt included: (1) the absence of a fixed maturity date and a fixed obligation to repay; (2) no reasonable (or market) interest rate; (3) repayments that depend solely of the FLP's success; (4) absence of security; and (5) the inability to obtain comparable financing from an independent source.

Some factors used by the court to justify its conclusion that the bona-fide-sale exception did not apply are not only inconsistent with existing law, but also unnecessary to reach the intended result—that there was no bona fide sale.

In *Kimbell* (*David A. Kimbell, Sr.*, 371 F3d 257, 5th Cir. 2004), the Fifth Circuit rejected concepts such as "mere recycling," "lack of legitimate negotiations," "pooling of assets," and "legitimate and significant business or nontax reasons" as essential to the bona-fide-sale exception inquiry because these tests placed undue emphasis on the taxpayer's subjective motives. Instead, the court formulated a three-pronged test. While the third prong does scrutinize the transaction to make sure it is not a sham, the nature of the inquiry is limited to an examination of objective facts that would confirm or deny the taxpayer's assertion that the transfer is bona fide. Thus, the presence of some potential benefit other than estate tax advantages should be sufficient to meet the third prong of the test, as long as there is no factual evidence of the retention of prohibited rights. The court in *Rosen* unnecessarily considered some of the rejected concepts (e.g., no legitimate

business operations, (Note that even the Tax Court majority rejected a similar concept in *Wayne C. Bongard*, 124 TC 95 (2005)) no negotiations, and *de minimis* contributions by the children) to justify its conclusion that the bona-fide-sale exception does not apply.

Korby: (*Estate of Korby*, 471 F3d 848, 8th Cir. 2006), aff'g TC Memo 2005-102) On Dec. 8, 2006, the Eighth Circuit became the latest appeals court to confirm the application of Sec. 2036(a)(1) to FLPs (joining the First, Third, and Fifth Circuits). This is not surprising, given the "bad" facts in this case, which included taxpayers in poor health transferring virtually all of the assets to their FLP; commingling of personal and FLP property; and the FLP's payment of not only substantial disbursements to the transferors, but also their living expenses directly. Unlike *Rosen*, in which the taxpayers purported that the disbursements were loans, the Korby estate claimed that the payments—which represented 27%-50% of FLP income per year—were management fees instead of distributions (despite the fact that there was no management agreement and the taxpayers did not include any of it as self-employment income for the first three years).

O. Stock Aggregation in Determining FMV.

The IRS stated in a technical advice memorandum (TAM 2006-48-028) that the stock owned outright by a decedent should be aggregated with the stock held in a trust (in which the decedent retained an income interest for life) in determining the fair market value (FMV) of all stock included in the decedent's gross estate. The Service reasoned that, in view of the trust terms under which the decedent retained the right to receive trust income as well as to designate (among his descendants and a charity) the beneficiary of the trust remainder, the decedent's transfers to the trust were wholly incomplete gifts.

In addition to the retained beneficial interest and dispositive power, the IRS noted that the decedent, as trustee, retained significant additional control over the trust corpus until death. The trustee possessed broad powers to allocate receipts and disbursements between principal and income; any such items allocated to income (such as sales proceeds) would be required under the trust to be distributed to the decedent. Further, trust assets could be registered in the name of an individual trustee. The Service noted that under the trust instrument, these powers could be exercised unilaterally by the decedent. Thus, the IRS concluded that the beneficial interest in and control over the stock did not pass from the decedent until the decedent's death, at which time the decedent's interest in and control over the trust terminated.

The Service ruled that the decedent's retained interest in the trust and powers over trust corpus caused the trust's corpus to be includible in the decedent's gross under Secs. 2036 and 2038. As is the case with Sec. 2035, the IRS noted that Secs. 2036 and 2038 are intended to prevent estate tax avoidance by including in the gross estate transfers that are essentially testamentary in nature. Accordingly, it concluded that the rationale underlying Rev. Rul. 79-7 regarding *inter vivos* transfers includible in the gross estate under Sec. 2035 was equally applicable to *inter vivos* transfers includible in the gross estate under Secs. 2036 or 2038.

The Service distinguishes the facts in the TAM from those in *Bonner* (Estate of Bonner, 84 F3rd 196, 5th Cir. 1996)) and *Mellinger* (Estate of Mellinger, 112 TC 26 1999) (dealing with aggregation of qualified terminable interest property trusts with the income beneficiary's estate), in which the decedent did not create the trust or control its disposition. In the TAM, the IRS noted that it was the decedent alone who created the trust, retained the beneficial enjoyment of the trust corpus, and retained the power, until death, to designate who would enjoy the trust remainder. It also noted that in *Mellinger*, in concluding that aggregation was not appropriate with respect to property subject to inclusion under Sec. 2044, the Tax Court contrasted property includible under Secs. 2035 and 2036.

P. Valuing S Corporation Stock.

"Tax-affecting" is the practice of reducing projected S corporation (S corp) earnings or cashflow by the projected shareholder-level income taxes on the S corp's earnings prior to applying a capitalization rate (on the assumption that the corporation will lose its S status). Proponents of this practice argue that a hypothetical buyer would take such taxes into account because the buyer will be taxed on the S corp's earnings regardless of whether it receives distributions. In *Gross* (Walter L. Gross, Jr., 272 F3d 333, 6th Cir. 2001, aff'g TC Memo 1999-254), a split Sixth Circuit upheld a Tax Court decision that shareholders must value their S stock without tax affecting the S corp's income. The Tax Court revisited the issue in *Dallas* (Robert Dallas, TC Memo 2006-212).

Dallas: In *Dallas*, the taxpayer produced two expert witnesses. One reduced the S corp's projected earnings by 40% for the taxes it was likely to pay if it lost its S status; the other reduced projected earnings by 35% for shareholder-level taxes on the S corp income. Finding no evidence in record that the corporation expected to lose its S status, the court rejected the first appraiser's reduction. It also rejected the second appraiser's adjustment because the corporation had a strong history of distributing sufficient earnings to the shareholders to cover their income tax liabilities.

Note: This area will continue to be controversial. Nevertheless, the two victories are bound to encourage the Service to challenge all valuations involving tax-affecting of S corp stock.

Q. Importance of Quality Appraisals.

The Tax Court has lately more often than not disregarded the valuations provided by qualified appraisers and substituted its own opinion as to the value of "hard to value" assets (i.e., assets for which market quotes are not readily ascertainable). In the transfer tax area, the court's decision to interject its own determination of value presents a huge dilemma for estate planners and their clients who rely on qualified appraisers to provide them with accurate valuations in order to make estate planning decisions.

Kohler (*Herbert V. Kohler, Jr.*, TC Memo 2006-152) is one of those rare cases (given the Tax Court's recent tendency) in which the court determined that the taxpayer's qualified appraisers had accurately determined the value of the decedent's closely-held stock. It also highlights the benefits of a qualified appraisal from a reputable and experienced appraiser.

In *Kohler*, the decedent was the grandson of the founder of Kohler Company. At the time of his death, the decedent owned approximately 13% of the company's outstanding stock. Also at that time, Kohler was undergoing a reorganization designed to bring all of its stock under the control of the Kohler family and to ensure that the stock would remain under the family's control. Under the reorganization plan (which was completed approximately two months after the decedent's death), new classes of stock were issued, with varying restrictions on transferability and participation.

The decedent's estate elected under Sec. 2032 to value the estate's assets as of six months after the decedent's death. As a result, the valuation of the estate's stock in Kohler took into consideration the new restrictions resulting from the company's reorganization. The decedent's estate valued its Kohler stock at approximately \$47 million (which included a 75% discount); the IRS valued the stock at \$145 million (which included a 20% discount).

The Tax Court gave no weight to the appraisal on which the Service made its determination because it was based on a limited review of Kohler's operations and the appraiser's credibility. The court then reviewed the estate's two expert appraisals and determined that they were credible and were made with far lengthier review of Kohler's business operations than that of the IRS's appraiser.

R. Basis of Inherited Property.

In general, Sec. 1014 provides that the adjusted basis of property included in a decedent's gross estate for estate tax purposes is such property's FMV at the decedent's date of death. Thus, regardless of the adjusted basis a decedent may have had in property prior to his or her death, Sec. 1014 allows the heir of such property to use its FMV at the decedent's date of death to measure the gain or loss the heir must recognize on the property's subsequent sale. In *Janis* (*Carroll Janis*, 469 F3d 256, 2d Cir. 2006, aff'g TC Memo 2004-117), the Second Circuit considered what is FMV for Sec. 1014 purposes.

The taxpayer inherited an undivided one-half interest in an art collection—consisting of 464 works by various artists—that was included in his father's estate for estate tax purposes. In preparing the father's estate tax return, the executor had each piece of art appraised separately and then as a collection. The FMV of the collection included a "blockage discount" of approximately 62% of the artworks' cumulative value, under the theory that if the entire collection of art had been sold on the date of the father's death, the estate would not have been able to command the same price as if it had placed each piece of art on the market separately.

The taxpayer subsequently sold certain pieces of the collection. In reporting the gain on the sale, the taxpayer used the artworks' undiscounted FMVs as his adjusted basis, alleging that the theory underlying the blockage discount at the father's death was inapplicable to the separately placed sale of the artworks. The Service assessed an income tax deficiency, alleging that the taxpayer's adjusted basis in the art for gain or loss purposes was the value of such art as reflected on the father's estate tax return (i.e., adjusted basis reflected the blockage discount).

The Second Circuit, affirming the Tax Court, held that FMV for Sec. 1014 purposes was the value of the property that appeared on the decedent's estate tax return from which the property was transferred. In making its determination, the Second Circuit reasoned that Sec. 1014 prevents the double taxation of the appreciation in the value of property that occurred prior to death, noting that the estate tax taxes this unrealized capital gain. Without Sec. 1014, the unappreciated capital gain would be taxed a second time by the income tax. Based on this consistency, the Second Circuit held that Sec. 1014 only provides a step-up in the adjusted basis of property received from a decedent by the amount reflected on the decedent's estate tax return.

S. Defined-Value Gifts.

The IRS has vehemently argued for disregarding defined-value gift formulas (e.g., the gift is expressed as \$X of the value of an interest to one beneficiary, with the remainder of the value to a charity) on multiple fronts, including the substance-over-form and violation-of-public-policy doctrines. Although it left many unanswered questions, the Fifth Circuit's pro-taxpayer decision in *McCord* (*Succession of Charles T. McCord, Jr.*, 461 F3d 614, 5th Cir. 2006, rev'g and rem'g 120 TC 358, 2003) provides an excellent analysis of the issues involved (See Satchit, "McCord: Defined-Value Gifts at the Crossroads," 38 *The Tax Adviser* 86, February 2007).

McCord: In *McCord*, the taxpayers gifted all of their limited-partner (LP) interests via an assignment agreement that allocated LP interests with an aggregate FMV of a specified dollar amount to various family beneficiaries. If the net FMV of the gifted LP interests exceeded that dollar amount, the excess value passed to charities. Based on an appraisal of a 1% LP interest, the various beneficiaries (and the charities) entered into a confirmation agreement that translated the dollar value of the gifts provided in the assignment agreement into percentages of LP interests. The charities' interests were later redeemed. The Service disputed the valuation of the LP interest. The taxpayers argued that, even if the IRS valuation was correct, the issue was moot because an increase in the value of the gifts would result in an increase in the taxpayers' charitable deduction due to the fixed value of the gifts to the various family beneficiaries.

The Service argued against the increased charitable deduction based on the doctrine of reasonable probability of receipt, as the charities' interests had already been redeemed at a significantly lower price. The Tax Court held for the IRS, using an argument never advanced by the Service. It first independently revalued the 1% LP interest and then applied that value to the percentages allocated to each beneficiary in the confirmation agreement (i.e., the percentages that were determined using the original valuation) to determine the value of the gift.

The Fifth Circuit reversed the Tax Court on the basis that the methodology used was flawed (as it essentially suspended the valuation date of the gifted property from the date of gift to the date of the confirmation agreement). Although the Fifth Circuit does not explicitly address whether the applicability of the doctrines referenced prohibit defined-value gifts, the court's comment, in dicta, that these doctrines were "overarching," and the careful consideration it gave to the facts in *McCord* (or rather, the lack of facts evidencing anything other than an arm's-length agreement), seem to

indicate that the court will not explicitly ban the use of formula clauses, but instead will review each fact pattern for evidence of non-arm's-length or abusive transactions.

T. Private Annuities.

Responding to perceived abuses by some taxpayers who inappropriately avoid or defer gain on the exchange of highly appreciated property for the issuance of an annuity contract, Treasury and the IRS issued proposed regulations (REG-141901-05, 71 Fed. Reg. 61441) that effectively revoke the "open transaction" doctrine for certain annuity contracts. Many of the transactions that are the focus of these proposed regulations involve private annuity contracts issued by family members or by business entities owned, directly or indirectly, by the annuitants themselves or by family members.

In a typical transaction targeted by these proposed regulations, a senior family member ("matriarch") sells a highly appreciated, low-basis asset to a trust for the benefit of her descendants in return for a private annuity with a value (determined under Sec. 7520) equal to the value of the appreciated asset. The trust then sells the asset and invests the proceeds in a portfolio of assets. Under the open-transaction doctrine, the gain on the appreciated asset's sale would be deferred over the life of the annuity, much like the deferral of gain that would occur in an installment sale. The trust would not recognize gain on the sale of the appreciated asset because its basis in the appreciated asset (equal to the value of the annuity transferred to the matriarch) was equal to its FMV. This subsequent sale circumvents the related-party installment sale rule, which otherwise would require the matriarch to recognize gain on the appreciated asset's subsequent sale (see Sec. 453(e)).

The proposed regulations provide that, if an annuity contract is received in exchange for property (other than money); (1) the amount realized attributed to the annuity is its FMV on the date of exchange; (2) *the entire amount of gain or loss, if any, is recognized at the time of exchange*; and (3) for purposes of determining the initial investment in the contract under Sec. 72(c)(1), the aggregate amount of premiums or other consideration paid for the annuity equals the amount realized attributable to the annuity.

It is the second consequence of the exchange that effectively closes the open-transaction doctrine for "typical transactions." These proposed regulations apply to exchanges that occur after Oct. 18, 2006, with a six-month limited exception for certain exchanges.

U. Deducting Investment Advisory Fees.

The question of whether investment advisory fees paid to outside advisers are fully deductible by a trust, or deductible only to the extent they exceed 2% of the trust's adjusted gross income, has created a split in the various circuits. The issue concerns the proper interpretation of Sec. 67(e), which provides an exception from the application of the 2% floor for certain expenses. The Sixth Circuit ruled that Sec. 67(e) applies to costs "incurred because of fiduciary duties"; the Fourth and Federal Circuits ruled that the statute applies to costs "not commonly incurred by individuals." In *Rudkin* (*William L. Rudkin Testamentary Trust*, 467 F3d 149, 2d Cir. 2006), the Second Circuit, affirming the Tax Court, ruled that the expenses exempt from the 2 % floor are "costs that individuals are incapable of incurring"; thus, investment advisory fees are subject to the 2% floor. While the standard (i.e., costs that individuals are incapable of incurring) sounds impossibly high to meet, the examples given by the Court (trustee fees, judicial accounting, and fiduciary income tax returns) are essentially the same as the examples provided by the Fourth Circuit. The Supreme Court will resolve this controversial issue - on June 25, 2007, it agreed to review the Second Circuit's decision in *Rudkin*.

V. Procedure and Administration.

Form 706: The Service released a revised version of Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return*, in October 2006. Among other changes, the instructions state that the executor must now file Form 706 at the Cincinnati Service Center, regardless of whether the decedent was a U.S. citizen residing in the U.S., a resident alien, or a nonresident U.S. citizen.

Form 706 also has a new question, 12e, in Part 4: "Did decedent at any time during his or her lifetime transfer or sell an interest in a partnership, limited liability company, or closely held corporation to a trust described in question 12a or 12b?" The question is probably intended to provide the IRS with information on sale of property to intentionally defective grantor trusts.

W. EGTRRA Changes Taking Effect in 2007.

The estate tax applicable exclusion amount remains at \$2 million for taxpayers dying in 2007 and 2008; it increases to \$3.5 million in 2009. The top estate and gift tax rate is reduced to 45% (from 46% in 2006) for individuals dying (or making gifts) in 2007, 2008, and 2009 (see Secs. 2010(c), 2001(c)(2)(B)).

X. Annual Inflation Adjustments.

Various dollar amounts and limitations relevant to estate and gift tax are indexed for inflation: (1) the annual exclusion for present interest gifts is unchanged (from 2006) at \$12,000; (2) the exclusion for transfers to noncitizen spouses is \$125,000 (\$117,000 for 2006); (3) the ceiling on special-use valuation is \$940,000 (\$900,000 for 2006); and (4) the Sec. 6166 amount eligible for the 2% rate is \$1.25 million (\$1.2 million for 2006). Rev. Proc. 2006-53, 2006-48 I.R.B. 996.

Y. Preparer Penalties: Notice 2007-54.

See Appendix I

II. Pending Legislation

See Appendix II

III. Recent Legislation

See Appendix III

IRS Circular 230 disclosure: To ensure compliance with U. S. Treasury Regulations governing tax practice, we inform you that any U. S. federal tax advice contained in this communication, including any appendices, is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding any penalties under U. S. federal tax law, or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

APPENDIX I

Part III – Administrative, Procedural, and Miscellaneous

PREPARER PENALTY PROVISIONS UNDER THE SMALL BUSINESS AND WORK OPPORTUNITY ACT OF 2007

NOTICE 2007-54

This notice provides guidance and transitional relief for the return preparer penalty provisions under section 6694 of the Internal Revenue Code, as amended by the Small Business and Work Opportunity Act of 2007.

SCOPE

The transitional relief provided by this notice will apply to all returns, amended returns, and refund claims due on or before December 31, 2007 (determined with regard to any extension of time for filing); to 2007 estimated tax returns due on or before January 15, 2008; and to 2007 employment and excise tax returns due on or before January 31, 2008.

BACKGROUND

The Small Business and Work Opportunity Act of 2007, Pub. L. No. 110-28, 121 Stat. ____, (the Act) was enacted into law on May 25, 2007. Section 8246 of the Act amends several provisions of the Code to extend the application of the income tax return preparer penalties to all tax return preparers, alter the standards of conduct that must be met to avoid imposition of the penalties for preparing a return which reflects an understatement of liability, and increase applicable penalties. The amendments are effective for tax returns prepared after the date of the enactment, May 25, 2007.

The amendments made by the Act raise questions regarding activities representing preparation of a tax return, who is a return preparer within the meaning of section 7701(a)(36) (as amended), and how the statute applies to signing and non-

signing preparers. In order to address these questions, the Internal Revenue Service and the Treasury Department are considering whether regulations or other published guidance are needed, including but not limited to, amendments to Treas. Reg. sections 301.7701-15 and 1.6694-0 through 1.6694-4. Because the Act extends the types of returns subject to the new provisions, changes are also required to the relevant forms and publications. The Service must also alter existing procedures in order to process disclosures with certain forms and in electronic formats. Because the amendments to section 6694 are effective immediately for returns prepared after May 25, 2007, the Service and the Treasury Department believe that effective tax administration requires transitional relief with respect to the new standards of conduct under section 6694(a).

PENALTY UNDER SECTION 6694

Prior to amendment by the Act, the penalty under section 6694(a) applied if:

(1) any part of an understatement of liability with respect to any return or claim for refund is due to a position for which there was not a realistic possibility of being sustained on its merits,

(2) any person who is an income tax return preparer with respect to such return or claim knew (or reasonably should have known) of such position, and,

(3) such position was not disclosed as provided in section 6662(d)(2)(B)(ii) or was frivolous.

Prior to amendment by the Act, the penalty under section 6694(b) applied if any part of an understatement was due to:

(1) a willful attempt in any manner by an income tax return preparer to understate the liability for tax; or

(2) to any reckless or intentional disregard of rules or regulations by an income tax return preparer.

Section 8246 of the Act amended several provisions of the Code to extend the scope of the income tax return preparer penalties to preparers of all tax returns, amended returns and claims for refund, including estate and gift tax returns, generation-skipping transfer tax returns, employment tax returns, and excise tax returns. The Act amended section 6694(a) to provide that the penalty would apply if:

(A) the tax return preparer knew (or reasonably should have known) of the position,

(B) there was not a reasonable belief that the position would more likely than not be sustained on its merits, and

(C)(i) the position was not disclosed as provided in section 6662(d)(2)(B)(ii), or

(ii) there was no reasonable basis for the position.

Although the Act did not alter the standard of conduct under section 6694(b), it increased the amount of the penalty and made the penalty applicable to all tax return preparers.

Section 8246 of the Act amends the standards of conduct under section 6694(a) in two ways. First, for undisclosed positions, the Act replaces the realistic possibility standard with a requirement that there be a reasonable belief that the tax treatment of the position would more likely than not be sustained on its merits. Second, for disclosed positions, the Act replaces the not-frivolous standard with the requirement that there be a reasonable basis for the tax treatment of the position.

The Act also increased the first-tier section 6694(a) penalty for understatements from \$250 to the greater of \$1000 or 50% of the income derived (or to be derived) by the tax return preparer from the preparation of a return or claim with respect to which the penalty was imposed. The Act increased the second-tier section 6694(b) penalty for willful or reckless conduct from \$1000 to the greater of \$5,000 or 50% of the income derived (or to be derived) by the tax return preparer.

Under both the prior and current law, disclosure under section 6694(a) is adequate if made on a Form 8275, Disclosure Statement, or Form 8275-R, Regulation Disclosure Statement, attached to the return, amended return, or refund claim, or pursuant to the annual revenue procedure authorized in Treasury Regulation sections 1.6694-2(c)(3) and 1.6662-4(f)(2). In addition, under both the prior and current law, the penalty under section 6694(a) would not be imposed if it is shown that there is reasonable cause for the understatement and the tax return preparer acted in good faith.

TRANSITIONAL RELIEF

In order to provide sufficient time to address issues pertaining to the implementation of the Act, the Service is providing the following transitional relief: For income tax returns, amended returns, and refund claims, the standards set forth under the previous law and current regulations under section 6694 will be applied in determining whether the Service will impose a penalty under section 6694(a). Generally, in applying transitional relief for income tax returns, amended returns or refund claims, disclosure would be adequate if made on a Form 8275, Disclosure Statement, or Form 8275-R, Regulation Disclosure Statement, attached to the return, amended return, or refund claim, or pursuant to the annual revenue procedure authorized in Treasury Regulation sections 1.6694-2(c)(3) and 1.6662-4(f)(2).

For all other returns, amended returns, and claims for refund, including estate, gift, and generation-skipping transfer tax returns, employment tax returns, and excise tax returns, the reasonable basis standard set forth in the regulations issued under section 6662, without regard to the disclosure requirements contained therein, will be applied in determining whether the Service will impose a penalty under section 6694(a).

This transitional relief will apply to all returns, amended returns, and refund claims due on or before December 31, 2007 (determined with regard to any extension of time for filing); to 2007 estimated tax returns due on or before January 15, 2008; and to 2007 employment and excise tax returns due on or before January 31, 2008.

No transitional relief is available under section 6694(b) as transitional relief is not appropriate for return preparers who exhibit willful or reckless conduct, regardless of the type of return prepared.

EFFECTIVE DATE

This Notice is effective as of May 25, 2007.

CONTACT INFORMATION

The principal author of this notice is Michael E. Hara of the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding this notice, contact Mr. Hara at (202) 622-4910 (not a toll-free call).

APPENDIX II

H.R. 110-3170 (IH)

[110th CONGRESS House Bills]
[From the U.S. Government Printing Office via GPO Access]
[DOCID: h3170ih.txt]
[Introduced in House]

110th CONGRESS
1st Session

H. R. 3170

To make permanent the individual income tax rates for capital gains,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

July 24, 2007

Mr. Mitchell (for himself and Mr. Shays) introduced the following bill;
which was referred to the Committee on Ways and Means

A BILL

To make permanent the individual income tax rates for capital gains,
and for other purposes.

Be it enacted by the Senate and House of Representatives of the
United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Capital Gains and Estate Tax Relief Act of 2007".

SEC. 2. INDIVIDUAL INCOME TAX RATES FOR CAPITAL GAINS MADE PERMANENT.

Section 303 of the Jobs and Growth Tax Relief Reconciliation Act of 2003 is amended by striking "this title" and inserting "section 302".

SEC. 3. REFORM AND EXTENSION OF ESTATE TAX AFTER 2009.

(a) Restoration of Unified Credit Against Gift Tax.--Paragraph (1) of section 2505(a) of the Internal Revenue Code of 1986 (relating to general rule for unified credit against gift tax), after the application of subsection (g), is amended by striking "(determined as if the applicable exclusion amount were \$1,000,000)".

(b) Exclusion Equivalent of Unified Credit Increased to \$5,000,000.--Subsection (c) of section 2010 of such Code (relating to unified credit against estate tax) is amended to read as follows:

"(c) Applicable Credit Amount.--

"(1) In general.--For purposes of this section, the applicable credit amount is the amount of the tentative tax which would be determined under the rate schedule set forth in section 2001(c) if the amount with respect to which such tentative tax is to be computed were the applicable exclusion amount.

"(2) Applicable exclusion amount.--

"(A) In general.--For purposes of this subsection, the applicable exclusion amount is as follows:

- "(i) For calendar year 2010, \$3,750,000.
- "(ii) For calendar year 2011, \$4,000,000.
- "(iii) For calendar year 2012, \$4,250,000.
- "(iv) For calendar year 2013, \$4,500,000.
- "(v) For calendar year 2014, \$4,750,000.
- "(vi) For calendar year 2015 and thereafter, \$5,000,000.

"(B) Inflation adjustment.--In the case of any decedent dying in a calendar year after 2015, the \$5,000,000 amount in subparagraph (A)(vi) shall be increased by an amount equal to--

- "(i) such dollar amount, multiplied by
- "(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting "calendar year 2014" for "calendar year 1992" in subparagraph

(B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of \$50,000, such amount shall be rounded to the nearest multiple of \$50,000."

(c) Rate Schedule.--

(1) In general.--Subsection (c) of section 2001 of such Code (relating to rate schedule) is amended to read as follows:

“(c) Rate Schedule.--

“(1) In general.--The tentative tax is equal to the sum of--

“(A) the product of the rate specified in section 1(h)(1)(C) in effect on the date of the decedent's death multiplied by so much of the sum described in subsection (b)(1) as does not exceed \$25,000,000, and

“(B) twice the rate specified in section 1(h)(1)(C) in effect on the date of the decedent's death of so much of the sum described in subsection (b)(1) as exceeds \$25,000,000.

“(2) Inflation adjustment.--In the case of any decedent dying in a calendar year after 2015, each \$25,000,000 amount in subparagraphs (A) and (B) of paragraph (1) shall be increased by an amount equal to--

“(A) such dollar amount, multiplied by

“(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting ‘calendar year 2014’ for ‘calendar year 1992’ in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of \$50,000, such amount shall be rounded to the nearest multiple of \$50,000."

(2) Conforming amendment.--Section 2502(a) of such Code (relating to computation of tax), after the application of subsection (g), is amended by adding at the end the following flush sentence:

“In computing the tentative tax under section 2001(c) for purposes of this subsection, ‘the last day of the calendar year in which the gift was made’ shall be substituted for ‘the date of the decedent's death’ each place it appears in such section.”.

(d) Modifications of Estate and Gift Taxes To Reflect Differences in Unified Credit Resulting From Different Tax Rates.--

(1) Estate tax.--

(A) In general.--Section 2001(b)(2) of such Code (relating to computation of tax) is amended by striking “if the provisions of subsection (c) (as in effect at the decedent's death)” and inserting “if the

modifications described in subsection (g)".

(B) Modifications.--Section 2001 of such Code is amended by adding at the end the following new subsection:

“(g) Modifications to Gift Tax Payable To Reflect Different Tax Rates.--For purposes of applying subsection (b)(2) with respect to 1 or more gifts, the rates of tax under subsection (c) in effect on the date of the decedent's death shall, in lieu of the rates of tax in effect at the time of such gifts, be used both to compute--

“(1) the tax imposed by chapter 12 with respect to such gifts, and

“(2) the credit allowed against such tax under section 2505, including in computing--

“(A) the applicable credit amount under section 2505(a)(1), and

“(B) the sum of the amounts allowed as a credit for all preceding periods under section 2505(a)(2).

For purposes of paragraph (2)(A), the applicable credit amount for any calendar year before 1998 is the amount which would be determined under section 2010(c) if the applicable exclusion amount were the dollar amount under section 6018(a)(1) for such year.”.

(2) Gift tax.--Section 2505(a) of such Code (relating to unified credit against gift tax), after the application of subsection (g), is amended by adding at the end the following new flush sentence:

“For purposes of applying paragraph (2) for any calendar year, the rate schedule under section 2001(c) used in computing the applicable credit amount under paragraph (1) for such calendar year shall, in lieu of the rates of tax in effect for preceding calendar periods, be used in determining the amounts allowable as a credit under this section for all preceding calendar periods.”.

(e) Repeal of Deduction for State Death Taxes.--

(1) In general.--Section 2058 of such Code (relating to State death taxes) is amended by adding at the end the following:

“(c) Termination.--This section shall not apply to the estates of decedents dying after December 31, 2009.”.

(2) Conforming amendment.--Section 2106(a)(4) of such Code is amended by adding at the end the following new sentence:

“This paragraph shall not apply to the estates of decedents dying after December 31, 2009.”.

(f) Effective Date.--The amendments made by this section shall apply to estates of decedents dying, generation-skipping transfers, and gifts made, after December 31, 2009.

(g) Additional Modifications to Estate Tax.--

(1) In general.--The following provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, and the amendments made by such provisions, are hereby repealed:

(A) Subtitles A and E of title V.

(B) Subsection (d), and so much of subsection (f)(3) as relates to subsection (d), of section 511.

(C) Paragraph (2) of subsection (b), and paragraph (2) of subsection (e), of section 521.

The Internal Revenue Code of 1986 shall be applied as if such provisions and amendments had never been enacted.

(2) Sunset not to apply.--Section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 shall not apply to title V (other than subtitles F, G, and H thereof) of such Act.

(3) Repeal of deadwood.--

(A) Sections 2011, 2057, and 2604 of the Internal Revenue Code of 1986 are hereby repealed.

(B) The table of sections for part II of subchapter A of chapter 11 of such Code is amended by striking the item relating to section 2011.

(C) The table of sections for part IV of subchapter A of chapter 11 of such Code is amended by striking the item relating to section 2057.

(D) The table of sections for subchapter A of chapter 13 of such Code is amended by striking the item relating to section 2604.

SEC. 4. UNIFIED CREDIT INCREASED BY UNUSED UNIFIED CREDIT OF DECEASED SPOUSE.

(a) In General.--Subsection (c) of section 2010 of the Internal Revenue Code of 1986 (defining applicable credit amount), as amended by section 3(b), is amended by striking paragraph (2) and inserting the following new paragraphs:

“(2) Applicable exclusion amount.--For purposes of this subsection, the applicable exclusion amount is the sum of--

“(A) the basic exclusion amount, and

“(B) in the case of a surviving spouse, the aggregate deceased spousal unused exclusion amount.

“(3) Basic exclusion amount.--

“(A) In general.--For purposes of this subsection, the basic exclusion amount is as follows:

“(i) For calendar year 2010, \$3,750,000.

“(ii) For calendar year 2011, \$4,000,000.

“(iii) For calendar year 2012, \$4,250,000.

``(iv) For calendar year 2013, \$4,500,000.

``(v) For calendar year 2014, \$4,750,000.

``(vi) For calendar year 2015 and thereafter, \$5,000,000.

``(B) Inflation adjustment.--In the case of any decedent dying in a calendar year after 2015, the \$5,000,000 amount in subparagraph (A)(vi) shall be increased by an amount equal to--

``(i) such dollar amount, multiplied by

``(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting `calendar year 2014' for `calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of \$50,000, such amount shall be rounded to the nearest multiple of \$50,000.

``(4) Aggregate deceased spousal unused exclusion amount.--For purposes of this subsection, the term `aggregate deceased spousal unused exclusion amount' means the lesser of--

``(A) the basic exclusion amount, or

``(B) the sum of the deceased spousal unused exclusion amounts of the surviving spouse.

``(5) Deceased spousal unused exclusion amount.--For purposes of this subsection, the term `deceased spousal unused exclusion amount' means, with respect to the surviving spouse of any deceased spouse dying after December 31, 2009, the excess (if any) of--

``(A) the applicable exclusion amount of the deceased spouse, over

``(B) the amount with respect to which the tentative tax is determined under section 2001(b)(1) on the estate of such deceased spouse.

``(6) Special rules.--

``(A) Election required.--A deceased spousal unused exclusion amount may not be taken into account by a surviving spouse under paragraph (5) unless the executor of the estate of the deceased spouse files an estate tax return on which such amount is computed and makes an election on such return that such amount may be so taken into account. Such election, once made, shall be irrevocable. No election may be made under this subparagraph if such return is filed after the time prescribed by law (including extensions) for filing such return.

“(B) Examination of prior returns after expiration of period of limitations with respect to deceased spousal unused exclusion amount.--Notwithstanding any period of limitation in section 6501, after the time has expired under section 6501 within which a tax may be assessed under chapter 11 or 12 with respect to a deceased spousal unused exclusion amount, the Secretary may examine a return of the deceased spouse to make determinations with respect to such amount for purposes of carrying out this subsection.

“(7) Regulations.--The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this subsection.”.

(b) Conforming Amendments.--

(1) Paragraph (1) of section 2505(a), as amended by section 3, is amended to read as follows:

“(1) the applicable credit amount under section 2010(c) which would apply if the donor died as of the end of the calendar year, reduced by”.

(2) Section 2631(c) is amended by striking “the applicable exclusion amount” and inserting “the basic exclusion amount”.

(3) Section 6018(a)(1), after the application of section 101(g), is amended by striking “applicable exclusion amount” and inserting “basic exclusion amount”.

(c) Effective Date.--The amendments made by this section shall apply to estates of decedents dying, generation-skipping transfers, and gifts made, after December 31, 2009.

<all>

APPENDIX III

Author: N GAUTREAU Status:

SIGNED BY THE GOVERNOR
ACT 371

Updated: 7/10/2007

Summary: TAX EXEMPTIONS: Provides an individual income tax credit for the installation of a wind or solar energy system which may be carried forward for 10 tax years. (gov sig) (EGF -\$3,800,000 GF RV See Note)

SENATE BILL NO. 90

BY SENATORS N. GAUTREAUX, MURRAY AND MARIONNEAUX AND
REPRESENTATIVES BALDONE, FARRAR, FAUCHEUX, HONEY,
KENNEY, ODINET, RICHMOND, RITCHIE, JANE SMITH AND
TOOMY

1 AN ACT

2 To amend and reenact R.S. 47:2401(B) and Code of Civil Procedure Article 2953(C)(1), to
3 enact R.S. 47:297.7(A) and 2451(A)(5) and 6026, and to repeal Chapter 14 of
4 Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950, comprised of R.S.
5 47:1201 through 1212, relative to individual and corporate income tax; to provide
6 a tax credit for the installation of certain renewable energy systems; to provide for
7 the promulgation of rules and regulations; to repeal the tax on income of individuals
8 transferred as gifts; to eliminate the tax on income and assets purchased by such
9 income when inherited; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 47:2401(B) is hereby amended and reenacted and R.S. 47:2451(A)(5)
12 and 6026 are hereby enacted to read as follows:

13 §2401. Levy of tax

14 * * *

15 B.(1) For deaths occurring after June 30, 2004, the tax levied under this Part
16 shall not apply ~~when a judgment of possession is rendered or when the succession~~
17 ~~is judicially opened no later than the last day of the ninth month following the death~~
18 ~~of the decedent.~~

1 B.(1) The credit shall be equal to fifty percent of the first twenty-five
2 thousand dollars of the cost of each wind energy system or solar energy system,
3 including installation costs, that is purchased and installed on or after January
4 1, 2008. The credit may be used in addition to any federal tax credits earned for
5 the same system. A taxpayer shall not receive any other state tax credit,
6 exemption, exclusion, deduction, or any other tax benefit for property for which
7 the taxpayer has received a tax credit under this Section.

8 (2) In the case of an individual who purchases and installs such a system,
9 the tax credit shall be claimed on the return for the taxable year in which such
10 system is completed and placed in service. In the case of an individual who
11 purchases a newly constructed home with such a system, the tax credit shall be
12 claimed on the return for the taxable year in which the act of sale of the house
13 takes place. In the case of an apartment project owner who purchases and
14 installs such systems, the tax credits for owner entities other than individuals
15 shall be claimed in accordance with the provisions of Subsection E of this
16 Section.

17 C. Notwithstanding any other provision of law to the contrary, any
18 excess of allowable credit over the aggregate tax liabilities against which such
19 credit may be applied, as provided in this Section, shall constitute an
20 overpayment, as defined in R.S. 47:1621(A), and the secretary shall make a
21 refund of such overpayment from the current collections of the taxes imposed
22 by Chapter 1 or Chapter 5 of Subtitle II of this Title, together with interest as
23 provided in R.S. 47:1624. The right to a credit or refund of any such
24 overpayment shall not be subject to the requirements of R.S. 47:1621(B). All
25 credits and refunds, together with interest thereof, must be paid or disallowed
26 within one year of receipt by the secretary of any such claim for refund or
27 credit. Failure of the secretary to pay or disallow, in whole or in part, any claim
28 for a credit or a refund shall entitle the aggrieved taxpayer to proceed with the
29 remedies provided in R.S. 47:1625.

30 D. As used in this Section:

1 (1) "Wind energy system" means a system of apparatus and equipment
2 with the primary purpose of intercepting and converting wind energy into
3 mechanical or electrical energy and transferring this form of energy by a
4 separate apparatus to the point of use or storage.

5 (2) "Solar energy system" means an energy system with the primary
6 purpose of collecting or absorbing sunlight for conversion into electricity or an
7 energy system with the primary purpose of collecting or absorbing solar energy
8 for conversion into heat for the purposes of space heating, space cooling, or
9 water heating.

10 E. Credits may be claimed in accordance with the following:

11 (1) Any entity taxed as a corporation for Louisiana income tax and
12 franchise tax purposes shall claim any credit authorized according to the
13 provisions of this Section on its corporation income and franchise tax return.

14 (2) Any individual, estate, or trust shall claim any credit authorized
15 according to the provisions of this Section on its income tax return.

16 (3) Any entity not taxed as a corporation shall claim any credit
17 authorized according to the provisions of this Section on the returns of the
18 partners or members as follows:

19 (a) Corporate partners or members shall claim their share of the credit
20 on their corporation income tax or franchise tax returns.

21 (b) Individual partners or members shall claim their share of the credit
22 on their individual income tax or franchise tax returns.

23 (c) Partners or members that are estates or trusts shall claim their share
24 of the credit on their fiduciary income tax returns.

25 F. The secretary of the Department of Revenue in consultation with the
26 secretary of the Department of Natural Resources shall promulgate such rules
27 and regulations in accordance with the Administrative Procedure Act as may
28 be necessary to carry out the provisions of this Section. The rules and
29 regulations shall be promulgated within ninety days of the effective date of this
30 Section.

1 Section 2. Code of Civil Procedure Article 2953(C)(1) is hereby amended and
2 reenacted to read as follows:

3 Art. 2953. Evidence as to taxes due, receipt of payment and filing of a return and
4 inventory or list

5 * * *

6 C.(1) For deaths occurring after June 30, 2004, proof of the filing with the
7 secretary of the Department of Revenue of an inheritance tax return, including the
8 related succession documentation required under Article 2951(A), and proof that no
9 inheritance taxes are due or that such taxes have been paid shall not be required if
10 either of the following occur:

11 ~~(a) A judgment of possession is rendered or if the succession is judicially~~
12 ~~opened no later than the last day of the ninth month following the death of the~~
13 ~~decedent as provided in R.S. 47:2401(B).~~

14 ~~(b) With respect to a revocable inter vivos trust, a trust declaration is filed~~
15 ~~with the secretary of the Department of Revenue in accordance with the provisions~~
16 ~~of R.S. 47:2426.~~

17 * * *

18 Section 3. Chapter 14 of Subtitle II of Title 47 of the Louisiana Revised Statutes of
19 1950, comprised of R.S. 47:1201 through 1212, is hereby repealed effective July 1, 2008.

20 Section 4. R.S. 47:297.7(A) as enacted in that Act which originated as House Bill No.
21 678 of the 2007 Regular Session of the Legislature is hereby amended and reenacted to read
22 as follows:

23 §297.7. Property insurance tax credit

24 A. **For tax years beginning during 2008 only, there** ~~There~~ shall be allowed
25 a credit against the individual income tax determined as provided in this Part seven
26 percent of the premiums for a homeowners' insurance policy, condominium owners'
27 insurance policy, or a tenant homeowners' insurance policy paid by the individual
28 during the tax year for the primary residence of the individual, less the amount for
29 which a credit is granted pursuant to R.S. 47:6025.

30 * * *

1 Section 5. The provisions of Sections 1, 2, and 4 of this Act shall be applicable to
2 taxable periods beginning on and after January 1, 2008.

3 Section 6. This Act shall become effective upon signature by the governor or, if not
4 signed by the governor, upon expiration of the time for bills to become law without signature
5 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
6 vetoed by the governor and subsequently approved by the legislature, this Act shall become
7 effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____