
House Bill Threatens Grantor Retained Annuity Trusts ("GRATs")

2010-03-31

On March 24, 2010, the House of Representatives passed H.R. 4849, the Small Business and Infrastructure Jobs Tax Act of 2010. One of the provisions of this bill would, if signed into law, preclude GRATs with terms of less than 10 years. In a [June 30, 2009 E-Alert](#), we discussed some of the ramifications of this potential change in the law.

H.R. 4849 would also technically forbid so-called "zeroed-out" GRATs by requiring all GRATs to constitute a taxable gift of an amount greater than \$0. Clients could still, under the bill in its current form, establish GRATs with a nominal gift tax value, but the inability to "zero-out" the GRAT completely would effectively require taxpayers to report all GRATs to the IRS.

The GRAT provisions of H.R. 4849 would become effective at such time as the law is enacted. However, it is possible that the bill may be changed prior to final enactment to make these requirements effective retroactively to some earlier date.

As of the date of this E-Alert, the Senate has taken no action with regard to this or any similar bill. However, it is possible that the Senate will pass the House bill, or will prepare a similar bill, soon after returning from recess on April 12, 2010. Therefore, the window for establishing short-term GRATs may be closed in a matter of weeks. If you have any interest in establishing a short-term GRAT, please contact WilmerHale as soon as possible to discuss the potential risks and benefits of establishing a GRAT prior to final enactment of H.R. 4849 or a similar bill.

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