



Real Estate Report

Third Quarter 2008 Volume 3, Number 3



Family Real Estate Transfers

by Brad Gai, Audit Stockholder

The news is constant and consistent, “real estate values are down”. We hear about it, we read about it and we probably know someone that has been personally affected by the tightening credit market and real estate down turn. We may even know someone that has lost their home in foreclosure or someone facing the loss of their home. As real as this is, it is not the same “world” for many others with low tax basis appreciated real property in their estate.

The decline in the real estate portion of your estate may present a window of opportunity to effectively transfer real estate to family members while the values are relatively low compared to values a year ago or anticipated values in the future. For those individuals or couples that want to pass as much of their estate to their family as possible, now is the time to take action. The dollar amount that constitutes a taxable estate is a moving target depending on the year of death and anticipated changes in the law as it now exists. For 2008, an individual can pass \$2,000,000 of assets to heirs at death with no estate tax. With effective planning a couple can leave \$4,000,000 to their heirs combined. For purposes of this article we are concerned with the life time gift tax exclusion of \$1,000,000 per individual. The applicable credit amount (formerly, the unified credit) can be used to offset the estate or gift tax. Any amount of the

credit used to offset gift taxes will reduce the credit available to offset estate taxes. In addition to the credit available to offset taxable gifts, there is an annual exclusion from gift tax for transfers not exceeding \$12,000 per individual per donor each calendar year. There is no limit on the number of individuals one can make

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gifts to and spouses may each make their own gifts of up to \$12,000 to the same beneficiary.

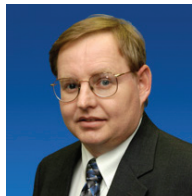
If an individual or couple would like to reduce their taxable estate there are several ways that real estate can be removed from their estate in whole or in part. Gifting partial interests in real estate or ownership in entities that hold ownership of real estate may be more effective at reducing an estate’s value than gifting 100% ownership of the real estate due to valuation discounts related to partial ownership. Each situation is different. Proper planning will consider the effect of changes in ownership on real estate tax and basis considerations.

Assets that are transferred at death receive a step-up in basis to the then current value. The donee receiving assets by gift steps into the tax basis of the donor.

The following is an example of a simple gift transfer plan.

Mr. and Mrs. Green own several rental homes in a Bay Area city. A year ago one of these rental homes was valued at \$500,000 based on comparable sales in the neighborhood. They have a mortgage on the property of \$150,000 and a tax basis net of depreciation of \$170,000. The current value for this property is \$400,000. The Green’s decide to gift 45% ownership in the property to their daughter as tenants in common. Alternatively, the Green’s could transfer the property to a Family Limited Partnership (FLP) and gift an equivalent amount of partnership units. The calculated value of the gift appears to be \$112,500 (\$400,000 fair value less \$150,000 debt = \$250,000 times 45%) The actual gift value is less than the computed amount because of established valuation principles that a fractional interest is not as valuable as the proportionate value of the whole. There is a very limited market to sell a fractional ownership interest in real estate, if any market exists at all. This is also true for the 55% retained by the parents in this

Continued on Page 2



Can I take an additional depreciation deduction on tenant improvements made to leased property?

by Ray Evans, Tax Manager

Yes. You are entitled to an additional 50% depreciation write-off for qualified leasehold improvements. In general, qualified leasehold improvements are improvements to an interior portion of non-residential real estate. The improvements must be made under or pursuant to a lease, either by the lessee, sublessee or lessor of the portion of the building which is leased, and must be placed in service after December 31, 2007 and before January 1, 2009. Certain structural improvements, building expansions, and improvements to common areas do not qualify. Additionally, the building must have been placed in service at least three years prior to the date the improvement is placed in service.

Any remaining depreciable basis of the qualified leasehold improvement is depreciated on a straight line basis over the life of the building, generally 39 years.

To discuss your situation in more detail, please contact Ray Evans at (925) 210-2180.

Family Real Estate Transfers - Continued From Page 1

situation. The value in their estate of a 55% ownership interest of this property will be less than the proportionate interest. This article cannot address the marketability discount that would apply in the gift and estate situations due to space limitations.

What will this property be worth in five years? We can't be certain about future values, but the consensus expectation is that the current real estate valuation decline will reverse itself at some point. Taking advantage in 2008 of what may be, and we hope will be, a relatively temporary dip in real estate values with a gift program will allow those individuals with taxable estates to make effective use of their \$1,000,000 life time gift tax exemption to maximize the net assets they transfer to their heirs free of estate tax.

Contact a RINA estate planning professional to discuss your situation in more detail at any one of our offices listed below.



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You May Qualify for a Reduction in Your Real Property Taxes

by Larry Mar, Tax Stockholder

You may have read recently in the newspaper that Larry Ellison, founder of software giant, Oracle, received a \$3 million reduction to his real property taxes. Based on the newspaper accounts, the Larry Ellison case involved a unique theory of property valuation, namely "significant functional obsolescence".

While you may not be able to prove significant functional obsolescence on your real estate investment (home, business or rental) property, you may qualify for a reduction in your real property taxes based on a comparable sale. You make the request for the reduced assessment by submitting information now, before you receive your notification of assessed value for the year 2008-2009.

Your County Assessor's Office has a form titled 2008-2009 Informal Requests for "Decline in Market Value" (Prop 8) Reassessment. The information requested is the selling price of a comparable property with a sale date prior to March 31, 2008. You should have asked the question last month. Your County may have a warning on the form: information received after June 2, 2008 may not be processed in time to affect the determination of the assessed value. The assessed values are usually released during the last weeks of June.

If your notice of assessed value for the year 2008-2009 is in excess of the comparable sale number, you have a second opportunity to obtain a reduced assessed value. You may file the Application for Changed Assessment with the Assessment Appeals Board of your county. The forms are available from and should be filed with Clerk, Board of Supervisors of your county. The time for filing the appeal is July 2 to September 15, 2008.