

Gift Tax, Estate Tax, and Generation-Skipping Tax Valuation Insights

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This introductory discussion summarizes all of the discussions presented in this autumn 2014 issue of Insights. The discussions cover the intergenerational wealth transfer management continuum. The discussions are prepared and presented by a mix of (1) trust and estate attorneys covering various topical legal issues and (2) business valuation analysts and financial advisers from Willamette Management Associates covering aspects of the judicial process and a number of topical valuation issues. These valuation issues affect just about every valuation analysis (1) attached to a federal gift tax and estate tax return or (2) challenged by the Internal Revenue Service (the "Service"). Such valuation issues are commonly the subject of dispute in cases that go before the federal courts.

INTRODUCTION

This 101st *Insights* issue presents a mix of discussions touching on gift tax, estate tax, and generation-skipping tax topics related to (1) taxation planning and compliance, (2) the judicial process, and (3) important elements of the estate valuation.

The discussions are presented chronologically along the intergenerational wealth transfer management (IWTM) continuum as illustrated in Figure 1.

The IWTM continuum is made up of two distinct, though interconnected, continuums.

The first continuum is the intergenerational wealth transfer (IWT) continuum, and it is made up of two phases: (1) the gift transfer phase—transferring wealth during the donor's lifetime by way of tax-efficient gifts to beneficiaries and (2) the estate transfer phase—transferring wealth through the deceased donor's estate. Generation-skipping transfers may be made in each of these cases.

The second continuum is the wealth transfer management (WTM) continuum. This continuum is also made up of two phases, designed to manage and preserve the intergenerational wealth transfer:

1. The judicial process phase—which addresses any challenges to the donor's federal gift tax return or federal estate tax return made by the U.S. Tax Court

2. The valuation analysis phase—which relates to performing the valuation analysis to be attached to the federal gift tax return or federal estate tax return or for the purposes of defending the valuation analysis in the federal courts

The discussions in this issue represent a nice cross section of gift tax, estate tax, and generation-skipping tax issues—the theme of this *Insights* issue—at the intersection of legal service providers and valuation analysts.

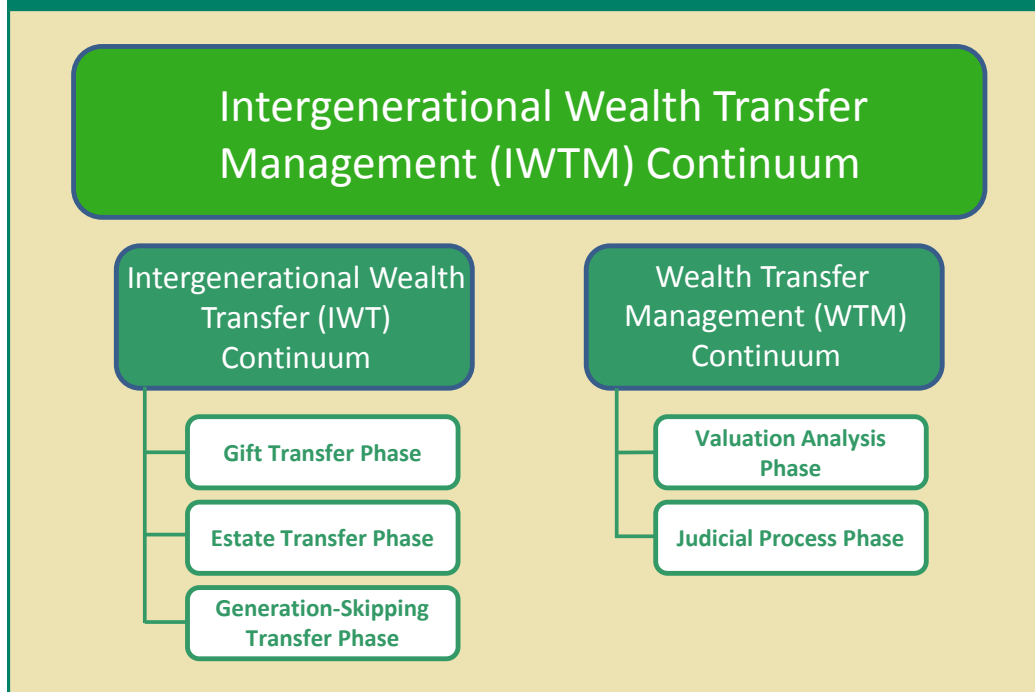
THE INTERGENERATIONAL WEALTH TRANSFER CONTINUUM

The Gift Transfer Phase

The first discussion in this issue deals with a gift tax planning topic—intra-family loans. This discussion describes certain factors that practitioners should consider when clients structure intra-family loans. These factors should be made at both the federal tax law level and the state tax law level.

Failure to structure intra-family loans correctly may result in unintended consequences such as rendering the interest payments on loans as gifts for which a gift tax may be applied.

Figure 1
Intergenerational Wealth Transfer Management Continuum



The Estate Transfer Phase

There are two discussions under the estate phase that are in this issue.

The first discussion describes new and upcoming issues in estate administration related to the identification and valuation of “digital” assets in an estate. The discussion covers information related to what are digital assets, valuation reporting requirements, legal challenges in obtaining information about the digital assets, and certain best practices that service providers may provide to mitigate these challenges.

The second discussion addresses certain aspects arising from the enactment of the topical ATRA. In this discussion, “porting” the decedent’s unused exclusion, which increased and became permanent with the enactment of ATRA, is discussed.

The discussion also addresses relevant considerations related to portability elections, complications of portability, and some helpful guidance to practitioners.

THE WEALTH TRANSFER MANAGEMENT CONTINUUM

The Judicial Process Phase

There are two discussions that deal with the judicial process phase of the IWTM continuum.

The first discussion presents insights gained from understanding the Tax Court process and the importance of experienced expert testimony and of selecting a qualified expert.

The second discussion presents some lessons learned from recent Tax Court cases and how the analyses submitted by the experts for the taxpayer petitioner and the Service respondent were favorably or unfavorably viewed.

The Valuation Analysis Phase

The final series of discussions address important elements of a business valuation analysis.

The first discussion addresses the important part of the valuation analysis where the analyst evaluates management-prepared projections and, when appropriate, effects the analysis based on a determination of their reasonableness, or not.

The second discussion provides insights related to the valuation of licenses and permits for gift tax, estate tax, and generation-skipping tax purposes.

The final three discussions describe important valuation discounts applied to valuations where the standard of value is fair market value, such as valuations performed for gift, estate, and generation-skipping tax purposes. These discussions are both topical and important because they are both typically (1) found in most valuations for gift, estate, and generation-skipping tax purposes and (2) frequently challenged by the Service.

The first of these discussions describe the appropriateness of applying discounts for lack of marketability (DLOM) to entities that have multiple tiers of holdings. The guiding principle that the analyst applies when performing such analyses is to evaluate each tiered entity as if it were the only entity being valued.

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The second discussion describes another discount—a blockage discount—that may be applied in gift, estate, and generation-skipping tax valuations. This discount applies to holdings of the stock of publicly traded companies where (1) the stock is restricted or (2) the block is larger than its daily trading volume such that it cannot be sold in one transaction or its block sale would have a sizable negative impact on pricing.

The third and final discussion in this section of *Insights* presents one of the most popular criticisms documented in deficiency determinations advanced by the Service. This discussion highlights some of the studies the Service frequently cites in its search of support for very low DLOMs.

This discussion addresses the many shortcomings implicit in these studies, which render them unreliable to conclude an appropriate level for the DLOM.

WILLAMETTE MANAGEMENT ASSOCIATES GIFT TAX, ESTATE TAX, AND GENERATION- SKIPPING TAX SERVICES

Willamette Management Associates analysts adopt a unique and robust approach to providing business valuation and financial advisory services to closely held business owners and to high net worth individuals. We perform these services for purposes of ownership transition, intergenerational wealth transfer, estate planning and structuring, gifting and charitable contributions, gift and estate tax compliance, and estate liquidity.

Because we are frequently called on to perform valuations for clients who have been served a notice of deficiency for their gift tax, estate tax, or generation-skipping tax returns, our valuation analyses are well documented and trial court ready—it is our direct expert testimony. This “trial court ready” standard has become the standard for all of our valuation analyses.

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