

Courts Rule Against IRS in Defined-Value Transfer Cases; Clear the Way for Using Hard to Value Assets to Optimize 2010 Tax Act Gifting Possibilities

Alpharetta, Georgia—May 15, 2012—Defined-value transfers, a mechanism for gifting hard-to-value assets, has long been a target of the IRS, with the agency often arguing the legitimacy of the strategy then attempting to revalue the assets for a higher amount at a later date. Now, says Attorney Richard Morgan, a string of taxpayer victories in IRS cases is giving these gifting strategies a solid legal foundation. That outcome is particularly beneficial now, given that the [2010 Tax Act](#), which allows individuals to exclude up to \$5.12 million in gifts from taxation, is set to expire at the end of 2012.

“With recent cases rejecting the IRS’s policy arguments against defined-value transfers, there is little doubt they are becoming a protected mechanism for transferring hard-to-value assets. Individuals who structure them properly with guidance from a knowledgeable advisor shouldn’t encounter problems—and will have stronger support for such gifts —should the IRS pursue action,” said Morgan. “This is one more reason for individuals to make beneficial gifts now and take maximum advantage of the current, unparalleled gift tax exclusion.”

Defined-value transfers are a mechanism for taxpayers to gift hard-to-value assets, such as business interests or land. With these transfers, the gift is a stated amount of the asset’s value rather than a percentage; for example, \$234,000 instead of 4%. Historically, recipients of percentage-interest gifts have struggled with the unintended tax consequences of the gift being revalued by the IRS at more than the stated amount. By giving a specified dollar amount of value, rather than a set amount of an asset, the giver hopes to set the value of the gift and prevent a revaluation from creating an unexpected tax liability.

The IRS has challenged defined-value transfers, just as it has argued against other methods of eliminating the possibility of additional taxation for the donor. However, with recent courts disagreeing—and the most recent case (*Wandry v. Commissioner*) offering the strongest dissent, the IRS may find itself being billed for legal fees if it continues to pursue this action.

“The courts have clearly confirmed that defined-value transfers are a legitimate mechanism for gifting assets without the shadow of future IRS scrutiny and liability risk,” says Morgan. “This shift will help people with hard to value assets take full advantage of the unprecedented gifting opportunities created by the gift tax exemption which exists for 2012.”

About Morgan and DiSalvo

Morgan and DiSalvo, PC is a partnership between Attorneys Richard Morgan and Loraine DiSalvo. Their reputation for personal service and compassion, combined with their expertise in estate planning, tax law and dispute resolution, has earned Morgan & DiSalvo the highest possible [Martindale-Hubbell Peer Review Rating](#) every year since the firm's inception in 1995. For more information visit www.morgandisalvo.com.

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Note to Editors: Attorney Richard Morgan is available for in person or phone interviews on Defined-Value Transfers and a number of other tax law issues.

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