



## 2010 Tax legislation more favorable for taxpayers than expected

by Timothy W. Dunn and Henry C.T. Richmond III of Greenebaum, Doll & McDonald. Reprinted with permission.

We've all heard the saying that "good things come to those who wait," but we never expect that principle to apply to issues related to tax laws. Well, we waited and waited for Congress to deal with the effective repeal of the federal estate tax and the generation-skipping transfer (GST) tax for 2010 and the looming expiration of the "Bush tax cuts." On December 17, 2010, when President Obama signed into law the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (Tax Relief Act), something good came from all of our waiting. The Tax Relief Act contains provisions which are more favorable to taxpayers than anyone expected.

For starters, the Tax Relief Act retroactively reinstated the federal estate tax for estates of decedents who died in 2010, if the estate elects. In that event, the estate tax exemption, which allows a taxpayer to transfer property free of estate tax at his or her death, was increased to \$5 million (from \$3.5 million in 2009). Further, the estate tax rate was decreased to 35% from its 2009 level of 45%. However, if the estate of a decedent who died in 2010 doesn't want the es-

tate tax and the \$5 million exemption to apply to the estate, the executor of the estate may elect to have no estate tax apply. If that election is made, the "carryover basis rules" also apply. Only a limited basis step-up, rather than the unlimited basis step-up which applies under the estate tax regime, is available if the carryover basis election is made.

The Tax Relief Act also retroactively reinstated the GST tax for 2010, but the GST exemption (which allows property to be passed free of GST tax to beneficiaries who are two or more generations younger than the transferor) was also increased to \$5 million (from its 2009 level of \$3.5 million) and the GST tax rate for 2010 was reduced to 0% (from 35% in 2009). Therefore, a taxpayer could effectively make gifts (or transfers at death) to grandchildren or great-grandchild in 2010 free of GST tax without the use of GST exemption. Even though we are well into 2011, there may still be time for you to take advantage of the planning opportunities created by this change in the GST

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[www.http://www.hamilton-co.org/cinlawlib/](http://www.hamilton-co.org/cinlawlib/)

# Tech Tip: Where Can I find a Power of Attorney Form?

By Julie Koehne, Systems Librarian

According to *Black's Law Dictionary*, 9th edition, the definition of a Power of Attorney is "an instrument granting someone authority to act as agent or attorney-in-fact for the grantor." Here are some different types of Power of Attorney.



Here is an example of Forms we have available at the Law Library via Westlaw!

Westlaw  
 30 WEST-LF § 28:81  
 30 West's Legal Forms, Specialized Forms § 28:81 (3d ed.)

Page 1

West's Legal Forms  
 Current through the 2010 Update  
 Specialized Forms  
 Richard Gillman[a9]  
 Chapter  
 28. Powers of Attorney  
 C. General Forms

... Power of attorney—Statutory form—Uniform act

### STATUTORY POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I \_\_\_\_\_ (insert your name and address) appoint \_\_\_\_\_ (insert the name and address of the person appointed) as my agent (attorney-in-fact) to act for me in any lawful way with respect to the following initialed subjects:

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (X) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS.

TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.

#### INITIAL

- \_\_\_\_\_ (A) Real property transactions.
- \_\_\_\_\_ (B) Tangible personal property transactions.
- \_\_\_\_\_ (C) Stock and bond transactions.
- \_\_\_\_\_ (D) Commodity and option transactions.
- \_\_\_\_\_ (E) Banking and other financial institution transactions.
- \_\_\_\_\_ (F) Business operating transactions.
- \_\_\_\_\_ (G) Insurance and annuity transactions.
- \_\_\_\_\_ (H) Estate, trust, and other beneficiary transactions.
- \_\_\_\_\_ (I) Claims and litigation.

Powers of attorney in Ohio must be conveyed in writing.

<http://codes.ohio.gov/orc/1337>

The Ohio Revised Code provides a form for Power of Attorney

<http://codes.ohio.gov/orc/1337.18>

One commonly used special type of Power of Attorney for Health Care is a Durable Power of Attorney. Pro Seniors has one available on its website.

[http://www.proseniors.org/Law\\_Library/Health/Advance\\_Dir.html](http://www.proseniors.org/Law_Library/Health/Advance_Dir.html)

## New CLE Materials

We are acquiring all of the OSBA's CLE books now. At the end of each quarter, we receive a shipment of recent CLE course materials. Chock full of practical information for the practitioner, these books can be checked out by our subscribers for two weeks. CLE books are shelved by topic just past the copier room as one enters from the sixth floor elevator foyer. Here is a list of recently added titles, to give our readers a sense of the diversity of topics available:

- ◆ Advanced Collaborative Family Law
- ◆ Advanced Skills for Conflict Resolution
- ◆ Creditors' Remedies
- ◆ Document Automation
- ◆ Drafting Wills and Trusts
- ◆ Eminent Domain
- ◆ Ethical Considerations Unique to Insurance
- ◆ Federal Estate and Gift Tax
- ◆ Intermediate Microsoft Word
- ◆ Making Your Case with a Better Memory
- ◆ Ohio Elder Law Institute
- ◆ Records and Information Management
- ◆ Roth IRA Conversions
- ◆ Titles to Real Estate in Ohio

## Conference Rooms

Subscribers may reserve the library's conference rooms, located in the main room. Each room includes a table, some chairs, and a speaker phone. While they are not sound-proof, they do provide a relatively private location for meetings or quiet study. To reserve a room for an hour or two, please speak with Mary Ann at 513.946.5300.



## Criminal Law

If you practice in the area of criminal law, you may want to know about some of the legal information resources we have from Aspen Publishing for our subscribers' off-site use:

- Drunk Driving Defense
- Evidence Library (including Wigmore)
- General Litigation Library
- Mauet Trial Practice Library

Through Westlaw in the library, you can use the following Baldwin's titles: Arrest, Search and Seizure, Criminal Defense Motions, Criminal Law, Domestic Violence Law, DUI Law, Felony Sentencing Law, Statutory Charges, and Trial Handbook. We also offer online access to BNA's Criminal Law Reporter. This is handy when print copies are checked out or when a digital version of just the content you need is preferable. If you just need a section or chapter and cannot make it into the library, give us a call. We'll send it to you.

## Court Rules

You will find court rules for many jurisdictions on the Law Library's website at <http://www.hamilton-co.org/cinlawlib/resources/courtrules.html>. In addition to federal and state courts, we provide rules for most counties in Ohio. A collaborative effort of law librarians around the state, we either link to the court's website or we acquire paper copies, scan, and upload them. Periodically, librarians verify links and currency of the rules. If you come across rules that we don't have or if you see that an update is available, please contact Law Library staff.

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tax law for 2010, through use of disclaimers, the election out of the automatic allocation of GST exemption or the late allocation of GST exemption to GST trusts created in prior years.

Since the Tax Relief Act extends the deadline for making an effective disclaimer for GST tax purposes (until September 19, 2011, nine months after the date of the enactment of the Tax Relief Act), you may be able to disclaim property that would have passed to you from a decedent who died in 2010, so that the property instead passes to your children or grandchildren free of GST tax. Also, if you or your parents made gifts in 2010 directly to grandchildren or great-grandchildren (or trusts for their benefit), the grantor may want to elect out of the automatic application of his or her GST exemption; this is because there is no need to apply GST exemption since the GST tax liability will be zero. Transfers in trust made in 2010 should be carefully analyzed to confirm that future distributions to grandchildren or great-grandchildren will be exempt from GST tax. If you created GST trusts prior to 2010 which are not fully GST exempt, consider making a late allocation of your GST exemption to that trust on your 2010 gift tax return.

In addition to the reinstatement of the federal estate tax and the GST tax for 2010, the Tax Relief Act also included additional changes to the transfer tax laws that will apply for the next two years, until December 31, 2012. These new rules are unexpectedly favorable to taxpayers.

Let's begin with the gift tax. The lifetime gift tax exemption is increased to \$5 million for 2011 and 2012, which is significantly higher than its \$1 million level in 2010. If you previously used all of your \$1 million gift tax exemption, you now have an additional \$4 million gift tax exemption you can use for your lifetime gifts. This change generally allows a taxpayer to make lifetime gifts up to \$5 million of property during 2011 and 2012 free of gift tax, in addition to making annual exclu-

sion gifts of up to \$13,000/\$26,000 per year to any donee. If gifts are made in excess of the \$5 million lifetime gift tax exemption, gift tax will be assessed at a 35% rate.

The \$5 million estate tax exemption and the 35% federal estate tax rate are also in effect for 2011 and 2012. In addition to this favorable exemption amount and the lower estate tax rate, the Tax Relief Act also introduced a new spousal exemption "portability" concept which applies during 2011 and 2012. Generally, "portability" allows a surviving spouse to use any estate tax exemption that was not used by his or her deceased spouse, in addition to his or her own estate tax exemption. Conceivably, this would enable one spouse to transfer all of his or her property to a surviving spouse at death, and as long as the surviving spouse owns less than \$10 million of assets at the surviving spouse's death in 2011 or 2012, all of the property also will pass free of estate tax at the surviving spouse's death. In order for this plan to have its intended effect, the first deceased spouse must die in 2011 or 2012, and the surviving spouse may also need to die in 2011 or 2012 because the "portability" concept is set to expire on December 31, 2012 under current law. There clearly are risks associated with relying on "portability" as an estate plan. Also, "portability" does not apply to a taxpayer's GST exemption, so that a deceased spouse's unused GST exemption may be wasted if additional planning is not implemented.

The increased GST exemption of \$5 million is also carried over to 2011 and 2012, but the GST tax rate for 2011 and 2012 is 35% (rather than the 0% rate for 2010).

The \$5 million exemptions for GST tax and lifetime gift tax purposes during 2011 and 2012 provide some very significant planning opportunities. Let's briefly look at how you can take advantage of them.

Have you contributed property to an irrevocable trust for children and/or grandchildren in the past without allocating GST exemption to

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those contributions? If so, distributions from the trust to your grandchildren will be subject to GST tax. It is possible to make a late allocation of your GST exemption to the current value of the trust property, in order to exempt the trust from GST tax. Since GST exemption must be allocated to the current value of the trust property in order to exempt the entire trust from GST tax, a late allocation to many trusts has been unavailable in the past due to high asset values and lower GST exemption amounts. The increase of the GST exemption to \$5 million for 2011 and 2012 allows a grantor to exempt up to \$5 million of trust property from GST tax.

You may also want to take advantage of what could be a temporary increase in your lifetime gift tax exemption and GST tax exemption by making gifts up to \$5 million of property to irrevocable trusts for your children and/or grandchildren in 2011 and 2012. Such transfers during your lifetime remove the value of the transferred property from your estate, and they also prevent any post-gift appreciation from accumulating in your estate. If the trust to which lifetime gifts are made is structured as a "grantor trust" for income tax purposes, you can further reduce the value of your estate by paying income taxes on the trust income from your personal (non-trust) assets.

Please keep in mind that while the Tax Relief Act presents many significant estate planning opportunities, these opportunities may only be available until December 31, 2012. Therefore, you should act quickly to take advantage of the "good" that has come from our time spent waiting on Congress to enact the recent tax legislation.

For more information, please contact Henry Richmond ([hctr@gdm.com](mailto:hctr@gdm.com)) or Tim Dunn ([twd@gdm.com](mailto:twd@gdm.com))



## BNA Labor & Employment Resource Center Webinar\*

Tuesday, June 8

1:00-2:00

Wondering where to turn for your labor and employment research? Join us for the BNA Labor & Employment Resource Center Webinar. The program will highlight features such as expert analysis, news, primary sources and practice tools as well as demonstrate effective search techniques.

To register, call 513-946-5300.

**\*Note: this is not a CLE.**

## Withdrawn Law Books on County Auction

You can find withdrawn law books on Hamilton County's auction site at <http://www.hamiltoncountyohioauction.com/app/>. Click on *Surplus* and look for books under *Books* or *Educational & Training Materials*. This modernizes our former protocol for discarding outdated materials, reaches a wider audience, generates a bit of revenue, and complies with laws related to the removal of surplus inventory. Typically, we're posting books in lots of related materials; a grouping of twenty books on family law or ten books on aspects of Kentucky law or a five volume set that we're withdrawing, for example. We do still have a "free" rack by the elevator for materials of limited value due to physical condition, age, or nature of the materials. Check out the public auction regularly for law books that may be of interest to smaller law firms and other businesses or for consumer-oriented materials.

## Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to 6 weeks at a time

Access to extensive electronic databases from the Law Library, including LexisNexis, Shepard's, CCH Omnitax, CCH Human Resources Group, and CCH Business Group resources, Hein Online Law Journals and Federal Register, and over 70 Aspen / LOISLaw treatises in 16 substantive areas

Wireless network throughout the Law Library

Polycom videoconferencing

5 meeting rooms with speaker phones

Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

Inexpensive CLE seminars throughout the year, on legal research and substantive topics

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/ LOISLaw treatises and CCH Newsletters.

## You and the Legal System: Bankruptcy

We are pleased to announce that law library subscriber Thomas J. Geygan, Sr., Attorney at Law, will present a session on *Consumer Bankruptcy* on Friday, June 17, 2011 at 12:00 noon at the Hamilton County Law Library. This program is free to the public. To register, call 513.946.5300.

Please note that this is not a CLE event; it is intended for the general public. However, attorneys are welcome to attend and may also want to pass along the program announcement to clients, staff, and community organizations. For more information, please call 513.946.5300.

*You and the Legal System* is brought to you as a public service by the Hamilton County Law Library, in conjunction with the Cincinnati Bar Association's Lawyer Referral Service.

And a "save the date" for the next event in the *You and the Legal System* series: Sherry Davis will present *When to Use Mediation* on July 15; details forthcoming.

### Library Board Meeting

The next regularly scheduled meeting of the Hamilton County Law Library Resources Board will be held at 1:00 p.m. on Thursday, July 7, 2011 in the Robert E. Kraft Board Room. Meetings of the board are open to the public. Minutes of past meetings are available at

<http://www.hamilton-co.org/cinlawlib/about/trustees.html>.

## Bankruptcy Resources

In addition to handy 24/7 online access to a variety of treatises on bankruptcy from Aspen Publishing, the Law Library also provides its subscribers with computer lab access to BNA's Bankruptcy Law Reporter and an array of bankruptcy-related materials from CCH. We also have excellent print resources including the following books. If you'd like us to hold one of them for you at the front desk, just give us a call.

Bankruptcy fundamentals video replay.  
KFO221 .B34 2010

BOOT CAMP : foreclosure and loan workout procedures [in Ohio]  
KFO130.5.F6 B59 2010

Chapter 7 commercial bankruptcy strategies : leading lawyers on interpreting recent bankruptcy trends, structuring an effective chapter 7 filing, and protecting a clients interests.  
KF1544 .C532 2011

Chapters 7 and 13 bankruptcy [in Ohio] : line-by-line workshop.  
KFO221 .B344 2010

Collier bankruptcy manual  
KF1524 .C59 2010

Collier handbook for trustees and debtors in possession.  
KF1524 .C633

Consumer bankruptcy handbook, with forms .  
KF1524 .C663 2010-

Consumer bankruptcy law and practice  
KF1040.Z9 S65 2009-  
KFO220 .C74 2011

Creditors' rights in Chapter 11 cases : leading lawyers on representing and enforcing the rights of creditors in bankruptcy matters.  
KF1544 .C462 2011

Creditors' remedies.  
KFO220 .C74 2011

Employee benefits and executive compensation in corporate bankruptcy : a Collier monograph  
KF1526 .E45 2010

Legal issues in real estate foreclosure [in Ohio]  
KFO130.5.F6 L72 2009

A lender's participation in a Chapter 11 case  
KF1544 .R67 2009

The surety and bankruptcy  
KF1524 .S87 2010

Tax aspects of restructuring financially troubled businesses  
KF6289.A1 T35 no. 541-4<sup>th</sup>

Titles to real estate in Ohio.  
KFO126 .T52 2011

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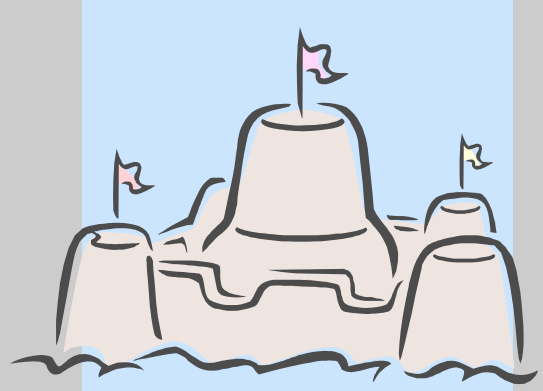
## Upcoming Events

June 8: BNA Labor & Employment Law Library Training Webinar

June 17: You and the Legal System: Bankruptcy

July 7: Law Library Resources Board Meeting

July 15: You and the Legal System: When to Use Mediation



## June 2011 Law Library Newsletter

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