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THE REPEAL OF THE FLORIDA INTANGIBLES TAX WHAT IT MEANS FOR YOU

The Wicked Witch is Dead! When the Florida legislature passed the repeal of the Intangible Personal Property Tax this spring, Governor Bush, perhaps feeling a little like the Wizard of Oz, held a press conference where he announced "the wicked witch is dead." Now, after months of waiting for just the right moment, he has finally signed the bill into law.

The tax, which was assessed at the rate of $.50 for every $1,000 worth of intangible assets owned (less an exemption amount of $250,000 per person or $500,000 per couple) was imposed on intangible property (stocks, bonds, mutual funds, notes and the like) owned on January 1 of each calendar year. To put this in understandable terms, the tax was $500 for every $1 million worth of intangible assets owned. Since the tax has now been repealed, it will not apply on this upcoming January 1, 2007, and the last intangible tax return anyone will have to file is for 2006 (the due date for which was June 30).

As a practical matter the tax had very little impact on most Floridians. If they owned less than $2 million of intangibles, they would just pay the tax. However, if their intangibles exceeded $2 million, it was worth the effort to avoid or minimize the tax if legally possible. Enter the "Intangibles Tax Trust (ITT)," a legal and relatively simple way to avoid the tax which had the blessing of the Florida Department of Revenue.

Intangibles Tax Trust. The ITT allowed an individual to move intangibles into a simple trust with a family member or trusted advisor as trustee before January 1, and then move them back into the individual's name a short time later. Since the intangibles were in the ITT on January 1, they were not subject to the tax.

Many ITTs were set up to continue in existence from year to year, so that prior to each January 1 intangibles could be moved into (and later back out) of the trust. Typically a small amount of cash was left in the trust account to keep it open to avoid having to establish a new brokerage account for the trust each year. Other ITTs were designed to last only for one year, and if the individual wanted to avoid the tax in a future year, a new trust was created. A few trusts were set up to continue to hold intangibles on a continuous basis to avoid the costs of moving assets in and out of the trust each year. This last type of ITT was frequently used when

the transfer of the intangibles in and out of the trust triggered significant other costs (such as state documentary stamp taxes imposed on the transfer of a promissory note).

What Repeal Means To You. If you did not establish an ITT to avoid the tax, you need do nothing other than make sure you have filed all required returns through 2006. If you created one or more ITTs, then your course of action will depend on how your trust was set up.

First, if your ITT was designed to last only a short period of time, it should have ended automatically under its terms earlier this year, and you should not have to do anything further to terminate it. You should have your legal advisor review the trust to make sure it is terminated and that no further action is required on your part. You should also maintain full records of the trust so that in the event of an audit you can show that the intangibles in the trust in prior years were not subject to the tax.

Second, if your ITT continued in existence from year to year, but intangibles were moved out of the trust on a yearly basis, the trustee first will need make sure that any remaining cash in the trust's brokerage account has been transferred out of the trust, and then the trust should be legally terminated. Your legal advisor will need to review the trust to determine what documents will be necessary to terminate the trust. Again, trust records should be kept for possible audit purposes.

Third, if you have left intangibles in the trust from year to year, you will need to consider whether you want to leave them there or move them back into you individual name. Most ITTs are set up for the sole purpose of avoiding the intangibles tax and do not contain language making them suitable for longer-term use. In those cases the trustee will need to move the intangibles out of the trust and then the trust should be terminated, taking into account any transfer costs that the transfer will trigger. In the rare case where the trust was set up to last for a long term, your legal advisor should be consulted to determine if the trust still makes sense now that the tax has been repealed.

The members of Dean Mead's Estate and Succession Planning Team are familiar with all aspects of the intangibles tax and Intangibles Tax Trusts, and are available to discuss the impact of the repeal of the tax on your particular circumstances.