

Tax Court Denies Charitable Contribution Deductions Because of Inadequacies in the Documentation

- Oatman: No contemporaneous written acknowledgement.
- Luczaj: No contemporaneous written acknowledgement.
- *Izen*: Tough rules for contributions of vehicles (§170(f)(2)).
 - \$338,080 claimed for a 1/2 interest in a 40-year-old private jet.
 - The entire plane was purchased 3 years earlier for \$42,000.
- RERI: Failure to disclose donor's basis in an LLC interest.
 - Purchased by donor 17 months earlier for \$2,950,000.
 - Sold by donee two years later for \$1,940,000.
 - Claimed deduction was \$33,019,000!
- **Ohde:** Taxpayers' claimed 2011 contributions to Goodwill Industries of over 20,000 items with a value of \$145,250.
 - Total claimed deductions 2007-2013 were \$542,363.
 - The Tax Court found none of their testimony to be credible.

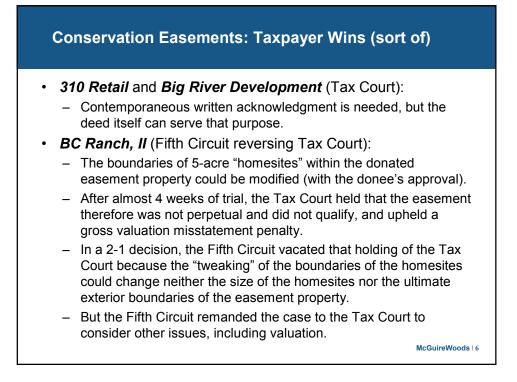
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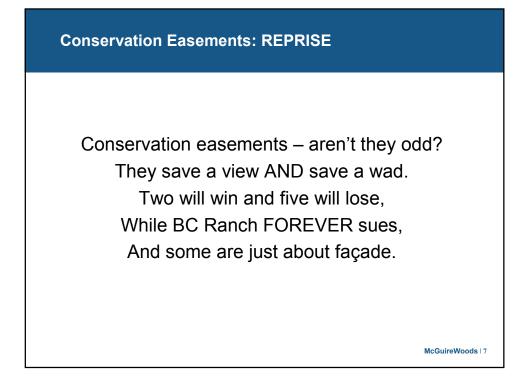
Syndicated Conservation Easements Now a Listed Transaction: Notice 2017-10

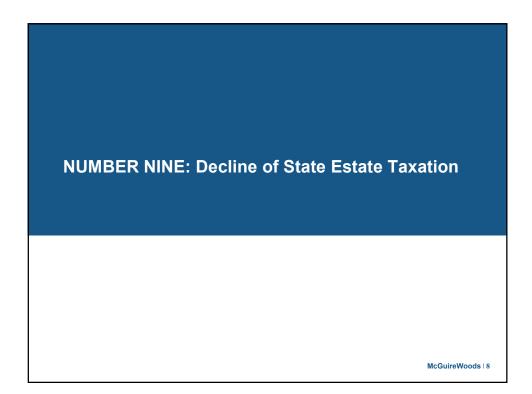
- Treasury and the IRS identified transactions they described as "conservation easement transactions that purport to give investors the opportunity to obtain charitable contribution deductions in amounts that significantly exceed the amount invested."
- As listed transactions, they require certain reporting under sections 6111 and 6112 by taxpayers, other participants, and advisors.

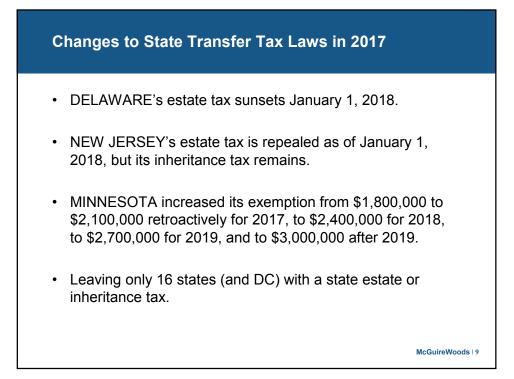
Conservation Easements: Taxpayer Losses

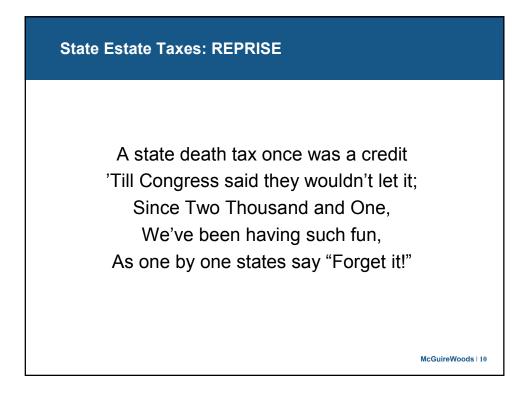
- **RP Golf** (Eighth Circuit affirming Tax Court) and **Palmolive Building Investors** (Tax Court):
 - Liens weren't subordinated to easement.
- Ten Twenty Six Investors (Tax Court):
 - The easement was not perpetual because the deed was not recorded in the year the deduction was claimed.
- Partita Partners (Southern District of New York):
 - The entire façade was not preserved.
 - PLUS a gross overvaluation penalty was upheld.
- Salt Point Timber (Tax Court):
 - Permitted replacement by a "comparable conservation easement" could permit the holder of the replacement easement to be an entity other than a "qualified organization" as defined in section 170(h)(3).

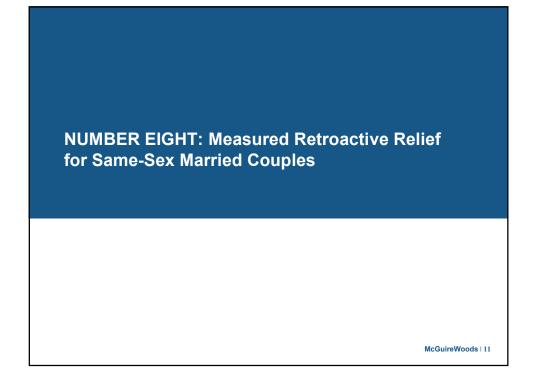


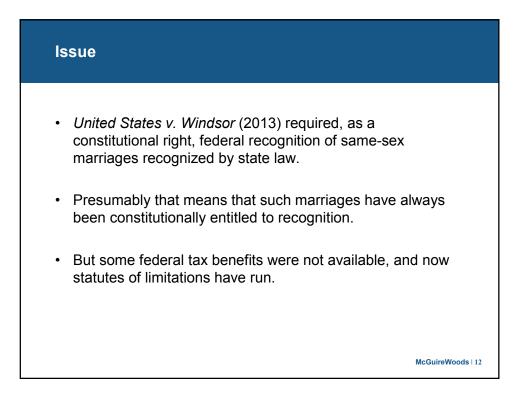






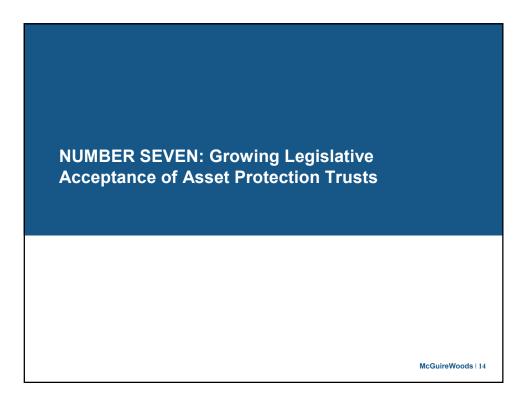




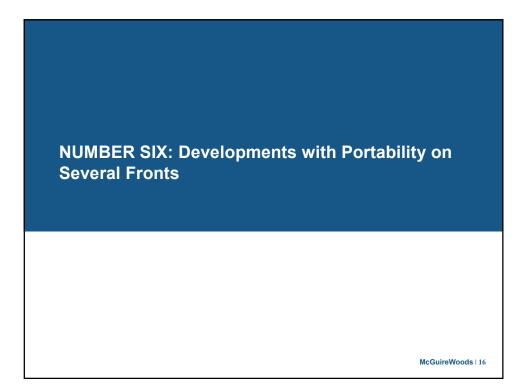


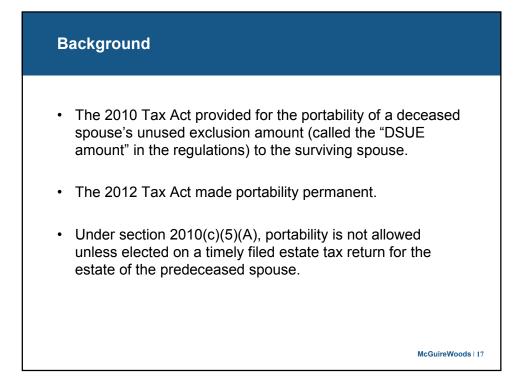
Response: Notice 2017-15

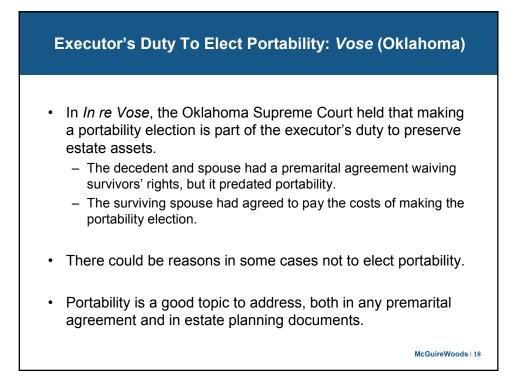
- Allows retroactive recalculation of marital deductions and generation assignments for purposes of determining the remaining applicable exclusion amount and GST exemption.
- But not claims for refund of tax paid, if the applicable statute of limitations has run.
- This seems to be a reasonable balance between constitutional rights and the need for repose.
- It works both ways: For example, the IRS won't collect gift tax on the creation of a GRIT for a same-sex spouse (now a member of the family under section 2702).





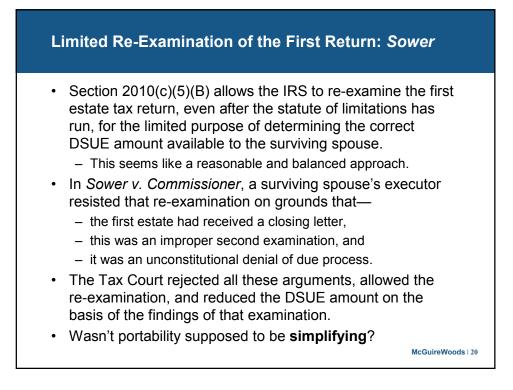






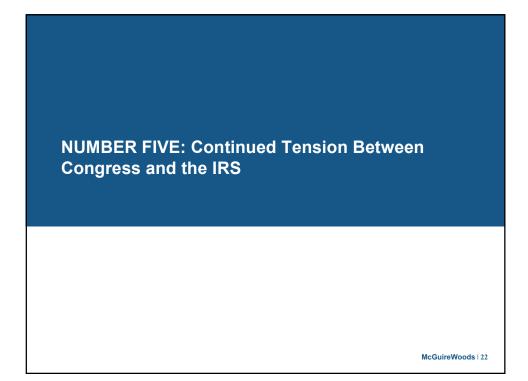
Relief for Late Elections: Rev. Proc. 2017-34

- For estates below the threshold requiring the filing of an estate tax return, Notice 2012-21 granted an automatic sixmonth extension of time to file a return (a "portability-only return") and make a portability election.
- Rev. Proc. 2014-18 provided a simplified method for obtaining an extension of time to file a portability-only return through December 31, 2014.
- Rev. Proc. 2017-34 further extended the time to file portability-only returns—
 - through January 2, 2018, for all decedents dying after December 31, 2010, and before January 3, 2016 (extended transitional relief); and
 - through the second anniversary of the decedent's death for all decedents dying after January 2, 2016 (limited permanent relief).





The survivor went to court To force DSUE to port. The courts said yes, But what a mess When simple concepts we contort.



"The Broken IRS"

- Described in the House Republican leadership's June 2016 "Blueprint" as "a broken tax collection agency that continues to fail the American people."
- Fallout from years (if not decades) of suspicion.
- Aggravated by allegations in 2013 of politically-motivated discriminatory treatment of citizens, destruction of emails, etc.
- Aggravated by partisanship in Congress.
- Reflected in relentless reductions of the IRS budget.
 - Approximately \$1 billion cut from an approximately \$11 billion budget since Fiscal Year 2010.
 - Another \$149 million cut in appropriations bill reported June 29.

Consequences
 Policy distractions for Congress.
 Decline in professional resources, resulting in—
 Failure to collect taxes that should be paid.
 Decline and delay in guidance projects.
 Difficulties in obtaining closing letters and lien releases.
 Occasional suspension of the issuance of letter rulings.
 Terrible telephone service.
 Dramatic reductions in training.
 Forcing upon taxpayers a shrinking, untrained work force.
 We are used to audit encounters being adversarial.
 But dealing with examiners unfamiliar with the law and basic estate planning techniques is unusually exasperating.
 And the result can sometimes be "throwing everything against the wall to see what sticks."
- Case law bears this out. McGuireWoods 24

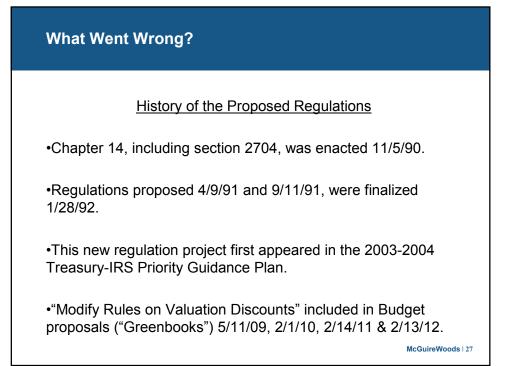
Tension Between Congress and the IRS: REPRISE

The Internal Revenue Service Made some in Congress nervous, But when training funds tumble, Making auditors stumble, The public will grumble, "What did WE do to deserve this?"

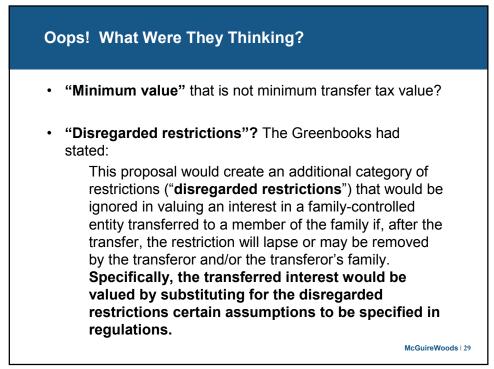
•Okay, it's too big, but what do we cut?

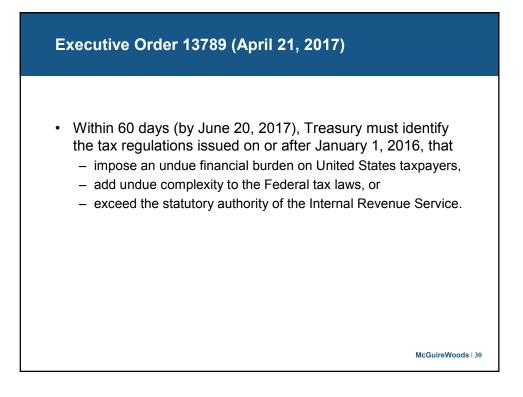
NUMBER FOUR: The Withdrawal of the Proposed Section 2704 Regulations

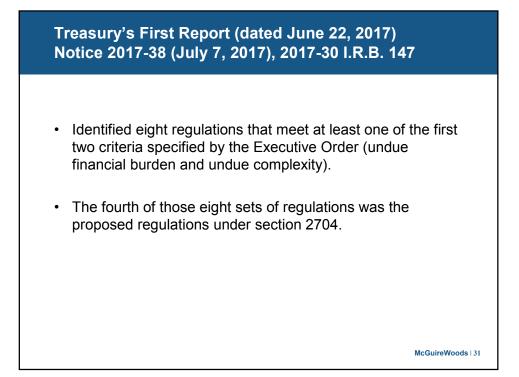
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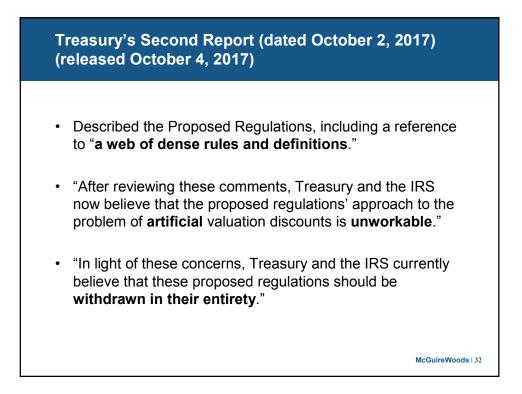




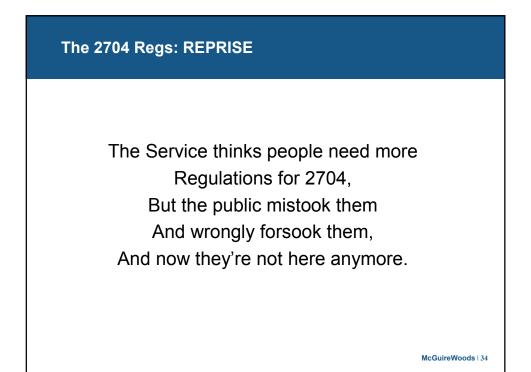


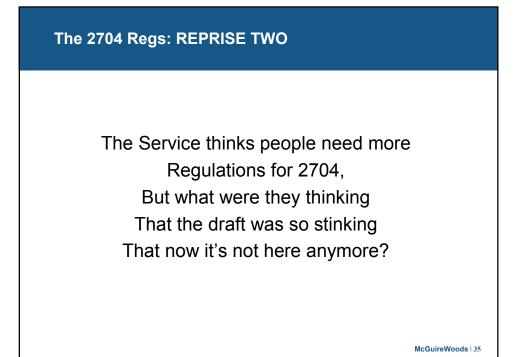








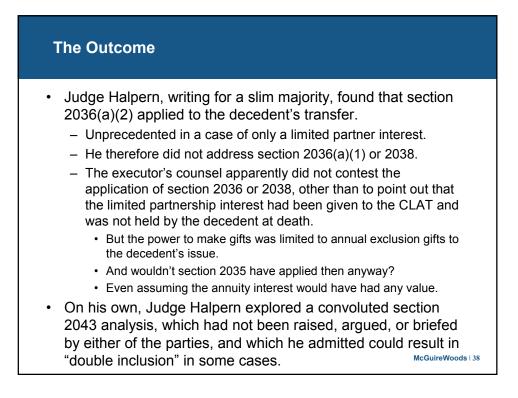




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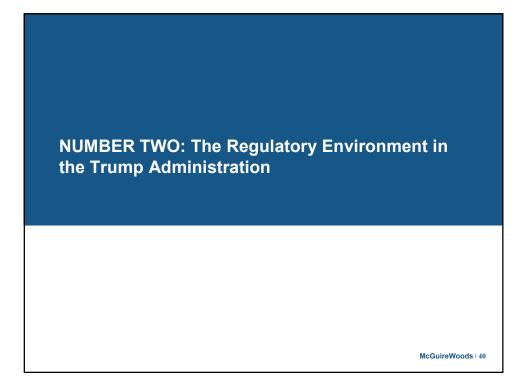
A Classic "Bad Facts" Marketable Securities FLP Case

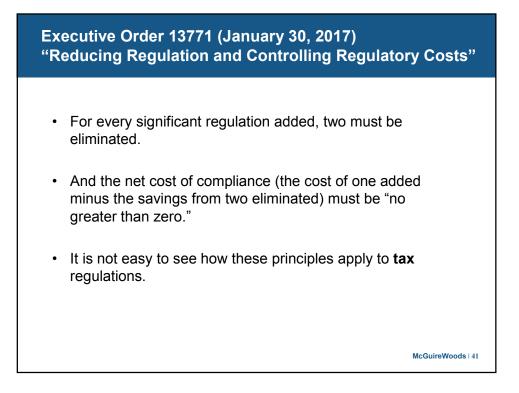
- The decedent's son, acting under a power of attorney from the decedent, contributed approximately \$10 million in cash and marketable securities to a limited partnership and took back, on the decedent's behalf, a 99% limited partner interest.
- The son and his brother contributed unsecured promissory notes and took back a 1% general partner interest.
- On the same day, the son with the power of attorney contributed the decedent's limited partner interest to a charitable lead annuity trust (CLAT).
- The decedent died seven days later, with the same son as executor.
- Seven concurring judges viewed this as "what is best described as aggressive deathbed tax planning."

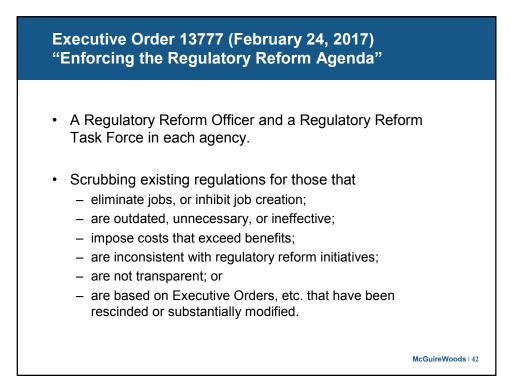


Powell—Bad Facts Make Bad Law: REPRISE

There once was a case named *Powell* That made all estate planners howl, 'Cause the court's logic got twisted When the PR persisted Instead of just throwing in the towel.







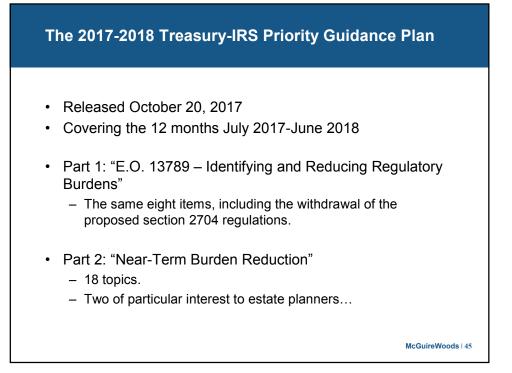
Executive Order 13789 (April 21, 2017) "Identifying and Reducing Tax Regulatory Burdens"

- Treasury must take action to mitigate the burden of tax regulations issued on or after January 1, 2016, that
 - impose an undue financial burden on United States taxpayers,
 - add undue complexity to the Federal tax laws, or
 - exceed the statutory authority of the Internal Revenue Service.
 - This led to the withdrawal of the proposed section 2704 regulations.
- Treasury and OMB must "review and, if appropriate, reconsider the scope and implementation of the existing exemption for certain tax regulations from the review process set forth in Executive Order 12866...."
 - *I.e.*, a Regulatory Impact Assessment.

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Regulatory Impact Assessment Executive Order 12866 (Sept. 30,1993), § 6(a)(3)(C) A quantified assessment of benefits to the economy, health and safety, the environment, elimination of bias, etc. A quantified assessment of costs to the government in administering, to businesses and others in complying, and to the economy, health and safety, the environment, etc. A comparison to the costs and benefits of alternatives. Public disclosure of that information. Public disclosure of changes made in the draft after the

- draft and the impact assessment were submitted to OMB. – And Treasury and OMB must "review and, if appropriate,
 - reconsider the scope and implementation of the existing exemption for certain tax regulations"? Meaning:
 - More regulatory impact assessments.
 - Or fewer regulations.

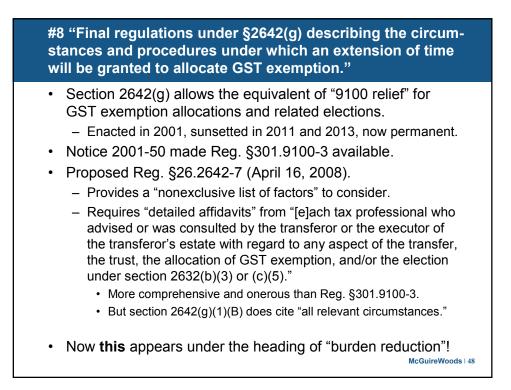


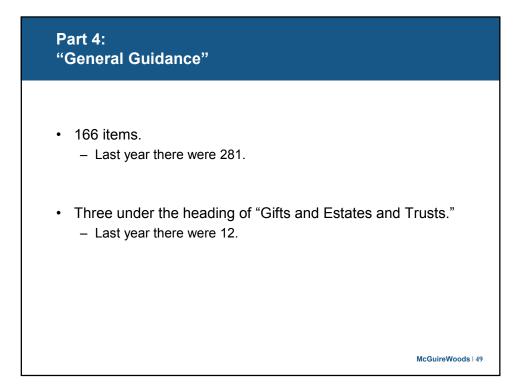


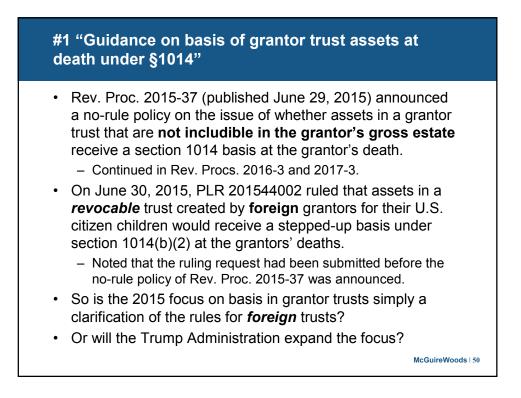
- The statute was enacted on July 31, 2015.
- Proposed Regulations were published on March 2, 2016.
- Regulations should have been finalized by January 31, 2017.
 - Within 18 months of enactment of the statute, to permit them to be retroactive under section 7805(b)(2).
- Some welcome exceptions:
 - Cash.
 - Modest tangible personal property.
 - Property that is sold.

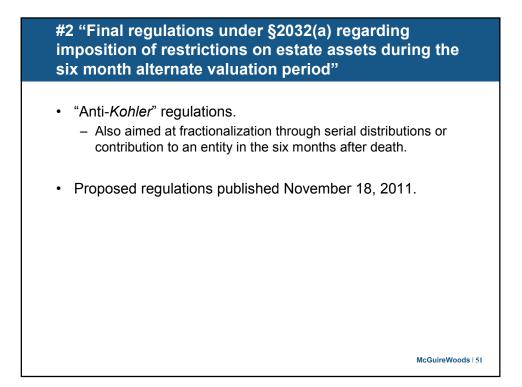
But Some Unwelcome and Burdensome Rules

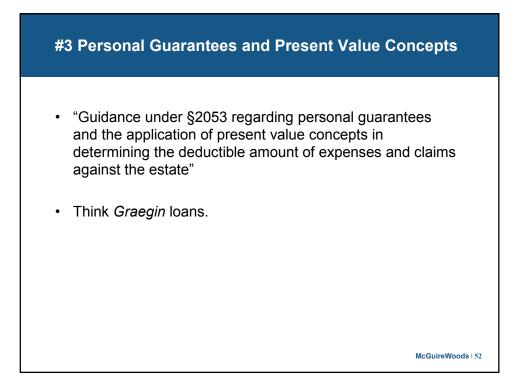
- Form 8971 and its Schedule A are required whenever an estate tax return is required.
 - Due 30 days after the estate tax return is filed!
 - How can an executor know who gets what by then?
 - Section 6035(a)(1) requires this information to be furnished "to each person **acquiring** any interest in property included in the decedent's gross estate for Federal estate tax purposes."
- Successive transferors must furnish and file Schedule A for gifts and other carryover basis transactions.
 - Section 6035(a) applies to an "executor" and any other person required to file a federal estate tax return.
- After-discovered property might get a zero basis!
- · Now this appears under the heading of "burden reduction"!

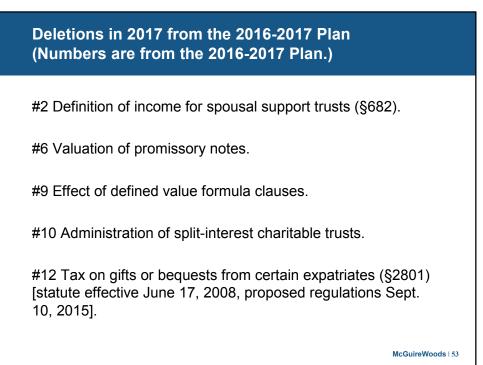




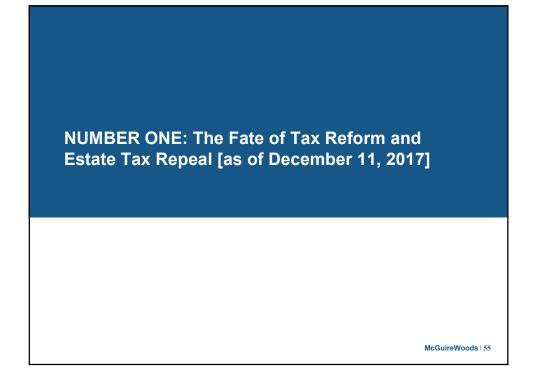








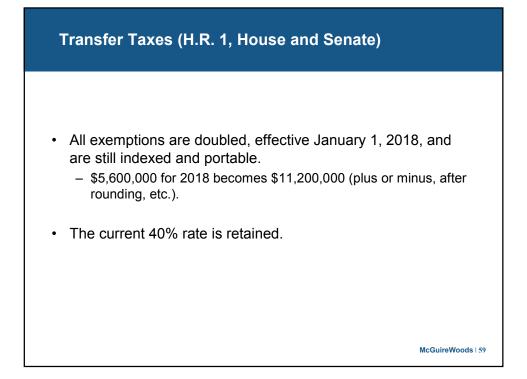


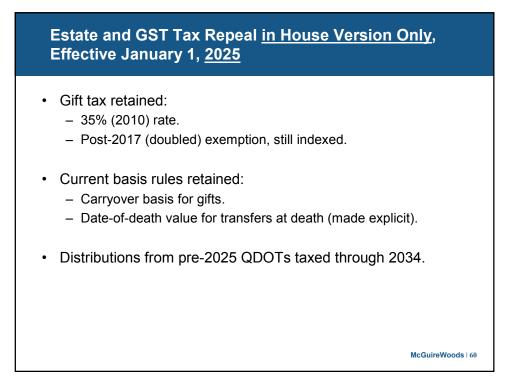


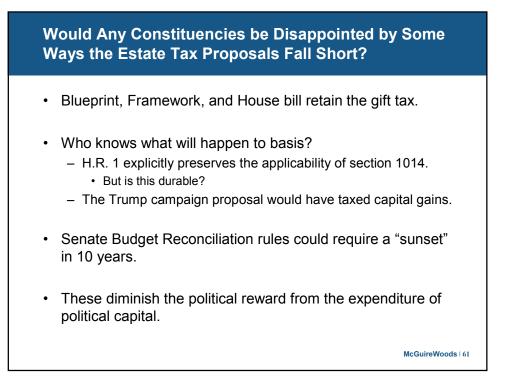
	House Republicans' "Blueprint" (6/23/2016)	President's Outline (4/26/2016)	"Unified Framework" (9/27/2017
Corporate rate (now 35%)	20%	15%	20%
Small/family businesses	25%	15%	25%
Alternative minimum tax	Repealed	Silent	Repealed
 H.R. 1 roughly fol 20% corporate rate (b Preferential taxation o House: 25% net ra Senate: 23% dedu Corporate alternative House: Repealed. 	ut, in Senate f business inc ate. ction.	version, not until 2 come of individual	2019).

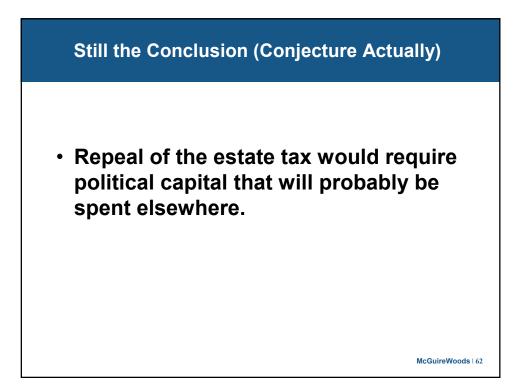
Current Law (in 2018)		House Version (2018)		Senate Version (2018)	
Rate	Starting at (taxable income)	Rate	Starting at (taxable income)	Rate	Starting at (taxable income
10%	\$0	12%	\$0	10%	\$0
15%	\$19,050			12%	\$19,050
25%	\$77,400	25%	25% \$90,000	22%	\$77,400
28%	\$156,150			24%	\$140,000
33%	\$237,950	- 35%	\$260,000	32%	\$320,000
35%	\$424,950			35%	\$400,000
39.6%	\$480,050	39.6%	\$1,000,000	38.5%	\$1,000,000
	Repealed in Ho 3.8% ne	use; Exe et investi	uction almost dou mption increased ment income tax 118 by reference t	about 2 retained	

Current Law (in 2018)		House Version (2018)		Senate Version (2018)		
Rate	Starting at (taxable income)	Rate	Starting at (taxable income)	Rate	Starting at (taxable income)	
15%	\$0	12%	\$0	10%	\$0	
25%	\$2,600	25%	\$2,550	24%	\$2,550	
28%	\$6,100	- 35%	2.50/ \$0.1	¢0.150	2.50/	¢0.150
33%	\$9,300		\$9 <i>,</i> 150	35%	\$9,150	
39.6%	\$12,700	39.6%	\$12,500	38.5%	\$12,500	





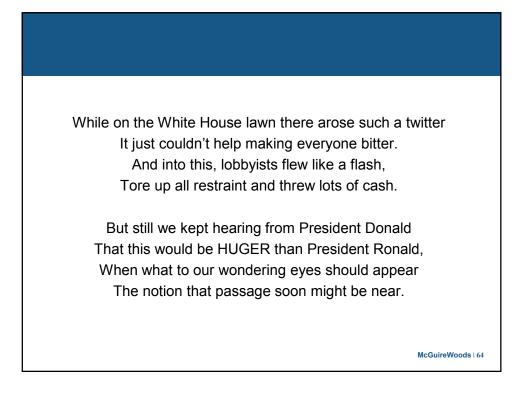




Tax Reform: REPRISE (as of December 31, 2017!)

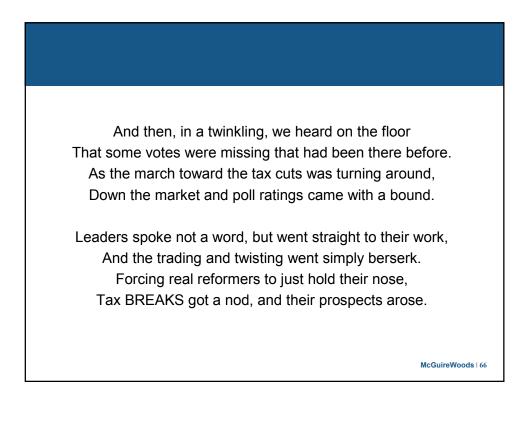
'Twas the month before Christmas, when the Senate and House Made the chances of tax cuts seem as small as a mouse. The tax reform frameworks were made with some care In hopes that somehow the votes would be there.

But some members were nestled so snug in their views That any hint of consensus would sure be big news. And Mitch with his frown and Paul with his grin Were about to despair it would ever begin.



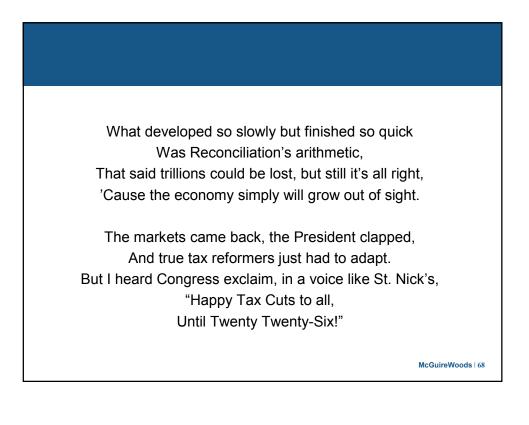
With a devious driver, with such a cynical mix, We knew it a moment it was Politics. With banners of eagles at podiums stood The congressional leaders to do what they could.

GOP leaders knew loss would mean shame, So they rallied their members and called them by name! Now Susan! Now Lisa! Now Corker and Ron! On, Rand Paul! On, Toomey! Hang on, Jeff and John!



So the bill got restructured, from its head to its foot And changes were made that went straight to its root. A bundle of Pork on Uncle Sam's back, And he looked like a peddler, just opening his pack.

The tweaks how they twinkled! the phase-outs so merry! They all found it grand when it should have been scary! At the end of the night, when they added the score, The votes were enough, 'tho they won by just four.



Questions or Comments?

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See also "Estate Tax Changes Past, Present and Future" (http://www.mcguirewoods.com/estate-tax-changes).