

SNIPPETS

AN ESTATE PLANNING AND FINANCIAL PLANNING NEWSLETTER SUMMER 2012

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2012 GIFTING: THE PERFECT STORM CAN PRODUCE THUNDEROUS RESULTS

The window of opportunity is rapidly closing on a potential one time savings on transfer taxes (estate tax, gift tax and generation skipping tax) provided under the current law. These tax laws are the most favorable to taxpayers since the 1940s, or possibly ever in the history of our country. However, at midnight on December 31, 2012, these tax laws are set to drastically change and your opportunity to take advantage of these transfer tax savings may disappear forever.

Current Law – What You Should Know

In 2001 and 2003, President George W. Bush signed a number of tax cuts (“Bush Tax Cuts”) which were set to expire on January 1, 2011. In order to prevent this from occurring, toward the end of 2010 after a contentious debate, President Barack Obama and Congress extended the Bush Tax Cuts until December 31, 2012. The extension addressed changes in the income tax rules (which is not the focus of this article) and included certain increases in the transfer tax exemptions and rates, as well as introducing the new concept of portability as follows:

- **Estate Tax.** The estate tax exemption is \$5.12 million with a tax rate of 35%. If you are married with proper trust planning your combined exemption is \$10.24 million.

- **Gift Tax.** The lifetime gift tax exemption amount is also \$5.12 million per person with a 35% gift tax rate for any taxable gifts to a non-spouse or charity over \$5 million.
- **Generation Skipping Tax (GST).** The GST exemption is \$5.12 million. The GST tax rate for 2012 is 35%. This tax occurs when you leave money to your grandchildren.
- **Exemption Portability Between Spouses:** The extension provides for "portability" between spouses resulting in a maximum exemption of \$10.24 million (\$5.12 million per spouse) for a married couple. Portability allows a surviving spouse to elect to take advantage of the unused portion of the estate tax exemption of his or her predeceased spouse, thereby providing the surviving spouse with a larger exemption amount on their death.

Unless President Obama and Congress take action before December 31, 2012 (which is highly unlikely), the extension is set to expire and the current law will change starting January 1, 2013 as follows:

- **Estate Tax.** The estate tax exemption will be reduced to \$1 million with an increased tax rate of 55% (yes, that is correct 55%!). If you are married with

proper trust planning your combined exemptions will now be only \$2 million. This means every dollar that your estate exceeds the exemption would be taxed at 55 cents on the dollar.

- **Gift Tax.** The lifetime gift tax exemption amount will also be reduced to \$1 million per person with a 55% gift tax rate for any taxable gifts to a non-spouse or charity over \$1 million (or \$2 million for a married couple).
- **Generation Skipping Tax (GST).** The GST exemption is also scheduled to be reduced to \$1 million, plus an inflation adjustment from 2001 to approximately \$1.34 million. The GST tax rate for 2012 is 55%.
- **Exemption Portability Between Spouses:** Repealed.

Estate Tax Proposals – Possible Outcomes

Historically, major changes to the transfer tax rules have had significant political undertones and often reflect the political party affiliated with the President and Congressional majority at the time the laws are passed. Here are President Barack Obama and Governor Mitt Romney's different proposals.

- **The Romney Proposal.** Governor Romney would seek full repeal of the estate and GST tax. This full repeal of the estate and GST tax would be accompanied by a reduced lifetime gift-tax exemption of \$1 million and gift tax rate of 35%.
- **The Obama Proposal.** President Obama submitted a new budget proposal to Congress on February 13, 2012 which included provisions addressing changes to the transfer tax rules and exemptions. He proposes that the exemptions revert to the 2009 amounts, meaning a \$3.5 million exemption for estate and GST purposes and \$1 million exemption for the gift tax. This reduction in the exemption would be coupled with a tax rate increase to 45% for all three taxes. In addition to the changes to exemptions and tax rates, President Obama also proposes to make portability permanent, to modify the rules which apply to

valuation discounts, and to set a limit the duration of generation skipping trusts.

In Massachusetts, there is no agenda to make any changes to their existing estate tax laws, so the \$1 million exemption and no portability remains in place.

Absent a crystal ball or some other way to predict the future, we will have to wait until after the election to gain some clarity on any changes to the transfer tax rules and exemptions. However, regardless of which candidate is elected, it is doubtful that he will get 100% of his proposed changes and some sort of compromise will be worked out before a new law finalized, but who knows when that will happen.

The Benefits of Making Lifetime Gifts Now!!

There are three major benefits of making a lifetime gift before the end of 2012.

- A gift now represents what could be a one-time opportunity to transfer wealth to children or other beneficiaries without paying a gift tax and to accomplish multi-generational planning without paying GST tax.
- A gift now will allow you to remove all the income and future appreciation of the gifted asset from your taxable estate. Since the current tax laws allow you to gift as much as \$5.12 million (\$10.24 million for a married couple), the removal of future income and appreciation of the gifted asset can be significant.
- In addition to federal tax advantages, a gift now would provide you with considerable Massachusetts estate tax savings. Since Massachusetts does not impose a GST or gift tax, you would be significantly reducing your overall taxable estate and the assets you gift away during your lifetime may avoid Massachusetts estate tax completely. So you don't need to pack your bags and move to Florida to avoid the Massachusetts estate tax.

Different Ways to Make Lifetime Gifts

There are many ways to make gifts. These may include gifting cash, stock, real estate or a business. The transfer taxes are all based on the value of the asset transferred to the recipient. Careful planning allow you to reduce the “value” of gifted assets substantially. These reductions are popularly called “discounts.” Depending on the nature of the asset you wish to gift, you can leverage the gift tax exemption by taking advantage of various estate planning vehicles which allow you discount the value of the gifted asset. Vehicles such as a Family Limited Partnership (FLP) or LLC not only allow you to make a leveraged gift but provide a way to maintain management and investment control of the assets you are gifting away. Further, you do not need to make outright gifts to your intended recipient and you can make gifts in trust. A gift to a trust will allow you to set the terms and conditions on the use and access to the assets to your children or grandchildren.

It really is a “use it or lose it” time in estate planning. It’s a “no brainer.” Appraisers are backed up. Planning and implementing large gifts take time, so acting now can prevent any hurried, last-minute decisions that may prove to be counterproductive. You and your family do not want to miss out on this historic opportunity. Please call or schedule an appointment to discuss if this opportunity may be of value to you.

<p>WHO KNOWS YOUR PASSWORDS: ESTATE PLANNING FOR DIGITAL ASSETS AND SOCIAL MEDIA</p>

It wasn’t very long ago that we had only paper for financial and tax records. We could simply point to a file cabinet or drawer and tell someone, “Everything is in there when the time comes.” But now we have computers and the internet, and so much of our lives is online. Unless we include our digital assets and social media in our estate planning, our family or administrator may not be able to find critical documents.

For example, if you scan documents or receive financial statements electronically, someone else may not even know these exist. If you use a program like Quicken or Quickbooks and tax preparation software, those records are on your computer. Facebook pages, blogs, email accounts and photos stored digitally on a computer or an online account would certainly have special meaning to your family. You would achieve immortality on facebook.

Much of this information is password protected. Unless you make arrangements in advance, family members or administrators may not be able to access these and the information could be lost forever.

Estate planning for digital assets and social media accounts is similar to estate planning for other assets. You need to make a list of what you have and where it is located, name someone (with computer and social media know-how) to step in for you, provide that person with access, and provide some direction for what you want to happen to these assets.

Listing your digital assets by category (hardware, software, social media/online presence, online accounts) will help make the task less daunting. Next to each one, add user names, passwords, PIN numbers and the site’s domain name. Keep this list in a safe place and tell your successor where it is. (Do not store it unprotected on your computer; if it is stolen, the thief would have all of your passwords. If you store it on your computer, password protect the file and give that information to your successor.)

Think about what you want to happen to these assets. For example, if you have a website or blog and you want it to continue, you need to leave instructions for keeping it up or having someone take it over and continue it. If a site is currently producing or could produce income (e-books, photography, videos, blogs), make sure your successor knows this. If there are things on your computer or hard drive that you want to pass on (scanned family photos, ancestry

research, a book you have been writing), put them in a “Do Not Delete” folder and include it on your inventory list.

Closing down accounts that are no longer needed will help to protect your family from identity theft after you are gone. The person you name as your successor will need a death certificate to do this. Consider naming this person as a co-trustee or co-personal representative with responsibilities limited to this area to give them legal authority to act for you.

Yes, this will take some time and thought. But, just like “other” estate planning, the more we can do now to put things in order, the easier it will be for our families later.

NEW MASSACHUSETTS UNIFORM PROBATE CODE IS FINALLY LAW

After several delays, on April 1, 2012, the Massachusetts Uniform Probate Code (MUPC) went into effect. The MUPC is a historical shift in Massachusetts probate law and brought along several significant changes to the Massachusetts probate rules and procedures. The following key changes in the law now make a historically cumbersome and expensive process easier.

- The MUPC now includes new streamlined procedures. The MUPC recognizes that the vast majority of estates proceed without controversy. As a result, the court generally won't intervene in an estate administration unless requested by an interested party. If all parties agree, except in certain circumstances, an estate can generally proceed through an administrative process known as informal probate. Supposedly (I will believe it when I see it), under informal probate, a Magistrate can appoint a fiduciary (known as a personal representative) to administer the estate within seven days of death. If

any interested party so desires, or a minor or incapacitated person is involved, formal probate is required. Formal probate requires having a judge determine the validity of a will and takes between two to three months to appointment a personal representative.

- The MUPC provides a higher limit for “Small Claims Style” of probate. Now an expedited procedure applies to estates containing no real estate, and up to \$25,000 of personal property (plus one automobile);
- The MUPC changes the people who will inherit from estates of individuals who die without a Will.
- The MUPC includes provisions for allowances to surviving family members which take precedence over the claims of creditors.
- The MUPC introduces the concept of priority of appointment of the person who will administer the estate in the event a person dies without a Will
- The new law permits a personal representative to name a replacement.
- Under the MUPC, estate administration now becomes an “in” and “out” process, without continuing court supervision. Parties will have the option to seek court involvement if authority is needed for any specific aspect of the estate (i.e. sale of real estate). If the estate is problematic or contested, on the other hand, the court would have the option to order a supervised administration.
- Under the MUPC divorce will not only revoke a Will made during the marriage, but will also revoke all beneficiary designations (i.e. life insurance, IRAs, etc.) in favor of an ex-spouse and in favor of all of the ex-spouse's family members.

Although the MUPC makes things easier, it still does not eliminate the process at death. We still urge our clients to avoid probate if at all possible.

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