New Federal Estate Tax and Gift Tax Legislation

After a long delay, Congress has passed and President Obama has signed into law the new federal estate and gift tax legislation. It has been very difficult for some individuals to prepare an appropriate estate plan not knowing what the potential federal estate and gift taxes will be. For the next two years, 2011 and 2012, there is some certainty. Parts of the new legislation may not impact everyone, but questions always abound concerning "death taxes". Now is an excellent time to review your estate planning documents to determine whether or not they continue to carry out your intentions.

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Federal Estate Tax Exemption Amount and Federal Gift Tax Exemption Amount

Beginning January 1, 2011 and continuing through 2012, the federal estate tax exemption amount will be $5 million and the federal gift tax exemption will also be $5 million. This essentially means that a married couple can pass $10 million in assets to their children without any federal estate or gift tax, with proper estate planning. The top tax rate for the federal estate and gift taxes for 2011 and 2012 will be thirty-five percent (35%). The new exemption and rate provisions are applicable only for deaths or gifts in 2011 or 2012.

Effectively, the exemption for the federal estate and gift taxes are unified again. The gift tax exemption and the estate tax exemption will be the same $5 million amount. Also, the Generation Skipping Tax (GST) Exemption is now $5 million, making it easier to transfer wealth to grandchildren.

Portability of Unused Exemption

For decedents dying after December 31, 2010, the last predeceased spouse's federal estate tax exemption that is unused at that spouse's death will carry over to the surviving spouse's estate. This concept is called portability. Therefore, if a surviving spouse remarries, he or she must look to the unused exemption of their latest spouse to die. It is critical to file an estate tax return for the estate of the predeceased spouse in order to get the portability benefit.

Decision to Make Large Gifts

With the federal gift tax exemption increasing to $5 million, persons having significantly large estates can consider gifting significant amounts to children in order to remove future appreciation or income from the parents' estates. It should also be pointed out that there is no more Louisiana gift tax. This tax was repealed effective July 1, 2008.

IRA Distribution to Charity

For 2010 and 2011, the new tax law allows the tax free distribution to a charity from an individual retirement account of up to $100,000.00 per taxpayer per taxable year. The legislation allows individuals to make charitable transfers during January of 2011 and treat them as made during 2010.

Other Considerations

While most of the above matters concern federal estate and gift taxes, you should consider whether or not your estate planning documents currently carry out your wishes and desires.

Also, have there been changes in your situation, such as any of the following, which would require a review of your estate planning documents?:

(1) Has there been a death in the family involving a legatee under the will?

(2) Has there been a change in your choice of executor under your will or agent under your power of attorney?

(3) Are your children now all twenty-four years of age or older without any mental or physical incapacity which would allow you to modify your will which previously provided for satisfaction of forced heirship?

(4) Is the financial institution which you named as trustee of a testamentary trust still doing business in Louisiana?

(5) Has there been a divorce or other change in family circumstance?

(6) Has there been a significant change in the value of your estate?

(7) Does the new law allow you more flexibility in your estate plan without negative estate tax consequences?