Advisory

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Estates, Trusts
& Tax Planning

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Estate and Gift Tax Planning Opportunities Scheduled to "Sunset" on December 31, 2012

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The estate and gift tax laws under the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, are scheduled to sunset on December 31, 2012. These laws provide opportunities to transfer assets to your desired beneficiaries at a tax cost that is significantly lower than under any prior tax laws. Higher income tax rates are also expected in the coming years. If you are interested in taking advantage of the current tax laws, we encourage you to contact a professional advisor as early as possible for tax planning. As the end of 2012 approaches, advisors and valuation experts are likely to be very busy as many individuals will be making gifts, either outright or in trust, and engaging in other tax planning.

Estate, Gift and Generation-Skipping Transfer Tax Laws in 2012 and Beyond

Lower Exemptions and Higher Rates for Estate, Gift and Generation-Skipping Transfer Taxes

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the "Tax Relief Act") established a $5 million exemption for gift, estate and generation-skipping transfer tax purposes and a 35% maximum tax rate, applicable from the beginning of 2010 through the end of 2012. For 2012, the exemption is inflation-adjusted to $5.12 million.

Currently, the generation-skipping transfer tax exemption can shelter trust assets for an unlimited number of generations, which can prove especially valuable for tax savings, as assets may grow over time and also this can avoid the recurring imposition of transfer taxes at each generation. It is possible that the generation-skipping transfer tax exemption may be limited to fewer generations in the future, and for this reason, 2012 is an opportune time for clients to establish long-term trusts to take advantage of the current unlimited duration of the generation-skipping transfer tax exemption.

It is advisable for those who can afford to do so to take advantage of these expiring exemptions and lower rates. However, those considering making substantial gifts also must take into consideration the fact that

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property received as a gift does not obtain an adjustment to basis for income tax purposes, as inherited assets do.

The Tax Relief Act is scheduled to "sunset" at the end of 2012. If Congress does not enact new law before the end of 2012, the gift and estate tax exemptions will return to $1 million, and the maximum rate for both taxes will be 55%. An additional 5% surtax would apply to estates and gifts between $10 million and approximately $17 million. The generation-skipping transfer tax exemption will be $1 million adjusted for inflation from 1997 and the tax rate will equal 55%.

The Portability of the Unified Credit Between Spouses

The Tax Relief Act established portability of the applicable exclusion amount between spouses, but portability will also "sunset" at the end of 2012, unless Congress acts to extend portability or make portability permanent.

Portability allows the surviving spouse to use the portion of the deceased spouse's unused estate tax exemption. In the case of multiple marriages portability is limited to only the most recently deceased spouse. The executor of the deceased spouse's estate must affirmatively elect portability on a timely filed estate tax return.

Because portability may be repealed, may be lost if a surviving spouse remarries and survives the person he or she remarries, may not apply for state estate tax purposes and does not apply for generation-skipping transfer tax purposes, we continue to recommend the use of trusts as part of an estate plan to minimize estate taxes.

Roth IRAs

Higher income tax rates are expected in the coming years. At the present time, retirement plans can be rolled over to a Roth IRA paying income tax at the lower income tax rate in effect this year. Rollover is available even to taxpayers who have high adjusted gross income.

Since it remains uncertain whether Congress will enact new estate, gift, and generation-skipping transfer tax laws before the end of 2012, many individuals will likely be transferring assets, either outright or in trust, to desired beneficiaries towards the end of 2012. Valuation experts and advisors could be extremely busy towards year-end, so we suggest that you contact a professional advisor as early as possible to discuss possible tax saving opportunities.

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