

ESTATE PLANNING: PRACTICAL POINTERS & TRIVIA

Increased Scrutiny of Estate Plans by the IRS

Over the last eight years the federal estate tax exemption has increased incrementally from \$675,000 per person in 2001 to the current \$3,500,000 (annualized, over the same period of time would be an astonishing 22 percent!). But, as Newton theorized, “Every action has an equal and opposite reaction.” Applied to Estate Planning, the action of the increased exemption will result in an equal increase in estate and gift tax audits.

Practical Pointer: As we move forward, increased scrutiny from the IRS will demand creative, accurate and diligently prepared estate plans and trust, estate and gift tax returns from professionals who are experienced with such qualifying estates.

Fun Trivia 1: With the current \$3.5 million federal estate tax exemption, approximately how many estates will be taxable at the federal level in 2010?

- 100,000 or 3.8% of decedents
- 50,000 or 1.9% of decedents
- 6,000 or 0.6% of decedents
- 8,000 or 0.3% of decedents

The Government Giveth and the Government Taketh Away

Recent Joint Committee reports from Congress suggest the real possibility that the “cost” of maintaining the current \$3.5 million federal estate tax exemption may be offset by removing or severely restricting certain estate planning techniques that the Internal Revenue Code and cases have previously sanctioned. An example of this includes Crummey withdrawal rights in trusts, zeroed-out GRATs, and discounts for family limited partnerships (FLPs and FLLCs) holding passive assets such as security accounts or passive rental passive rental real estate. In fact, there are bills that have been introduced into Congress which would eliminate valuation discounts for FLPs or FLLCs owning passive assets. If any such bills along these lines were to pass, any transfers made prior to enactment would be grandfathered under existing law.

Practical Pointer: Families or individuals contemplating making gifts or sales of FLP or FLLC interests or establishing zeroed-out GRATs should consider moving forward with such transfers as soon as possible. Additionally, any individual with an irrevocable trust purchasing life insurance should take great care in determining who the Crummey beneficiaries of their trust will be.

Fun Trivia 2: Potential federal estate tax options for 2010 and beyond that have been presented before Congress include:

- freezing the exemption at \$3.5 million and the rate at 45%
- freezing the exemption at 3.5 million with a maximum rate of 55%
- having a \$5 million estate tax exemption and 35% rate
- reunifying the federal lifetime gifting exemption with the federal estate tax exemption
- all of the above

Is “Big Brother” Watching?

Have you noticed that your “private” phone number is no longer private? Keeping one’s affairs confidential used to be fairly straightforward. With the advancement of technology and new standards by Washington’s Secretary of State, keeping your address, your phone number, the value of your home, your lines of credit, your mortgages, your business interests – even the names and addresses

of your relatives - confidential has become trickier.

Practical Pointer: Don’t want people to know where you live? Want to keep your “personal balance sheet” to yourself? Want to provide an added layer of asset protection? If confidentiality is a concern of yours, as it is for most people, talk to your estate planning attorney about ways to protect your confidentiality.



Fun Trivia 3: Which of the following are ways your private information can become public?

- Ordering products online
- Purchasing a home in your own name
- Applying for a credit card
- Donating to a political campaign
- “Patching” 2010 with a \$3.5 million exemption and 45% rate
- All of the above

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More Fun Trivia

True or False? If you gift or bequeath property to your child and your child meticulously retains the property as his or her separate property, it cannot be awarded to his or her ex-spouse in a divorce proceeding.

False. In Washington, a court has jurisdiction to make a “fair and equitable” division of both community and separate property.

True or False? If Congress passes a law making a spouse’s federal estate tax exemption portable, there is no need for a bypass/credit trust to be established upon the first spouse’s death.

False. Even if the federal estate tax exemption is made portable, each person’s \$3.5 million generation-skipping transfer tax exemption will not be. Additionally, there are many advantages of trusts such as tax free gifting to children, asset protection and control of ultimate distribution.

True or False? Charitable Lead Annuity Trusts are too complicated; it is better to give assets outright to a charity.

False. With depressed portfolios and historically low interest rates, there are many great tax and non-tax advantages to establishing charitable lead trusts either during one’s lifetime or at one’s death.

True or False? Waiting until the 26th of December gives my estate, financial and tax professionals plenty of time to advise me on my year-end planning.

False. There is no better time than right now to meet with your estate, financial and tax professionals to craft the best tax saving year-end planning for you.

Until next time... Happy Planning!

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