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NEWSLETTER - AUGUST 2012

The exemption for the lifetime gift tax and the estate tax for the remainder of this year is $5,120,000 per person ($10,240,000 per married couple) and the top tax rate is at a historic low of 35%. That means that a person may gift $5,120,000 without paying any gift tax and a married couple may make tax-free gifts totaling $10,240,000 (in each case, reduced by prior taxable gifts). Unless Congress passes legislation to extend these exemptions, beginning on January 1, 2013, these generous exemptions will drop to $1 million per person ($2 million per married couple), with the top tax rate at a high 55% (a 20% increase from where it is now). To illustrate the effect of this change in tax law, for a single person with a taxable estate of $5 million, the scheduled estate tax changes could mean a federal estate tax bill of over $ 2 million next year, compared with a zero federal estate tax under current law.

Based on this uncertainty, and the exemptions that are now available, it may be advisable for individuals with estates over $1 million (or a married couple with estates over $2 million) to make gifts, in one form or another, before the end of 2012 in order to reduce their taxable estates significantly.

There are various “gifting” options that are available in order to take advantage of the 2012 exemptions, including outright gifts or gifts to irrevocable trusts. While making gifts of assets to irrevocable trusts requires individuals to give up ownership and control of those assets, it is possible to structure gifts to irrevocable trusts in such a way which will allow the donors to shelter a portion of their estates from the estate tax, while retaining sufficient access to those assets which they may need during their lifetimes. Of course, there is always the possibility that Congress will attempt to “clawback” the tax savings generated with these types of plans; however, even if gifts made in 2012 were subject to such a clawback, the appreciation of the gifted assets would still be removed from the taxable estate and be free of estate tax. Thus, this is a “nothing ventured, nothing gained”and, perhaps, once in a lifetime opportunity.

If you would like to talk about planning that you can do before the end of 2012 to take advantage of these generous exemptions and historically low tax rates (35% versus a reversion to 55% next year), or would like to revisit your estate plan, in general, please contact us.

We hope you are enjoying your summer! Best regards.

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