The Legal Intelligencer

Trusts and Estates

Year-End Tax Planning Tips: Don't Wait Until December

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It's that time of the year again—time to begin considering year-end tax planning issues. Rather than wait until the end of December, when most people would rather be enjoying the holiday festivities, it is best to get a head start on year-end planning to improve your chances of concluding matters as optimally as possible by Dec. 31. Here are some items that we suggest you consider before the end of 2016 to enable you to start 2017 in the best wealth planning shape possible.

• Annual Exclusion Gifts

Each individual can make a cumulative gift of $14,000 per donee during 2016 (or 2017) without using any portion of his exemption from the federal gift and estate tax ($5.45 million per person this year, and increasing to $5.49 million in 2017). Such gifts can be made outright, through 529 Plan benefits (education savings accounts), or in special qualifying trust structures. For those still considering such gifts, it may be worthwhile to plan for 2016 and 2017 at the same time, keeping in mind that gifts for 2017 can be made effective as of Jan. 1.

• Accelerate Deductions

Prepay deductible expenses due in January (including state and local income tax estimated payments that may not be due until January).

• Loss Harvesting

Harvest tax deductible losses to offset taxable gains for 2016. However, be mindful of the 30-day wash sale rule of Internal Revenue Code Section 1091, which could disqualify a deduction of the capital loss if the same, or substantially identical, security is purchased within 30 days after selling at a loss.

• Required Minimum Distributions

For those who have reached their required beginning date or who hold inherited IRA accounts, be sure to take your required minimum distribution for 2016 from your traditional IRA or qualified plan account by Dec. 31. Note that taxpayers who are 70 ½ or older are able to transfer up to $100,000 from an IRA (other than an inherited IRA) directly to a qualifying charity (a charitable rollover) in partial or full satisfaction of their required minimum distribution for 2016. This IRA Charitable Rollover law, which had formerly been a temporary measure, was passed permanently as of Dec. 18, 2015, by its inclusion in the Protecting Americans from Tax Hikes (PATH) Act of 2015.

• Qualified Retirement Plan Establishment

Business owners who are considering funding a new retirement plan have the opportunity to establish a qualified retirement plan by the end of the year but defer the decision about the funding amount (and the actual contribution) until later during 2017 (contributions can generally be delayed until at least Sept. 15). Tax deductible contributions for 2016 can be as much as $59,000 per participant for defined contribution plans (when including the $6,000 catch-up contribution for a participant who has reached the age of 50). Next year this cap will be increased to $60,000.

• Roth IRA Conversion

Convert a traditional IRA to a Roth IRA to take advantage of lower brackets or absorb excess deductions. All or any portion of the converted amount can be re-characterized to a traditional IRA on or before Oct. 15, 2017.

• Basis Step-Up Planning

For individuals who have funded "grantor" trusts for their families, year-end is a good time to consider swapping back low basis assets (e.g., appreciated stock) for high basis assets (e.g., cash) to help make tax reporting after the swap cleaner (rather than switch tax identification numbers in the middle of a tax year). It's better to own the lower basis assets at death because of the opportunity for a basis step-up to fair market value under Internal Revenue Code Section 1014.

• Charitable Giving

If you are in a high income year, consider "prepaying" future charitable contributions to generate current income tax deductions. This can be accomplished simply by increasing the contributions to your favorite charities, in general, or you can defer the receipt by the charitable organizations you wish to benefit (or even defer the decision as to which ones to benefit) by contributing to a donor advised fund, a private foundation, charitable lead trust or charitable remainder trust or purchasing a charitable gift annuity. Both the charitable gift annuity and charitable remainder trust options allow you to retain an income stream for life and defer the transfer of the remaining funds to the charity until after your death.

• IRAs and HSAs

While you technically have until April 15, 2017, to fund your Individual Retirement Account and Health Savings Account for 2016, it's always a good idea to start planning for such funding at year end. Consider helping your children (to the extent that they have earned income) to fund tax favored Roth IRAs if at all possible. The maximum contributions for IRAs for both 2016 and 2017 is $5,500 ($6,500 for those who have reached the age of 50). The maximum family contribution for an HSA in 2016 is $6,750 (or $3,350 for individuals), with an extra $1,000 available for those who have reached the age of 55. For 2017, the only change for HSAs will be a $50 increase for individuals.

• Trust Income Tax Planning

While a Trustee will generally have until 65 days after the end of the tax year to shift trust taxable income to a beneficiary, it's worthwhile to monitor the issue at year end to get a jump start on evaluating the issue. This is becoming a more consequential issue with the Medicare tax imposed at 3.8 percent and the extra 5% tax which is imposed on dividends and capital gains at the higher brackets (which are reached pretty quickly for a trust).

• Estate Plan Review

And, last but not least, although it's not necessarily year-end sensitive, the end of the year is a good time to review your estate plan to see if changes might be in order (whether because of changes in the tax law, your wealth, your chosen fiduciaries, or objects of your bounty). If you don't review it at year end, you might never review it before it's too late, since you may not have any advance notice of the actual deadline. •

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