

GOLDEN opportunities

A new year and a new presidential administration have arrived.

When it comes to estate taxes, what changes and concerns are in store for us in the upcoming months and years?

Current Federal Estate Tax Law

For many, estate planning during the past eight years has been challenging due to uncertainty in the law.

The current law, enacted in 2001, provides each taxpayer who dies in 2009 with a \$3.5 million exemption from Federal estate tax, up from \$2 million in 2008. Assets owned by a decedent above this amount will be subject to

estate taxation, with the highest marginal tax rate set at 45%.

In 2010, the Federal estate tax is scheduled to be repealed. However without further legislation by Congress, the Federal estate tax will return in 2011, with the applicable exclusion amount reduced back to the pre-2001 level of \$1 million.

Death of Federal Repeal?

Indications are that the new administration and Congress will act quickly to prevent a 2010 repeal from taking place.

President Obama's plan calls for retaining the current \$3.5 million applicable exclusion amount, along with the

top marginal tax rate of 45%.

Taxpayers Beware

Taxpayers should be mindful of planning issues stemming from this year's increase in the applicable exclusion amount from \$2 million to \$3.5 million. This change may have significant consequences for Wills that contain a federal credit shelter formula. Such consequences could be intensified by recent stock market declines, so a review of the estate plan is appropriate to determine the suitability of the funding formula.

Married couples, for instance, who have Wills providing for the



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creation of a federal “credit shelter” or “by-pass” trust upon the death of the first spouse, should ascertain that the credit shelter trust will not be disproportionately “over-funded” with insufficient assets passing outright to the surviving spouse.

To illustrate this potential pitfall, let’s assume that husband has a Will providing for creation of a trust for his wife equal to the federal applicable exclusion amount, with the balance of the estate passing outright to her. In 2008, his estate is worth \$5 million. His death in 2008 would have resulted in a credit shelter trust funded with \$2 million, with the balance of \$3 million passing outright to his wife. Assuming a 20% portfolio decrease in 2009, the value of husband’s 2009 estate would be \$4 million. Death in 2009 would result in \$3.5 million passing into the credit shelter trust and only \$500,000 outright to his wife.

Other Potential Changes

Other tax changes that 2009 may bring include reunification of the estate and gift tax exclusion amounts, restriction on the use of discounting on gifts of certain assets, and a change in the rules relating to the use of “Crummey demand powers”

(withdrawal powers) which are an important feature of irrevocable life insurance trusts.

New York State

New York State’s last estate and gift tax code overhaul was enacted almost a decade ago. At that time, NYS brought its estate tax code into line with states perceived as more estate tax friendly by repealing its gift tax entirely and adopting a “pick up” estate tax that basically apportioned part of the overall estate tax liability from the IRS to the state.

Unfortunately, the enactment of the Federal estate tax provisions in 2001 caused New York’s estate tax applicable exclusion amount to freeze at \$1 million dollars—an amount we seem to be saddled with for the foreseeable future. On the positive side, lifetime gifts may continue to be an effective strategy to reduce the transfer taxes that will be due to New York upon a taxpayer’s death.

Conclusion

This New Year—with its many anticipated estate tax changes—necessitates giving careful attention to financial and economic matters related to estate planning.

Stay tuned.

If you wish to learn more information regarding any aspect of estate planning, please call our office at **516-741-6565** to schedule an appointment.



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