

Estate & Gift Tax Update

Planning in an Uncertain Environment

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The Challenge

- Impending changes in the estate and gift tax
- Impending changes in the income tax
- Uncertain political environment
- Election year

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The Opportunities

- Potential estate/gift tax savings for you and your family
- Potential benefit from today's low interest rates
- What could or should you do before the end of this year?

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Some Terminology

- Probate Estate
- Non-probate Estate
- Gross Estate
- Taxable Estate

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Probate vs. Non-Probate

- Non-probate
 - specific beneficiary designations for specific assets
 - e.g. life insurance, retirement plan, etc.
- Probate
 - everything else
 - determined by your will

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Gross vs. Taxable

- The gross estate is the probate and non-probate estates combined
- Taxable estate is the gross estate less debts and expenses plus prior taxable gifts
 - This is the "base" for the estate tax

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The Estate Tax

- Really intended for “wealthy” people
- Not intended for the “middle” class

Estate Planning

- Everyone should have an estate plan
- Not just for the “wealthy”
- Involves much more than minimizing the estate tax

Federal Estate Tax

Year	Applicable Exclusion	Top Rate
2002	\$1,000,000	50%
2003	\$1,000,000	49%
2004	\$1,500,000	48%
2005	\$1,500,000	47%
2006	\$2,000,000	46%
2007	\$2,000,000	45%
2008	\$2,000,000	45%
2009	\$3,500,000	45%

Federal Estate Tax

Year	Applicable Exclusion	Top Rate
2010*	\$5,000,000	35%
2011	\$5,000,000	35%
2012	\$5,120,000	35%
2013	\$1,000,000	55%

*With option to forgo the estate tax in favor of a modified carry-over basis

Federal Estate Tax

- Your taxable estate is below the federal threshold?
- You’re not out of the woods yet!
- Don’t forget about the New York State estate tax!

New York State Estate Tax

Year	Applicable Exclusion	Top Rate
Since 2002	\$1,000,000	16%

Affects many more people than the federal estate tax

New York State Estate Tax

Taxable Estate	Tax
\$1,000,000	Zero
\$1,500,000	\$64,400
\$2,000,000	\$99,600
\$3,500,000	\$229,200
\$5,000,000	\$391,600

Other States' Estate Tax

- Not all states have an estate/gift tax
- Some states piggyback on the federal estate/gift tax
- Other states have their own regime
- Be sure to take your own state into account

Federal Gift Tax

- Annual Exclusion
 - Currently \$13,000
 - \$26,000 for a married couple
 - Tied to inflation
 - No limit on number of recipients
 - Can be to anyone
 - Not restricted to family members

Federal Gift Tax

- These are not considered gifts
 - Direct payment of tuition to educational institutions
 - Direct payment of medical expenses to health care providers

These are "non-events" for gift tax purposes

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This creates a unique planning opportunity

New York State Gift Tax

- New York has not had a gift tax for several years
- Lifetime gifts have the added benefit of saving New York State estate tax

Making that planning opportunity even more valuable

What To Do?

- Your assumptions should be:
 - That the environment will continue to be uncertain
 - That Congress will continue to not provide us with a long-term solution

What To Do?

- You need to plan for/around that uncertainty
- You should take advantage of any opportunities if and when they present themselves

Taking Inventory

- What kind of assets do you have?
- Do any of those assets come with an income tax burden?
- Will any gift/estate tax saved be worth giving up the date of death step-up on appreciated assets?

Taking Inventory

- Remember, for income tax purposes, a donee takes on the donor's basis
- In the right circumstances, gifting low basis assets could actually cost you more

Taking Inventory

- Also, review the titling of your assets
 - For example, is your will consistent with your beneficiary designations for non-probate assets

Taking Inventory

- Common assets found in an estate
 - Real estate
 - Investments
 - Cash
 - Life insurance
 - Tangible personal property
 - Investment in a small business
 - Retirement funds

Year End Opportunities

- Large gifts before the law changes?
 - For many years now, the applicable exclusion for gifts was capped at \$1,000,000, seriously restricting large lifetime gifts
- Major overhaul of your estate plan?
- Accelerate family business succession planning

Recent Not So Hot Topic

- Portability
 - Perhaps getting too much attention
 - Considering today's uncertain environment
 - Not a substitute for an estate plan
 - Would not want to rely on this to make up for poor planning

Making Large Gifts

- Law will change 1/1/2013, assuming that Congress takes no action
- Potentially save federal gift and/or estate tax
- Potentially save New York State estate tax

Making Large Gifts

- Possible obstacles
 - Some sort of future "claw back" of any of the tax benefits received in the event the applicable exclusion drops from today's current level

Making Large Gifts

- Review your current estate plan
- Take an inventory of your estate
- **Run the numbers**
 - Gift tax
 - Estate tax
 - Income tax

Making Large Gifts

- If you're going to do it, the sooner the better, but no later than 12/31/2012
- Preferably, don't wait until the last few weeks of December, especially if you'll be needing your team of advisors
- Some gifts require plenty of lead time (such as real estate, interest in a family business, and trusts)

Making Large Gifts

- Works great in New York State because there is no state gift tax
- Also, one of the biggest benefits:
 - Removes any future growth of the gifted assets out of the estate

Making Large Gifts

- Example
 - Single taxpayer
 - Estate worth \$12,000,000
 - Taxable gift of \$5,120,000
 - Assume 2012 applicable exclusion
 - Assume 2012 estate/gift tax rates
 - Ignores income tax to the donee

Making Large Gifts

Without the Gift

Federal Estate Tax	\$1,922,620
NYS Estate Tax	1,386,800
Net to the Family	\$8,690,580

Making Large Gifts

With the Gift

Federal Estate Tax	\$ 2,190,076
NYS Estate Tax	622,640
Net to the Family	\$ 9,187,284
Potential Savings To The Family	\$ 496,704

Making Large Gifts

- Example 2
 - Single taxpayer
 - Estate Worth \$1,300,000
 - Taxable gift of securities
 - Valued at \$300,000
 - With income tax basis of \$100,000
 - Assume 2012 applicable exclusion
 - Assume 2012 estate/gift tax rates
 - Assume income tax to the donee at 22%

Making Large Gifts

Without the Gift

Federal Estate Tax	\$	0
NYS Estate Tax		51,600
Net to the Family	\$	1,248,400

Making Large Gifts

With the Gift

Federal Estate Tax	\$	0
NYS Estate Tax		33,200
Income Tax Paid By Family (on sale of the gifted securities)		44,000
Net to the Family	\$	1,222,800

Making Large Gifts

- Example 2
 - Potential **cost** to the family \$25,600!
 - Illustrates the real need to run numbers before moving forward with a large gift

Making Large Gifts

- Example 2
 - Also serves as a reminder that the taxable estate base **INCLUDES** previous taxable gifts
 - Note in this example, that we reduced the estate down to \$1,000,000 at death, but still had a state estate tax because of the taxable gift

Major Estate Plan Overhaul

- Review your current estate plan
- Take inventory
 - Assets and liabilities
- Is your estate plan flexible?
- Will your plan continue to work as intended if the law changes?

Major Estate Plan Overhaul

- Consult your estate planning team
 - Attorney
 - Accountant
 - Investment advisor
 - Insurance agent

Major Estate Plan Overhaul

- Review your planning documents
 - Will/trust
 - Power of attorney
 - Health care proxy/living will
 - Beneficiary designations

Major Estate Plan Overhaul

- Re-evaluate your beneficiaries
 - Disability
 - Spendthrift
 - Bad marriage
 - Substance abuse

Major Estate Plan Overhaul

- Don't forget the non-tax issues!
- For example, a major gift might be the right thing to do but your sole beneficiary is a big spender
 - This doesn't nix the gift, but makes it more complicated to achieve

Major Estate Plan Overhaul

- Some planning vehicles for larger estate
 - Intentionally defective grantor trusts (IDGT)
 - Grantor retained annuity trusts (GRAT)

Major Estate Plan Overhaul

- However, for smaller estates:
 - Simple is best
 - Know what you have
 - Know who you want it to go to
 - Make sure your estate plan says exactly that

In Conclusion

- The one thing that is certain is uncertainty
- Tax legislation often creates unintended results
- Your estate plan should be able to adapt to those unintended results

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