

Year End Estate Planning

Here are our year end recommendations concerning estate planning. There are important things to consider and ways you can take advantage of tax saving opportunities before they expire.

Annual Gifts

- Let's start with the basics. Annual gifts of \$13,000 per person (\$26,000 if you are married) are an easy way to save estate taxes by depleting your assets and are also a way to help family members. Do a holiday gift for 2011, and then make a New Year's gift in 2012. Remember though that time is of the essence: cash gifts can be given through December 31st, but gift checks or wires must clear your account before January 1st to count for 2011.
- Gifts to "529" college savings accounts (which count towards the \$13,000/\$26,000 limit) can also get you a state income tax deduction, the funds grow income tax-free, and account distributions for education are free of income taxes.
- Any amount paid for tuition and medical expenses (including health insurance premiums) are tax-free gifts as long as you pay the school or medical provider directly. These gifts do not count toward the annual or lifetime gift limits.
- If outright gifts concern you, gifts can be made to trusts for your beneficiary instead of outright and your payment of the annual income tax bill on the trust is an additional tax-free gift.

Major Gift Planning

- Larger gifts can save even more taxes. New York has no gift tax. No Federal gift tax is due until you use up your lifetime exemption (which will rise to \$5,120,000, or \$10,240,000 per couple, in 2012). However, 2012 will be the last year this larger exemption is available. In 2013 the gift and estate exemption reverts to \$1,000,000 and the top rate goes back to 55% (plus a 5% surcharge for certain large estates). There was a rumor that the deficit "Super Committee" in Washington was going to cut back the lifetime exemption to \$1,000,000 before 2013, but that did not come to pass. Legislators have introduced bills on the exemption.
- Even if you were fortunate enough to have had the means to exhaust your lifetime exemption, the rate for taxable gifts is now lower than ever (35%) and is scheduled to return to 55% in 2013. Further, the amount used to pay a gift tax is out of your estate, when that tax amount itself would be taxed at your death.
- Gifting techniques that take advantage of historically low interest rates and low asset values are very attractive now and should be considered. We understand that the economic downturn has challenged everyone, but please consider that it also presents an opportunity you may find attractive for shifting wealth to the next generation. The combination of these factors can produce highly advantageous results for your family. Techniques such as Grantor Retained Annuity Trusts ("GRATs"), Charitable Lead Trusts ("CLTs"), sales to Intentionally Defective Grantor Trusts ("IDGTs"), and loans to your

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children are particularly advantages now. Moreover, future appreciation on gifted assets in an eventual economic recovery will benefit the gift recipient and escape estate taxes. Bills have been introduced in Congress repeatedly to restrict or eliminate these techniques.

- No one can predict what will happen in the future at this point. For that reason, consider gifting options before they are gone or severely limited. As the gift tax exclusion was \$1,000,000 for many years, this increase for a limited time is a unique and valuable opportunity that should not be passed up. If you are interested in saving estate taxes, you should act as soon as possible to ensure your plan is not affected by future changes in the law.

Charitable Giving

- For last-minute gifts to charities to qualify as a 2011 deduction, the check or wire must be sent by January 1, 2012 (but need not clear your account).
- Consider gifts of appreciated stock to satisfy your charitable giving. The charity pays no capital gains tax on the sale of the stock as you would, essentially allowing you to make charitable gifts at a reduced cost to you.
- Consider creating a “donor advised fund” administered by a local community trust. You can make a gift in 2011 to your donor advised fund, and take a charitable deduction for 2011, but defer distributions to charities of your choice until the need for a contribution arises. The funds are invested until distribution and community trusts offer planned giving advice to help you choose reputable and effective charitable recipients.
- Use your “required minimum distribution” (“RMD”) to make gifts to a charity directly from your IRA and pay no Federal income tax on your required minimum distribution. The distribution counts towards your RMD, but you will not receive a charitable income tax deduction.

IRAs

- There is no longer an income tax ceiling for a Roth conversion. Consider converting an IRA to a Roth IRA, paying the income taxes, and having the funds continue to grow income tax free without required minimum distributions or income taxes on future distributions.

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Please contact Doris L. Martin if you require further information about making gifts or would like to act on any of these suggestions.

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