TAX

USE IT OR LOSE IT - - SHORT LIVED ESTATE TAX BREAKS ARE COMING TO AN END

by: Judy Fertel Layne
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Individuals currently have an opportunity to transfer meaningful family wealth without incurring estate or gift tax. This opportunity is scheduled to end on December 31, 2012, if Congress does not act to extend certain tax breaks before then.

In December of 2010, Congress made short-term changes to our gift, estate, and generation-skipping transfer tax system that are scheduled to terminate at the end of this year. Currently, an individual can transfer $5.12 million without incurring any estate or gift tax. A married couple can transfer as much as much as $10.24 million without incurring any estate or gift tax. The gift and estate tax rate on transfers that exceed the sheltered amount is 35%.

If Congress does not act before the end of the year, beginning January 1, 2013, the estate and gift tax structure is scheduled to "snap back" to 2001 law which would provide each individual with only a $1 million exemption from estate and gift tax and would have a top marginal estate and gift tax rate of 55% on transfers of $3 million or more.

Nobody knows for sure what our future estate and gift tax law will provide, but for individuals who are concerned about minimizing taxes and keeping family assets in the family, it may be wise to take advantage of this "window of opportunity" by gifting assets to family members today to avoid the risk that 2001 law will return or that Congress may freeze the exemption from estate and gift tax at an amount less than $5.12 million.

For families wishing to take advantage of the current high exemption, it is important to consider what assets make the best gifts. Individuals should consider assets that are expected to appreciate. In addition, taxpayers should consider the structure of the gifts. Gifts can be made outright or in trust. Thus, individuals can make gifts to young children or grandchildren yet arrange for the gifted assets to remain in trust so that a third party can invest the assets and use them for the young family member's benefit. Families can even take advantage of special kinds of trusts or other structures that can help leverage the current high exemption.

Please contact a Dickinson Wright trusts and estate lawyer to learn more about how you and your family best can take advantage of the increased exemption before year end.

The IRS has promulgated regulations in Circular 230 that regulate written communications involving federal tax matters between attorneys and their clients. According to the IRS, such communications are either opinions or "other written communications". If a communication is not intended to be an opinion, the writing must so state. Therefore, we must advise that "this written communication which discusses federal tax matters is not an opinion, and is not written to be relied upon to avoid any tax penalty." Please contact us if you have any questions concerning Circular 230 or any tax planning, implications or consequences relating to your estate plan.

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