Client Advisory Bulletin

Kistler-Tiffany Advisors
May 2012

KISTLER TIFFANY ADVISORS

IS NOW THE TIME TO MAKE A LIFETIME GIFT?

As we have discussed in previous Bulletins, many of the changes that were implemented in the 2010 Tax Act were temporary and have either expired or are scheduled to expire or sunset at the end of 2012. This makes it especially important to consider taking advantage of these opportunities in the remaining months of this year.

For this year, the credit exemption for **federal estate, gift and generation skipping transfers (GST) is $5,120,000 per individual ($10,240,000 per couple) with a top tax rate of 35%.** At the end of this year the federal credit exemption and 35% top tax rate will sunset. As of **January 1, 2013**, the estate and gift tax exemption is scheduled to revert back to a credit exemption of $1,000,000 per individual ($2,000,000 per couple) with a top rate of 55% and the GST tax exemption will be reduced to $1,360,000 per individual ($2,720,000 per couple), subject to inflation adjustment.

As in the past years, there have been continuing discussions in Washington to extend or reduce the existing exemption or eliminate estate and/or gift taxes. For example, in President Obama's 2013 budget proposal, the estate and generation skipping transfer tax exemption is reduced back down to $3,500,000 per individual and the gift tax exemption is reduced to $1,000,000 per individual with maximum rates increased to 45%. **It is possible that beginning next year the estate and gift exemptions will be substantially lower than the 2012 levels.**

IS NOW THE TIME?

Due to the potential changes described above, now may be the time to consider taking advantage of the $5,120,000 federal credit and GST exemptions by making substantial gifts to children and grandchildren.

- Given the current economy, large gifts may be especially appropriate now while valuations on real estate as well as many business interests remain at low levels. Valuation discounts, which may not always be available in the future, continue to play an important role in valuing assets for transfers to children and grandchildren. The potential future appreciation on assets transferred would then be out of your taxable estate.
- Before a large gift is made, the donor must first consider and ensure his or her continued lifetime financial security.
- Next, consideration should be given to the proper way to make the gift, first utilizing annual exclusions and unlimited gifts for medical and educational expenses (if paid directly to the school or provider); and, next ensuring that gifts are given continued protection from a recipient's creditors and/or divorce.
  - If transferring real estate or other assets, it may be worthwhile to first consider the creation of a family limited partnership or LLC, possibly allowing for increased discounts and protection.
  - Large gifts can be made to an irrevocable trust for the benefit of one or more family members. This trust could also be designed to further protect assets for future generations. If desired, the donor's spouse could even be a lifetime beneficiary of the trust allowing the trust to provide some "access" to the trust assets during your lifetimes.

As with all things "tax", if something seems like it could be too advantageous to the taxpayer, it may be. In this case, it is the possibility of what is referred to as the **"Clawback."** While this is too complicated to explain in detail here, **clawback** basically refers to the calculation of the estate tax on the decedent's estate in the event the federal credit exemption reverts back to $1,000,000, or other reduced number, after the larger gift has been made.

- Lifetime gifts (in excess of annual exclusions) are added back into the taxable estate to achieve the adjusted taxable estate (gifts are added back in at the time of gift value not at the appreciated value). This could mean an increased taxable estate at the time of death and thus an increased estate tax. It is generally felt that this will be addressed by Congress for any gifts made in 2011 and 2012.

We will continue to be in touch as the estate tax picture takes shape for the year 2013 and beyond.

If you have any questions regarding the above, please give us a call. As always, it is important to consult with a financial and legal advisor before taking any specific action.

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