

ALERTS

Additional Gifting Opportunities in 2012

January 24, 2012

Tax legislation passed at the end of 2010 temporarily lowered the federal estate, gift and generation-skipping transfer (“GST”) tax rates to 35 percent; increased for 2011 and 2012 the federal estate tax exemption from \$3.5 million to \$5 million; increased the federal GST tax exemption from \$1 million to \$5 million; and reunified the federal estate and gift tax exemptions so that an individual can gift up to \$5 million through 2012 free of federal gift tax. Additionally, because such legislation indexed the federal estate, gift and GST tax exemptions for inflation, *such exemptions have increased further, from \$5 million to \$5.12 million for 2012*. In order to take advantage of the increased exemptions and low transfer tax rates, as well as historically low interest rates, you may wish to implement one or more of the planning techniques discussed in this *Alert* before the end of this year.[1]

Increased Exemptions, Low Tax Rates

You may wish to consider making substantial gifts this year, while transfer tax exemptions are high and transfer tax rates are low.

- Currently, married couples that fully utilized their federal gift tax exemption in 2011 by making aggregate gifts of \$10 million, reduced by prior taxable gifts, have an additional \$240,000 (and individuals have an additional \$120,000) that they can give without paying any federal gift tax.
- Those who did not utilize their gift tax exemption in 2011 still have until December 31, 2012, when the tax legislation is scheduled to expire, to make aggregate gifts of up to \$10.24 million for a married couple (up to

\$5.12 million for an individual), reduced by prior taxable gifts, without paying any federal gift tax. Whether such gifts make sense from a tax perspective will depend on your specific situation, including consideration of whether any state gift tax might apply. (The federal gift tax exemption is in addition to the following, which you can give each year free of federal gift tax: \$13,000 to an unlimited number of people; unlimited payments of tuition directly to qualifying educational organizations; and unlimited payments directly to providers of medical care or medical insurance.)

- The federal gift tax rate is scheduled to revert to 55 percent in 2013 (from 35 percent now). To the extent that you wish to make gifts in excess of your current \$5.12 million exemption, you should consider making these gifts this year while the federal gift tax rate is only 35 percent.
- Now is also a good time to consider transferring assets into a long-term GST exempt trust. A married couple establishing GST exempt trusts today can shield assets worth up to \$10.24 million (plus all future appreciation) from wealth transfer taxes for approximately 100 years in New York or in perpetuity in certain other jurisdictions.

Historically Low Interest Rates

With IRS interest rates at near all-time lows, you may wish to consider estate planning techniques such as intra-family loans, GRATs and sales to irrevocable grantor trusts. These techniques generate the most transfer tax savings when IRS interest rates are low.

Review Wills and Revocable Trusts

Many Wills and revocable trusts include a provision creating a trust (an “exemption trust”) that will be funded with the *maximum* amount that can pass free of federal estate or GST tax at the person’s death. Given the increased federal estate and GST tax exemption amounts for 2012 (i.e., \$5.12 million), you should review your estate plan and your finances to determine whether it is appropriate for you and your spouse to fund your respective exemption trusts with the maximum exemption amount (or possibly a lesser amount), if the exemption remains at a high level. To arrive at such determination will require a case-by-case analysis based upon your financial, tax and personal circumstances.

Please contact your attorney at Schulte Roth & Zabel at your earliest convenience if you wish to discuss these or other gifting opportunities as they may apply to your specific financial and personal situation since these valuable transfer tax opportunities will expire at the end of 2012 and, in some instances, may be very beneficial to implement well in advance of that deadline.

[1] The tax laws discussed in this *Alert* apply only to persons who are citizens or residents of the United States. Additionally, the techniques mentioned are described in greater detail in our November 4, 2011 *Alert*, available at:
http://www.srz.com/Unique_Gifting_Opportunities_Through_the_End_of_2012/.

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