tax implications

end of the year estate and tax planning

–Gerald M. Morello Jr.

Every year around this time, our offices receive a flurry of telephone calls, from clients and financial advisors alike, with questions regarding end of year estate and tax planning. This year is no different.

On December 3, 2009, the U.S. House of Representatives passed a bill that will have a substantial impact on estate and tax planning for years to come. The House voted in favor of making permanent the $3.5 million dollar exclusion from Federal Estate tax per individual. If the U.S. legislature takes no action at all, the Federal Estate tax will expire at the stroke of midnight on the last day of this year. However, now that the House has picked up the issue, it is likely that the estate tax is here to stay, on a more permanent basis.

For all taxpayers who have planned for their future, and the future of their children and grandchildren, what the U.S. legislature does with the estate tax should be of particular interest. The recent actions in Washington, D.C. should spur individual taxpayers and business owners alike to talk to their financial advisor or other tax professional, so that they fully understand the tax implications of future legislation. With this in mind, I have put together a brief list of estate and tax planning issues that should be part of any discussion.

estate planning

REVIEW OF ESTATE PLAN

If you have an estate plan in place, the end of the year is an ideal time to review your documents. The course of an entire year can greatly change a family's financial picture, as well as its social harmony. First, it is prudent to think about the key appointees within your documents. You should know whether the people that you want to handle your affairs when you pass away, or become incapacitated, are named in your documents. Also, review whether you are leaving your hard-earned money and assets to the people you still want to receive those things. Third, think about any new people (baby or adult) who may have become a member of your family in the last year, and know whether they are provided for in your documents. Fourth, understand any restrictions on the inheritance for your beneficiaries (if there are any), and know whether they are adequate based on your beneficiaries' current circumstances. Lastly, if you do not have a comprehensive estate plan in place, you should think about having one completed, either before the close of the year or within the next year. Spending some money now to properly plan can save your family and estate much more money in the future.

GIFTING

Another thing to think about at this time of year, from an estate and tax planning perspective, is gifting. The current annual federal gift tax exclusion amount for 2009 is $13,000 per beneficiary per year. This means that a person can give a child, grandchild, or other beneficiary up to $13,000 in gifts in year 2009 without those gifts being subject to the federal gift tax (a married couple can jointly give up to $26,000 in gifts to a beneficiary). If it appears that a person is going to have a taxable estate when he or she dies (meaning they will have over $3.5 million in assets), I often recommend that he or she begin a gifting program to spend down their estate. Essentially, you can pre-pay to your children, grandchildren, and other beneficiaries their future inheritance, without any current tax penalty, thereby allowing yourself the avoidance of future estate taxes. But remember, if you do not make gifts in a given year, you lose your ability to use that year's gift tax exemption amount. The annual Federal Gift tax exclusion amount for next year will remain at $13,000 per beneficiary.

GIFTING OF BUSINESS SHARES OR INTEREST

For family business owners, this year is a great time to gift shares or interests in your business to those people who will take over the business once you step down. Since many businesses have seen a downturn in overall value, gifting shares or interests at today's value allows you take advantage of the recession, instead of being hammered by it. I've written on this topic previously (Downriver Profile, April 2009). If this may apply to you, contact your attorney, financial advisor, or tax professional and ask about developing a plan of recapitalization and business gifting. This will not only help reduce potential future taxes, but will also start to develop the process by which your business will be transferred. It is less costly and helps to avoid any interfamily squabbling that may occur if you plan for business succession before you pass away, instead of leaving that for your heirs to take care of.

CHARITABLE GIFTING

In addition to the annual gift tax exclusion, an unlimited deduction is available for gifts to a qualified charity. Other than for gifts to a subdivision of government or a church, a charity should have an exemption letter from the Internal Revenue Service indicating that gifts are eligible for the gift tax charitable deduction if it is planned for the gift to be deductible.

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CONTRIBUTIONS TO TAX DEFERRED RETIREMENT PLANS

There are many ways to save for retirement, and at the same time reduce your total income tax bill for the year. I advise most of my clients to contribute the maximum annual amount that they can

to their 401(k), IRA, or other tax deferred retirement plan. Not only will your tax bill for this year be lowered, but the interest that accrues on the contributions will be tax deferred. Then, when you retire and begin to receive the money from the retirement plan, you will likely be earning less money and therefore will be taxed at a lower tax rate. Therefore, you defer taxes now, and pay a lower tax in the future. Check with your financial advisor or plan administrator to determine what the maximum contribution in 2009 for your particular plan is, and find out if you have contributed all you can.

ESTABLISHING AND FUNDING A 529 PLAN

I recently wrote an article *(Downriver Profile, September 2009)* regarding the benefits of 529 plans (education savings plans). These plans are beneficial because they allow you to save for the future education of your children, grandchildren, or other beneficiary, while providing a substantial deduction for state income tax purposes. The interest that accrues on the contributions is usually tax exempt. If you already have an established 529 plan, it may be wise to invest the maximum amount for this year. If you do not have a 529 plan in place, now is a good time to speak with your financial advisor about setting one up.

ESTABLISHING AND FUNDING A HEALTH SAVINGS ACCOUNT

Another way to lower your annual tax due, and at the same time provide for your family's well being, is to establish and fund a health savings account or medical savings account. Considering the unknown future that is "Healthcare in America," personally insuring the payment of your family's health care is appealing. The federal government allows you to establish an account to pay for future medical care, and in doing so, gives you a substantial tax savings by allowing a portion of the money contributed to a health savings account to be exempt from income tax.

MAKE INFORMED DECISIONS

I encourage you to speak with your financial advisor and tax professionals to fully understand all end of the year estate and tax planning issues mentioned in this article. Remember that there are many issues to address, so make sure you are fully informed of what is right for you. If you would like a copy of any prior articles I have written, please contact our offices. ■

Gerald M. Morello, Jr., Esq. would like to graciously thank Rob Emmitt, Esq. for his assistance in preparing this month's article for Downriver Profile.

For further information or to schedule an appointment, please contact Morello Law Group, P.C. and Gerald M. Morello, Jr., Esq. at (734) 281-6464 or on the web at morello@morellolawgroup.com.