

ADVICE | MONEY

it's time to review your estate plan...again



"Each person, regardless of age, net worth, employment or marital status should have a comprehensive estate plan in place. In addition, business owners face unique estate planning challenges, and are advised to review their planning regularly."

Gerald M. Morello, Jr., Esq.

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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.

2012 TAX ACT

The President signed on January 2, 2013, permanent legislation which creates significant changes to the Federal Estate Tax. The Act currently provides that an individual in 2015 may exempt \$5.43 million from Federal Estate Tax. This is a significant change from the historically low amount that an individual could pass to his or her heirs estate tax free. The top Federal Estate Tax rate on estates valued in excess of \$5.43 million is 40%!

The 2012 Tax Act, as well as other recent tax law changes, provides our clients with a great opportunity to plan for their future, and the future of their children and grandchildren. The tax law changes is an impetus for individuals and business owners alike to talk to their estate and business planning attorney, financial advisor or other tax professional, to fully understand the tax implications of current and potential 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 currently desire 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 an inheritance from you. 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. Proper

planning can save your family and estate significant expense, taxation and heartache.

SIMPLIFIED PLANNING FOR MARRIED COUPLES

Historically, a married couple needed to establish two separate AB type Trusts to protect both the husband's, as well as the wife's, exemptions against the Federal Estate Tax. In other words, for a married couple, if you did not "protect it," you would "lose it." Now, with proper planning, most typical married couples can protect both the husband's and the wife's exemption against the Federal Estate Tax (\$5.43 million each for a total of \$10.86 million) by doing some very simple, straight-forward planning. This effectively eliminates the need for ongoing administration of the deceased spouse's Trust during the lifetime of the surviving spouse.

This simplified approach will not always be appropriate planning; its based on many factors the clients should be made aware of. An important point is that the surviving spouse, in order to capture the deceased spouse's unused exemption against the Estate Tax, must file a timely Federal Estate Tax Return with the IRS within nine (9) months of death of the deceased spouse. Again, if the 706 Return is not filed, you lose the exemption of the first spouse to die.

IRA CONDUIT TRUST

The rules that govern IRA tax planning are complex, yet critically important in the estate planning arena. Most clients have retirement accounts, and the estate planning objective is usually continuing the power of tax deferral for the beneficiary after one's death. A properly designed Revocable Living Trust will have provisions that create an IRA Conduit Trust to receive the retirement accounts at death. The result is continuing tax deferral on these accounts for beneficiaries, with the lowest tax amount due to the IRS.

LADY BIRD DEEDS

A Lady Bird Deed (or Enhanced Life Estate Deed) is a Deed that estate planning attorneys now utilize on a regular basis to ensure that an individual can protect a primary residence during a nursing home stay from the Medicaid spend-down rules, while ensuring that, at death, the home ultimately is transferred to the Trust in order to avoid the Michigan Estate Recovery Act as well as to avoid the probate process. The Michigan Estate Recovery Act currently provides the State of Michigan with the ability to be reimbursed for Medicaid costs by extracting the reimbursement from the sale of the primary residence after the taxpayer has passed away. A Lady Bird Deed is a simple, but very important, method of ownership arrangement for a primary residence that allows the home to be maintained as a protected asset from the Medicaid spend-down rules while you are alive, yet removes the asset from your probate estate and is distributed by your Revocable Living Trust upon your death. This is an excellent technique for most every client of ours that we assist with estate planning.

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 2015 is \$14,000 per beneficiary per year. This means that a person can give a child, grandchild, or other beneficiary up to \$14,000 in gifts in year 2015 without those gifts being subject to the federal gift tax (a married couple can jointly give up to \$28,000 in gifts to a beneficiary). If it appears that a person is going to have a taxable estate when he or she dies

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(meaning, an individual will have over \$5.43 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.

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 (please see our website at morellolawgroup.com). 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.

TAX PLANNING

CONTRIBUTIONS TO TAX DEFERRED RETIREMENT PLANS

There are many ways to save for retirement, and at

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ESTATE PLAN UPDATES

Here are some additional recommendations on what to consider when updating your estate plan:

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- Prepare or update a Revocable Living Trust to avoid probate court, eliminate government interference, maintain privacy, simplify administration and protect your family's estate.
- Review assets to make certain they are owned or "funded" in the name of your Trust; confirm your beneficiary designations properly name your trust. Do not put a child on the deed to your home, stocks or mutual funds due to adverse tax consequences.
- Consider the best way to transfer assets at death to avoid Estate Tax.
- Roll-over 401k plan monies after changing jobs, or at retirement, to an IRA account. Then consider all options to maximize income tax deferral for heirs on the IRA at your death.
- Review whom you have appointed as Executor, Successor Trustee, Guardians for minor children, and Agents for financial and health care documents.
- Determine whether your estate plan contemplates the Tax Act of 2012 and the IRA rules changes.
- Review your total net worth, and determine whether your estate plan is appropriate.
- Determine whether you have acquired real estate since your Trust was developed and whether ownership of that real estate is appropriate.
- Determine whether your heirs' circumstances have changed, which might affect your planning, such as a disability, births, deaths, marriage or divorce.
- Consider the tax benefits of leaving monies to grandchildren, especially IRAs.
- Consider provisions in your Trust to provide monies for younger heirs for education and health care, and an age requirement to receive the inheritance, such as age 25.

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 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 a 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

Estate planning is not just a one time event. Instead, a comprehensive estate plan should be reviewed on a regular basis.

You should review and update your estate plan as necessary with an experienced estate planning attorney to ensure your important legal affairs are in good order. 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.

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 morello@morellolawgroup.com