Estate Tax Law

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Super Committee May Target $5 Million Gift Tax Exemption for 2012

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As we wind up year 2011 and consider year-end tax planning, there may be an added incentive to accelerate your long-term gift planning to the end of 2011 instead of waiting until 2012. The so-called Super Committee may be considering a reduction or even elimination of the $5 million gift tax exemption sooner than expected, which could have a serious impact on the future plans of many families.

The Budget Control Act of 2011 (the "Act") was signed by President Obama on August 2, 2011. The Act raised the debt limit to avoid a projected August 2, 2011, default and created a bipartisan joint select committee on deficit reduction (the "Super Committee"). The Super Committee is tasked with drafting additional deficit reduction legislation in time to be voted on by Congress before year-end. The Super Committee is scheduled to present its recommendations to Congress on November 23, 2011. Congress will have to vote on the recommended plan by December 23, 2011. The vote will be an up-or-down pure majority vote in each chamber. If Congress can't agree on the proposed bill, automatic spending cuts will be triggered under the Act.

In order to reduce the deficit, the Super Committee must combine spending cuts with revenue increases. Given that the President's Plan for Economic Growth included a reduction in the estate, gift and generation-skipping transfer tax exemption levels back to 2009 levels ($3,500,000 for estate and GST tax and $1,000,000 for gift tax), it is possible that the Super Committee's plan will include a reduction or perhaps a complete elimination of the current $5,000,000 exemption levels for these three taxes. While the content of the Super Committee's meetings has not been made public, there has been some commentary suggesting that the Super Committee will decrease the gift tax exclusion amount from $5 million to $1 million as of January 1, 2012, rather than letting it expire on December 31, 2012, as originally intended. Some commentators even suggest that the reduction might be effective as of November 23, 2011, when the plan is presented to Congress.

In addition to the possible loss of the gift tax exclusion:

- Legislation that would substantially reduce the effectiveness of certain planning techniques (such as grantor retained annuity trusts and family limited partnerships) has been pending for some time and could be enacted as part of the deficit reduction package.
- Interest rates used in many estate planning techniques to leverage gifting are at unprecedented low levels. These low interest rates translate into larger gifts at a lower transfer tax cost.

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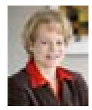

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- Previous changes in the estate and transfer tax laws occurred unexpectedly and without significant debate. Congress could quickly enact further legislation that is less favorable to the taxpayer without leaving individuals much time to act.

Of course, we have no way at all of knowing what might actually happen (if anything), but, given this possibility, it would be advisable for those who were planning to make gifts using the increased exemption amount (but were going to wait until 2012 to do so) to consider making gifts prior to the end of this year instead. If you wish to consider immediate gift and estate tax planning, your estate planning attorney and CPA can work with you to help you determine what strategies may be appropriate for you and your family.