Grant Coleman Issues Estate Planning Alert

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Significant changes were made to the federal estate and gift tax laws as part of the comprehensive tax package enacted by Congress late last year. Principal among these changes was the increase in the gift, estate and generation skipping exclusion amounts to $5,000,000 per individual or $10,000,000 per couple. Another significant change permits a surviving spouse to apply any unused exclusion amount of a predeceasing spouse – the so-called "portability" option.

The effect of these provisions warrants a review of all estate plans. All wills should be reviewed to consider the effect of the larger exclusion amount on formula bequests which are based on an exclusion amount.   Additionally, married couples should consider whether or not to change their wills to provide outright bequests to the surviving spouse in view of the new portability option.

 Wealthier clients also should consider, as part of their overall estate plan, whether to make use of the expanded gift tax exclusion to transfer property expected to appreciate or produce significant income.

Unfortunately, the increased exclusion amounts and portability option are only effective through 2012. If no further action is taken, beginning in 2013, all exclusion amounts would be reduced to $1,000,000 and there would be no portability option. For this reason, consideration should be given to drafting a new will which contains provisions to be effective during the next two years as well as provisions to be effective in the event that the exclusion amounts are reduced substantially and portability is not available.

Finally, certain clients may wish to undertake lifetime estate planning utilizing techniques, such as grantor retained annuity trusts, private annuities, family LLCs, and sales to intentionally defective grantor trusts, which may not be available after Congress makes estate tax reform permanent.

For further information, please contact J. Grant Coleman.