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- Estate Planning
- Elder Law
- Estate Administration
- Asset Protection
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- Creation of Family Limited Partnerships, Limited Liability Companies and Charitable Foundations
- Estate & Trust Litigation

For additional information on this or any trust and estate- related issue, please contact RMF's Trusts & Estates Chair: Michael K. Feigenbaum, who can be reached at 516-663-6540 or mfeigenbaum@rmfpc.com or David R. Schoenhaar, Senior Associate, who can be reached at 516-663-6588 or dschoenhaar@rmfpc.com.

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Historic Estate & Gift Tax Savings Opportunities Almost Gone

We are half way through 2012 and the generous tax legislation that went into effect on January 1, 2011, is scheduled to sunset on December 31, 2012, if Congress fails to act. Those who can participate in significant gift planning must act now if they plan to take advantage of the historic opportunities presented by the high gift tax exemption amount before the close of 2012.

What's At Risk?

If Congress does nothing, which is highly likely given its failure to act in 2009 and the fact that this is an election year, the estate, gift, and generation-skipping transfer (GST) taxes will revert to pre-2001 levels as follows:

- Estate, gift, and GST tax rates will significantly increase from 35% to 55%.
- Individual exemption amounts will dramatically decrease from $5,120,000 to $1,000,000 for estate and gift taxes and to approximately $1,000,000 for GST taxes due to an inflation adjustment.

For the optimist who believes Congress will act, experts predict that any new legislation will be much less favorable than the rates and exemption amounts that exist today for gifting. Even if the experts are wrong and Congress extends the current tax laws, gifting now can still be an advantage if assets appreciate in value. Most of the pundits are saying if Congress acts:

- Estate, gift and GST tax rates will settle in at 45%- the midpoint between pre-2001 rates and today's rate.
- Individual exemption amounts for estate and GST taxes will be between $3,000,000 and $3,500,000.
- Individual exemption amounts for gift taxes will return to $1,000,000.

Accordingly, whether Congress acts or allows the current tax laws to sunset, there is a significant risk to failing to take advantage of the current historic gifting opportunities.

What to Do?

It is critical to consult with your legal and tax advisors to analyze your specific situation (i.e. amount of assets available, cost basis, gift tolerance, etc.). High net worth individuals who decide to make significant gifts can do so utilizing a variety of strategies.

The most simple gift transaction is to make outright gifts. However, this is suitable only in specific situations as it is not an effective method for gifting to young children or grandchildren, can expose the asset to the donee's creditors, and does not allow the donor to leverage his or her GST exemption.

To facilitate the protection and growth of the assets gifted, we advise clients to make substantial gifts to a trust or multiple trusts. The trust can be drafted for the benefit of the donor's intended beneficiaries (e.g. children and/or grandchildren) and the donor can appoint trustees that will have the power to make distributions to or for such beneficiaries according to a standard based on the beneficiaries' needs and the donor's wishes.

The trust can be structured as a “Grantor Trust” for income tax purposes. This means that the income tax liability of the trust will flow through to the donor’s personal income tax return. This presents the following additional benefits: (i) trust assets appreciate free of income tax liability, (ii) the donor effectively makes additional tax free transfers to the trust by paying the income tax on the trust’s income, and (iii) transactions between the donor and the trust are not considered a taxable event for income tax purposes.

In addition to making gifts to a Grantor Trust to utilize the donor's gift tax exemption amount, assets can be sold to a trust through a sophisticated technique referred to as a Sale to an Intentionally Defective Grantor Trust. In a sale transaction, the donor can sell additional assets (valued after discounts if available) to a Grantor Trust in return for a secured promissory note with interest only payments until maturity. The interest rate used for a nine (9) year note is the Mid-Term AFR rate which is presently 1.07%. The note can provide the flexibility for pre-payments if the donor so desires. Finally, the donor can allocate his or her unused GST exemption to the "seed" gifts made to the trust, valued at approximately 10% of the value of the sale transaction, and the entire trust will grow and pass to the donor's children and grandchildren without incurring an estate or GST tax

Given the historic gift tax opportunities that exist today, it is critical that gifts be made before these opportunities expire at the end of this year. The wealth transfer strategies discussed above are just a few strategies available for significant estate and gift tax planning. Please contact us today to discuss what options may be available to you and to start the process of implementing a wealth transfer program that is coordinated with your overall estate plan.