ESTATE PLANNING MATTERS!

GRAY PLANT MOOTY

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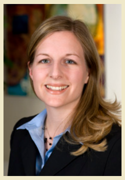

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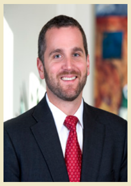

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When to Involve an Attorney in Your Charitable Giving

Making a donation to charity is often a straightforward process: you identify a cause, write a check or transfer assets, and make an impact on the community. Most of the time these gifts occur without concern for the legal implications, and this is usually fine. However, there are a few circumstances when it is important to involve your estate planning attorney in your charitable giving. Involving an attorney at the front-end is significantly easier and less expensive than trying to fix a gift that carries unintended tax or legal implications for the following types of gifts:

1. You are considering a charitable gift of property that is not cash or publicly traded securities.

It is important to involve your attorney when contemplating a charitable gift of property other than cash or publicly traded securities (often referred to as a "property gift"). This could include a gift of real estate, artwork, collectors' items, or closely held securities.

Property gifts usually require written documentation, like a deed or an assignment, to accomplish the transfer to charity. An attorney can help you prepare the appropriate transfer documentation. Property gifts must also be documented in a specific manner in order to qualify for the income tax charitable deduction. These requirements are highly technical and they must be done correctly the first time. An attorney can help you navigate these requirements and compile the necessary documentation to ensure you receive an income tax charitable deduction.

An attorney can also help you understand the tax implications of your gift. The tax benefit associated with making a charitable gift will vary depending on the type of property contributed and the type of charity receiving the gift.

2. You have been asked by a charity to sign a pledge, gift instrument, or letter of intent.

Charities will often ask a donor to sign a pledge, gift instrument, or letter of intent whenever the donor intends to complete a charitable gift at a later point in time. Sometimes these documents create a legally binding contract. Other times, the documents are not legally binding and merely reflect what the donor wishes to do in the future.

Determining whether a pledge, gift instrument, or letter of intent is legally binding can be difficult. In some circumstances, a pledge or gift instrument can be legally binding even though its terms say otherwise. This distinction is important if you die before completing a gift. A legally binding obligation can be paid to the charity and deducted for estate tax purposes. In contrast, if the promise is not legally binding and the gift is later fulfilled at your death, the distribution may be subject to estate tax unless payment is specifically authorized in your estate planning documents. An attorney can help you sort through these issues and make sure your estate planning documents take into account your pledges and gift instruments as needed.

3. You would like to donate property that might be sold in the near future.

Contributing appreciated property to charity before a sale can be tax-advantageous as it allows you to benefit charity and avoid recognition of the capital gain. However, if a sale of the property is a "reasonable certainty" before it is contributed to charity, the IRS may require you to pay tax on the

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capital gain under the theory that the contribution was a "pre-arranged sale" and that it was made for tax avoidance purposes.

To avoid the risk of a pre-arranged sale, involve your attorney before contacting a broker, listing real property, signing a purchase agreement, or taking any substantial steps towards a sale of property that might be contributed to charity.

4. You are interested in a charitable gift annuity, charitable remainder trust, charitable lead trust, donor-advised fund, or private foundation.

Charitable gift annuities, charitable trusts, donor advised funds, and private foundations are all created with legal documents such as a trust agreement or contract. Your attorney should either draft or review these legal documents to ensure that they are done correctly and consistently with your goals.

With all of these gifts, keep in mind that an ounce of prevention is worth a pound of cure. It is much easier to involve your attorney and structure a charitable gift properly than it is to fix it later when problems arise.

Big Changes to Minnesota Estate and Gift Taxes

On March 21, 2014, Minnesota lawmakers passed a tax bill that has a major impact on many Minnesota residents and non-residents who own property in Minnesota. On May 20, 2014, the legislature passed another tax bill making additional changes. The press has largely focused on the income and business tax changes, but the Minnesota estate and gift tax changes are also significant. Many Minnesotans will benefit from these changes because more assets can pass to family members free of Minnesota estate tax. Highlights include repeal of the Minnesota gift tax enacted in 2013 and increase of the Minnesota estate tax exclusion amount by $200,000 per year up to $2 million in 2018.

Minnesota Decoupled from Federal Estate Tax in 2002

In 2001, Congress increased the federal estate tax exclusion from $675,000 to a maximum of $3.5 million by 2009. In 2010, Congress increased the exclusion to $5 million for 2010, 2011, and 2012. Then, at the end of 2012, Congress enacted a permanent estate tax exclusion of $5 million indexed for inflation ($5.34 million in 2014). In 2002, Minnesota chose to freeze its estate tax exclusion amount at $1 million. For the next ten years, while Congress made many changes to the federal estate tax, the Minnesota estate tax was largely unchanged (with the exception of adding a Minnesota qualified small business and qualified farm property deduction and a few other minor tweaks). Then, in 2013, Minnesota enacted a gift tax to go along with the estate tax, a three-year estate tax inclusion period for certain taxable gifts, and an estate tax on certain Minnesota property interests held in a pass-through entity. In 2014, Minnesota made some noteworthy changes.

Estate Tax Exclusion Increase

The new law raises the Minnesota estate tax exclusion from $1 million to $2 million over the course of the next five years as follows:

Year	Minnesota Exclusion
2014	$1.2 million
2015	$1.4 million
2016	$1.6 million
2017	$1.8 million
2018 and beyond	$2.0 million

The new law also changes the tax rates so that the new Minnesota estate tax rate starts at 9% of the amount over $1.2 million and reaches 16% for amounts over $10.1 million (note that the 9% rate is replaced by 10% after 2014).

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Retroactive Repeal of the Gift Tax but Certain Lifetime Gifts Included in Taxable Estate

The new law retroactively repeals the Minnesota gift tax. However, the Minnesota estate tax for 2014 and beyond includes the value of all federal taxable gifts made within three years of death and also made after June 30, 2013. In addition, taxpayers must file a Minnesota estate tax return if the sum of the federal gross estate and federal adjusted taxable gifts made within three years of death exceeds the Minnesota estate tax exclusion amount.

Another significant change is the elimination of certain federal tax elections unless a federal estate tax return is required to be filed. Most notably, this will have a significant impact on estates of decedents with a non-citizen spouse that do not require a federal return, because assets that pass to a non-citizen spouse will not qualify for the Minnesota estate tax marital deduction.

Benefit to Certain Estates

The new law will mostly benefit estates below the new Minnesota exclusion amount because those estates will no longer need to file a Minnesota estate tax return or pay Minnesota estate tax. Estates under $3 million will also see more estate tax savings than larger estates in 2014. The estate tax difference for an estate with $1.1 million in assets from 2013 versus 2014 under this new law is $38,800 in tax savings (plus savings for not preparing and filing an estate tax return).

Not Much Benefit for Estates over $3 Million

The tax savings for estates over $3 million is not very significant in 2014. For an estate of $3.6 million to $5.8 million, the total estate tax savings is a flat $800 in 2014 (compared to 2013). For estates of $5,830,500 and larger, the total estate tax savings is a flat $480 in 2014 (compared to 2013). In 2018, the total estate tax savings on estates of $7.1 million and up will be merely $3,480 in comparison with the 2013 tax laws. In other words, estates of $7.1 million and up only get $3,480 of tax benefit from the extra $1 million of Minnesota estate tax exclusion in 2018 and beyond.

Elimination of the "Tax Bubble"

The new law eliminates the so-called "tax bubble," which previously applied to estates between $1 million and $1,093,784 (where the old federal marginal estate tax rate of 41% applied instead of the Minnesota estate tax marginal rate). Under the old system, for an estate valued at $1.1 million, the Minnesota estate tax owed was $38,800, but, for a $2 million estate, only $99,600 of estate tax would be owed. With the elimination of that bubble, assets immediately over the threshold are now taxed at a marginal rate of 9% or 10%.

> **"Many Minnesotans will benefit from these changes because more assets can pass to family members free of Minnesota estate tax."**

What Does This Mean for You Now?

For more than a decade, Minnesota estate and gift taxes were left nearly untouched. Now, in less than one year, lawmakers have raised the Minnesota estate tax exclusion; eliminated the "tax bubble" and some federal elections; and passed and repealed the Minnesota gift tax. These changes might not get the headlines in the press, but they have a real impact on many Minnesota residents.

We carefully tailor wills and trusts to adapt to changes in the tax law. Many estate plans involve tax planning considerations and use formula language that divides assets to take advantage of estate tax exclusion amounts, even if those amounts vary from year to year. Some of those formulas fund a trust for the benefit of the next generation up to the Minnesota estate tax exclusion amount, which is now increasing from $1 million to $2 million by 2018. This may be more than you previously anticipated passing to or for the benefit of the next generation at your death.

As a result of these changes, we suggest that our clients take some time to review their estate plans to ensure that the rising exclusion amounts do not have unintended consequences. For many clients, this will just mean more assets pass to family members free of Minnesota estate tax. Please contact your Gray Plant Mooty attorney to determine the impact that these changes might have on your plan.

This article is provided for general informational purposes only and should not be construed as legal advice or legal opinion on any specific facts or circumstances. You are urged to consult a lawyer concerning any specific legal questions you may have.

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Why You and Everyone You Know Needs an Estate Plan

An unfortunate misconception exists that certain people do not need an estate plan. The reality is that state law has already prepared a default estate plan for everyone. For many singles, unmarried couples, or people without children, this plan may be different from one they would otherwise choose. Each person should plan for incapacity through a health care directive (appointing someone to make medical decisions) and financial power of attorney (appointing someone to make financial decisions), select property recipients (even modest assets), and nominate the person to wrap up affairs at death. For a single person without a will, the law allows parents, siblings, or perhaps even creditors to receive property and control distribution of assets. Those without a spouse or children may prefer that nieces and nephews or charities receive property at death. A surviving unmarried partner may not benefit from the other partner's estate or receive sentimental property and may have to move from home. The only way to ensure wishes are met is to have an attorney prepare a will and coordinate beneficiary designations. Do not delay in calling or referring loved ones to call a Gray Plant Mooty attorney to assist with estate planning.

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