Do You Have Some Money To Give Away?

There Still Is Time In 2012 To Make Generous Gifts With Less Tax.

There remains time in 2012 to make substantial tax-exempt gifts before generous exemptions from estate/gift taxes and generation skipping transfer taxes expire on December 31, 2012.

The estate and gift and generation skipping transfer tax exemptions for 2012 are set at $5,120,000 ($10,240,000 per couple). The tax rate is 35% on transfers above that amount. These generous exemptions apply only until December 31, 2012. Unless Congress and the President take action, as of January 1, 2013, the new exemptions and rates will adjust to $1 million ($2 million per couple) for the estate and gift tax and to $1 million, plus an inflation adjustment from 2001 to approximately $1,340,000 ($2,680,000 per couple), for the generation skipping transfer tax. In addition, without Congressional action, the tax rate on transfers above the exemption levels will increase to 55 percent on January 1, 2013.

The current exemptions provide a time-critical estate planning and gifting opportunity. In the simplest terms, an individual can make a large gift in 2012 without owing any gift tax or generation skipping tax, while the same gift in 2013 would result in a large gift tax liability. For the remainder of 2012 individuals may make gifts of up to $5,120,000 directly or in trust without incurring a gift tax. This tax exemption for lifetime gifts is in addition to, and does not include, smaller annual gifts of up to $13,000 or certain direct payments to schools or healthcare providers, excluded under a separate exclusion. In addition, the increased generation-skipping transfer tax exemption permits these gifts to benefit grandchildren and more remote descendants directly or in trust without incurring the generation skipping transfer tax.

There are two primary benefits to gifting now:

(i) First, a gift in 2012 represents what could be a one-time opportunity to transfer wealth to children or other beneficiaries without paying a gift tax and to accomplish multi-generational planning without paying generation-skipping transfer tax.

(ii) Second, these gifts can save estate taxes by removing the post-gift appreciation on and income from the gifted asset from an estate.

Many issues and other laws factor into what a person should or could do in light of the expiring exemptions. Even for those without millions of dollars to gift, the current tax environment could make smaller gifts and gifts to grandchildren more impactful than in the past or in the future. Gifting now may provide an opportunity to reduce the size of an individual's estate to what may be a non-taxable estate under the 2013 tax rules currently set to come into effect. Because planning and implementing large gifts take time, however, you should start now to avoid hasty, last-minute decisions that may prove to be counterproductive.

Additional information on estate planning with Hirschler Fleischer, P.C., may be obtained by contacting Chandra Lantz at clantz@hf-law.com or 804.771.9586.