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Don’t Let Uncertain Times Lead to Uncertain Planning

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Now is a great time for estate planning. Seriously. We know that the state and federal estate tax laws have been on quite a roller coaster recently, and it doesn't look like the ride is over quite yet. However, there are fundamental realities that make now a great time to plan.

Where We Have Been

In the last 24 months we've seen the following changes to estate tax laws:

- In November 2009, the federal estate tax had a $3.5 million exemption and a top rate of 45% on amounts above the exemption.
- On January 1, 2010, the federal estate tax was temporarily repealed.
- In December 2010, the Congress enacted a new law that gave 2010 estates the choice of a federal estate tax with a $5 million exemption and a 35% tax rate or electing out of the estate tax entirely and instead wrestling with complicated rules for capital gains tax treatment of inherited assets.
- Beginning January 1, 2011, the federal estate, gift, and generation-skipping transfer tax exemptions were all set at $5 million with a top rate of 35% -- but only for the years 2011 and 2012.
- In July 2011, the Ohio General Assembly repealed the Ohio estate tax, effective for all deaths on and after January 1, 2013

Where Are We Going? Back to the Future?

Absent congressional action, beginning on January 1, 2013, the federal estate tax exemption is scheduled to plummet back to $1 million (adjusted for inflation from 2001 to roughly $1.5 million) and the estate tax rate is scheduled to jump back to 55% on amounts above the exemption. In other words, *federal estate tax laws are scheduled to revert to what they were about a decade ago, in 2001* (along with similar unfavorable changes to the generation-skipping transfer tax and gift tax systems).

Now the Joint Select Committee on Deficit Reduction (aka the "Super-Committee") of twelve members, evenly split between Representatives and Senators, Republicans and Democrats, is charged with releasing a proposal for $1.2 trillion in deficit cuts over the next ten years. It must provide a recommendation by November 23, 2011, though there are some rumors the committee may be granted an extension of time to complete its work. Assuming the recommendations are submitted on time, they must be voted on by Congress without amendments by December 23, 2011.

There are rumors the Super-Committee is considering lowering the gift tax exemption from $5 million to $1 million effective immediately. The Committee is also considering adopting various Obama administration proposals restricting favorable tax treatment for certain sophisticated estate planning techniques (e.g., by lengthening the required term for Grantor Retained Annuity Trusts or reducing the ability to take valuation discounts for family limited partnerships).

What Can We Do? Opportunity Knocks!

With all of these changes and proposed changes, it is easy to become paralyzed and choose to do nothing. Don't fall into that trap. There are several factors that make this a great time for estate planning:

- Your family still needs protection. You still want to provide for your spouse, children, or other beneficiaries in an efficient and effective manner. We have been drafting estate plans for many years that are designed to provide flexibility -- to allow executors to make the most of the tax laws, whatever they may be.

- Interest rates are historically low. Many sophisticated planning techniques rely on an interest rate the IRS has set monthly since 1989. That rate is now 1.4%, the lowest in history.

    - If you own assets you expect to grow faster than 1.4%, now is a great time to use them in your planning - particularly if your family may be subject to federal estate tax at your death.

    - For the same reason, now is also a great time to make intra-family loans (e.g., loans from parent to child) at a bargain "price," or to refinance existing intra-family loans.

- The gift tax exemption is $5 million right now. If you have considered making a large lifetime gift, there may be no better time than right now to do so, and the "window" for these large gifts may close faster than was previously expected (see the Super-Committee discussion above). Again, large lifetime gifts are particularly attractive if your family may be subject to federal estate tax at your death.

- After a terrible third quarter, asset values are low right now. If you expect your investment portfolio to increase in value in the coming years, a gift of depreciated property (e.g., current values?) will remove any future appreciation from your estate.

Don't let the uncertainty of the current legal environment keep you from taking advantage of the economic realities that make the present a great time to engage in either simple or sophisticated estate planning.

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