

ALERT

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PRIVATE CLIENT SERVICES

News Concerning Recent
Trust and Estates Issues



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Clock Is Running on Gifting Opportunities

As you may know, the exemption for both gift tax and estate tax purposes for the balance of this calendar year is \$5,120,000 per person. That means that an individual may gift that amount (reduced by prior taxable gifts) without paying any gift tax and, in the case of a married couple, the aggregate opportunity to make tax-free gifts is \$10,240,000 (again, reduced by prior taxable gifts). The current provisions of the Internal Revenue Code that provide this very generous exemption will "sunset" on December 31, 2012 and, unless Congress passes legislation extending or modifying the current exemptions, the law will automatically change on January 1, 2013; the exemption per taxpayer will go back to \$1,000,000 (\$2,000,000 for a married couple) and the applicable rate for gift and estate tax purposes which is currently 35 percent will increase to 55 percent.

There has been much discussion about the advisability of individuals with very large estates taking advantage of the current generous (but perhaps temporary) exemptions. There has also been much talk about the opportunity to make gifts of \$10,000,000 since this *may* be a once-in-a-lifetime opportunity and may be a situation where if it is not used this year, it will be lost forever. Individuals with very large estates can afford to part with \$10,000,000 of assets in connection with their estate planning. Other individuals, however, who have more modest, but nonetheless substantial, estates that would benefit greatly from this type of tax planning may not be able to part with significant assets without serious misgivings.

However, individuals with estates in the range of \$5,000,000 to \$10,000,000 (and above) should seriously consider certain options that are available and may provide them with an opportunity to reduce their taxable estates significantly without, at the same time, reducing their own sense of financial security by parting with too much of their nest egg.

There are various options available to such individuals that, depending upon their particular facts and circumstances, may be an attractive way to "hedge their bets" by parting with assets this year (while the law remains very favorable) and yet leaving themselves with sufficient access to those assets to retain a sense of financial comfort for the balance of their lifetimes.

Of course, if Congress should extend the current exemptions and make the \$5,000,000 exemption permanent, such planning may prove to have been unnecessary. But given the real risk that the exemption may be reduced significantly in 2013 and future years and given the absolute certainty that the exemption will go back to \$1,000,000 on January 1, 2013 if Congress is unable to arrive at a compromise that is acceptable to both parties, the planning described in this notice may be of interest to you.

If it is, or if you want further information, please communicate with any of the lawyers in our Private Client Services Group. Please understand that this is not something that can wait until the end of the year. It is very unlikely that there will be any action taken by Congress prior to the election and relatively little chance that the law will be clarified after the election and before the current Congress closes shop in the middle of December. By the time these events develop (or don't develop) there will not be adequate time to carefully discuss and implement this kind of planning.

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