ALERT
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TRUSTS & ESTATES
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COZEN O'CONNOR
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END-OF-YEAR ESTATE PLANNING

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As we march quickly through the last quarter of 2008, consider the following for this year and for 2009.

2008 ANNUAL EXCLUSION GIFTS - $12,000

In 2008, you may give up to $12,000 to any person without incurring gift tax and without using any of your $1 million gift tax exclusion. If you are married, your spouse also may give $12,000 to the same beneficiary or beneficiaries. Moreover, with some exceptions, annual exclusion gifts need not be reported on a federal gift tax return. A $24,000 annual exclusion gift to a beneficiary on behalf of both spouses but made from one spouse's *individual* funds (rather than $12,000 from each spouse) is called a "Split Gift." Split Gifts must be reported on a federal gift tax return even though they qualify for the annual exclusion.

Gifts to minors should be made to trusts for their benefit, to Uniform Transfers to Minors Accounts, or to education accounts such as the so-called "529 Accounts" (which grow income-tax free). You may apply five (5) years of your annual exclusion for gifts in one year to a 529 Account ($60,000 to each child's account), provided you have not used up your annual exclusions for this year on prior gifts to the child. Gifts to 529 Accounts in excess of the annual exclusion (e.g. $60,000) must be reported on a federal gift tax return even though the gift qualifies for the annual exclusion from gift tax under the special rules for 529 Accounts.

When determining how much annual exclusion you have available to give to a beneficiary, (i) *be sure to count* the beneficiary's share of insurance premiums contributed by you to any Insurance Trust; but (ii) don't count any gifts for education tuition or medical expenses that you paid directly to a school or medical provider. Gifts made directly for tuition and medical care are not taxable, they are not counted toward your annual exclusion, and they do not reduce your $1 million gift exclusion.

2008 KIDDIE TAX RULES

Beginning in 2008, the kiddie tax applies to: (1) children under 18; (2) 18-year old children with unearned income in excess of the threshold amount, who do not file a joint return and who have earned income that does not exceed one-half of the child's support amount; and (3) children between the ages of 19 and 23 if, in addition to the above rules, they are full-time students. For 2008, the kiddie tax threshold amount is $1,800.

2008 AND 2009 CHARITABLE DONATIONS FROM IRAS

If you are have reached age 70 ½, you may deduct donations made to qualified charities directly from your IRA without increasing your taxable income. The use of this deduction has been extended for 2008 and 2009, and is limited to donations of $100,000 per year from each IRA. Both spouses may use the deduction for donations made from separate IRAs.

2009 ANNUAL EXCLUSION GIFTS - $13,000

In 2009, the annual exclusion described above will increase to $13,000 per beneficiary annually ($26,000 for gifts from husband and wife to a beneficiary).

2009 INCREASE IN COMBINED ESTATE AND GIFT TAX EXCLUSION TO $3.5 MILLION PER PERSON

The combined estate and gift tax exclusion is currently $2 million. You may use up to $1 million of that amount to protect lifetime gifts from gift tax, as noted above. In 2009, however, the combined estate and gift tax exclusion for each individual will increase from $2 million to $3.5 million (the "exclusion amount"). The $1 million gift exclusion will not increase. Rather, your estate can pass another $2.5 million of assets after your death without incurring estate tax.

In light of the increase in the exclusion amount to $3.5 million, a husband and wife will be able to protect up to $7 million from the federal estate tax. In order to do so, however, the first spouse to die must have (i) assets valued at $3.5 million titled in his or her own name for which the surviving spouse is not the designated beneficiary, and (ii) a will or revocable trust that carves out the exclusion amount into a trust for the surviving spouse.

Of course, saving taxes should not be the sole consideration in determining how assets are titled. Other factors are also important. For example, assets titled to spouses jointly generally enjoy special protection from creditor's claims against one spouse. Further the homestead laws of some states require that the residence protected by the homestead law pass outright to the surviving spouse.

Those spouses who have been comfortable maintaining approximately $2 million in separate names should plan to increase the value of their separate assets to $3.5 million before the end of 2008 to take full advantage of the increased exclusion amount.

LOOKING AHEAD

The current federal estate and gift tax rates and exclusions are part of a temporary tax law enacted in 2001. If Congress takes no action, there will be an unlimited exclusion from estate tax for decedents dying in 2010, but then in 2011, the exclusion amount will revert back to a combined estate and gift tax exclusion of only $1 million. It is too soon to know how the economy and the election will impact this area of tax law. Nonetheless, it appears extremely likely that Congress will address the law in 2009. Moreover, both parties and the President-Elect have expressed a desire to maintain the $3.5 million exclusion amount for estate and gift taxes. Therefore, we recommend that our clients plan accordingly.

Please contact us for assistance and additional information regarding tax-effective estate planning.

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