

THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

Estate PLANNING

A year-end review of federal and New York transfer taxes

Estate tax

- Federal

Exemption \$5,000,000 per person*

\$10,000,000 per couple*

— To get maximum tax savings, both spouses are no longer required to each have a \$5,000,000 estate. Example: first spouse to die may have \$4,000,000 estate. Survivor has \$6,000,000 exemption. This concept is known as “portability”

Rate: 35%

Deduction for state estate taxes

*Remember, the estate tax exemption available at death is reduced dollar for dollar by used gift tax exemption

Law expires December 31, 2012

- New York

Exemption \$1,000,000 per person

No portability

Rate: 6+% at \$1,000,001 graduated to 16% over \$10,000,000

Gift tax

- Federal

Annual exclusion — \$13,000 per donee

No gift tax payable until aggregate gifts in excess of annual exclusion exceed \$5,000,000

Spouse may agree to split gift

Rate on taxable gifts in excess of \$5,000,000 is 35%

Law expires Dec. 31, 2012

- New York

none

Generation Skipping Transfer Tax

- Federal

Exemption \$5,000,000 per person*

\$10,000,000 per couple*

Rate: 35%

*Exemption is reduced dollar for dollar by generation skip-

ping exemption allocated to lifetime gifts

Law expires Dec. 31, 2012

- New York

none

Where are we going?

- Federal — some possibilities being discussed

— Possibility 1: Return to 2002 rates:

\$1,000,000 per person exemption

No portability

Rates range from 41% to 60% on assets in excess of \$10,000,000

— Possibility 2: Return to 2009 rates:

\$3,500,000 per person exemption

No portability

Flat Rate: 45%

— Possibility 3: Repeal

— Possibility 4: Your guess is as good as mine.

- New York

I am not aware of any changes being considered. Raising or lowering estate taxes seems to be out of the question. Raising taxes will cause more New Yorkers to move out of state. Lowering taxes will adversely affect the State budget.



By **DAVID C. PETTIG**

Daily Record
Columnist

Other thoughts:

Remember that the Congress passed estate tax legislation in mid-December 2010 that was made retroactive to Jan. 1, 2010. There is nothing to stop them from doing that in the future.

If the federal estate tax is not repealed, there is a chance that the following changes may be adopted:

Minimum term for a Grantor Retained Annuity Trust may be increased to 10 years, making the technique far less attractive.

Marketability and minority interest discounts will not be permitted for family-owned partnerships which invest primarily in

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marketable securities or other assets which are not part of a true business enterprise.

A federal rule against perpetuities may be adopted to eliminate trusts that last 360, 500 or 1,000 or more years.

My guess is that the federal estate tax will continue in some form if President Obama is re-elected. Assuming that is true, for those who can afford to do so, it makes sense to take advantage of the lifetime \$5,000,000 per person gift tax exclusion sooner rather than later.

It seems highly unlikely (but not impossible) that the federal government would retroactively repeal the \$5,000,000 exemp-

tion even if the estate tax exemption is reduced to some amount less than \$5,000,000 per person. I also doubt that it would be constitutional to pass a tax law in 2012 that is retroactive to 2011. Consequently, to be safe, it is far better to make such substantial gifts this year, rather than next.

One thing we can be sure about in the foreseeable future is that deadlock will reign in Congress and planning uncertainty will continue to plague us.

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