

CLIENT STRATEGIES: *REVIEWING AND UPDATING YOUR ESTATE PLAN*

On April 22, 2010, the United States Senate Budget Committee passed a resolution on the congressional budget for the U.S. Government for fiscal year 2011 (the “Resolution”). The tax provisions included in the Resolution are not binding and present only guidelines to the Finance Committee (among others), which ultimately has responsibility for drafting legislation. In other words, the Resolution offers provisions for budget legislation that have the potential to pass the full Senate.

Key components of the Resolution include extensions of selected tax provisions adopted during the Bush Administration. Specifically, the Resolution provides for:

- Reinstatement of the federal estate tax for 2010 and 2011 with a \$3.5 million exemption amount and a 45% rate;
- Continuing the 15% tax rate for capital gains and qualified dividends for married taxpayers with income below \$250,000 (\$200,000 for single taxpayers);
- Extending the alternative minimum tax (AMT) relief for 2010 and 2011;
- Permanently extending the \$125,000 current expensing limit provided under Internal Revenue Code section 179; and
- Permanently extending the marriage penalty relief, child tax credit and portions of the lower brackets, but only for married taxpayers with income below \$250,000 (\$200,000 for single taxpayers).

The Resolution also included amendments from Senator Grassley to delay some of the tax increases related to the recent health care reform legislation (discussed in last month’s Tax Letter) if such delay would not increase the deficit.

The Resolution provides for over \$1.3 trillion in discretionary programs in 2011 and forecasts a 70% reduction in the deficit by 2015, at which time the deficit would still be equal to 3% of U.S. Gross Domestic Product.

In light of the many tax changes being considered by Congress, we would like to remind you to review your current estate plan. The attached report provides some guidance on how to conduct such a review.

Sincerely,

John Meisenbach,
President

REVIEWING AND UPDATING YOUR ESTATE PLAN

An estate plan that is never updated works about as well as a car that is never serviced. They're both in great condition when they're new, but the wear and tear of the intervening years can take an enormous toll. Because even the most thorough plan cannot predict *every* contingency, a careful review of an existing estate plan is critical to making sure that it will continue to meet evolving needs.

It may be convenient to conduct a review of your estate plan annually after filing your income tax return. That way the review becomes a yearly exercise while financial information is easy to access. Another alternative is to use an important date (your birthday, for instance) to trigger an estate plan review. Ultimately, however, it doesn't matter which method is selected as long as the plan is reviewed periodically.

QUESTIONS TO ASK

The object of an estate plan review is to determine whether the plan reflects your current objectives in light of any changes that may have occurred since the estate plan was created (or last reviewed). The following questions may help you identify any such changes:

Family

- Has there been a change in marital status for any family members (marriage, divorce, separation, remarriage)?
- Are there more children in the family? More grandchildren? Has the number of dependents increased or decreased? Have any children moved out of (or back into) the home?
- Have any relatives or beneficiaries died?
- Have any relationships among family members and/or beneficiaries changed significantly?
- Have there been any changes in anyone's health (both physical and mental) that would materially affect the estate plan?
- Have any family members moved to a new address, particularly a move to another state?

Assets & Liabilities

- Has there been any substantial change in family assets or liabilities? For example, have major assets been acquired, any gifts or inheritances been received or a significant sum of money been borrowed or loaned? Have investments been augmented?
- Was a business purchased? Has a business been mortgaged, sold, or liquidated? Has there been any other material change in business circumstances?
- Have there been any changes in the amounts or sources of retirement benefits (e.g., pensions, IRAs, profit-sharing plans, Roth IRA conversions)?
- Has any insurance changed? Besides life insurance, this includes health insurance, group insurance, any other employer plan, property insurance, and casualty insurance. Have insurers changed? Have any policies been surrendered? Have any policies lapsed?
- Have there been any changes in property ownership? Has any property been purchased either jointly or separately? Has any property been transferred to a dependent, trustee or other family member? Has a residence in a different state been purchased?

Miscellaneous

- Have any changes been made to a will, trust agreement, buy-sell agreement, or any other document that will have an impact on the estate plan?
- Has the person named as executor of the estate or trustee of any trusts still willing or capable of serving? Has the health of these individuals changed?
- Have charitable intentions developed (or altered)?

Significant changes identified in the estate plan review may indicate that an estate plan has become outdated. We encourage you to review any such changes with your professional advisors.

CHANGES IN THE LAW

Changes in federal or state laws can also have a significant impact on an existing estate plan. As a result, you should be aware that there is currently much debate and uncertainty over the future of the federal estate tax. Specifically, the federal estate and generation-skipping transfer (GST) taxes have been repealed for 2010. Any assets received from a decedent who dies in 2010 will instead be subject to income tax when sold by the recipient under a “carry-over basis” regime. However, under current law, the federal estate and GST would return in 2011 with \$1 million exemptions and significantly higher maximum rates. The gift tax exemption is \$1 million indefinitely, but the rate for 2010 is reduced to 35 percent.

Many practitioners believe that Congress will enact legislation before the end of 2010 that will raise the exemption and rate levels, possibly to the levels that were effective in 2009 (e.g., \$3.5 million estate tax exemption). In light of this uncertainty, the following questions should be considered as part of a thorough estate plan review:

- Does your Will or Living Trust contain a formula that divides your estate with reference to the estate tax (and GST) exemption amount? For example, typical tax planning Wills or trusts divide an estate into a “marital share” and a “bypass” share, the latter of which is to receive any amounts that can be sheltered from estate tax by the decedent’s exemption amount. If your planning includes such a provision, this could create an unintended result for a death during any period of estate tax repeal. For example, the marital share of the estate could be eliminated by the operation of the formula and the “bypass” trust would, instead, receive the entire estate. Documents should be reviewed and revised as necessary.
- Does your Will or Living Trust contain directions for the executor to handle the “carry-over basis” regime for assets received from a decedent who dies in 2010?
- Have gifting opportunities been considered? With currently no GST tax and a reduced gift tax rate, there may currently be a unique opportunity for high net worth grandparents to make wealth transfers at lower transfer tax costs. However, some practitioners believe that any changes made by Congress to the federal estate and GST taxes will be retroactive (i.e., beginning January 1, 2010). As a result, such gifting should be attempted only with the advice of estate planning professionals.
- Have grantor retained annuity trusts (GRATs) been used or considered in the estate plan? In a separate bill passed by the House, but not yet enacted, the use of short-term GRATs would be prohibited.

With respect to non-tax issues, many state probate laws, as well as laws affecting trusts, living wills, and powers of attorney, have undergone substantial changes in the past few years. For example, most states have adopted new flexible definitions of income and principal of a trust that could affect the distributions to various trust beneficiaries. In addition, some states are considering legislation to provide courts with remedies to address the unintended consequences created by formula clauses as discussed above. It is important to review your estate plan in light of such developments to ensure that unintended results do not occur.

MAINTAINING ACCURATE PERSONAL DATA

In addition to reviewing and updating the estate plan itself, care must be taken to ensure that the addresses and phone numbers of all the individuals named in the plan (e.g., beneficiaries, executors, trustees) are current. It is a good idea to take an inventory of all estate planning documents and let family members know exactly where to find them. There should be a written list of the location of all important financial information, along with a list of the financial advisors to contact in the event of death. Any information that would affect tax reporting should be available to heirs. This is particularly important for the executor and the heirs to be prepared to handle the “carryover basis” rules in effect for 2010. The records reflecting initial acquisition costs plus any additional expenditures or depreciation incurred with respect to assets will be relevant. Having this information readily at hand will make settling the estate that much easier.

Conducting regular estate plan reviews can pinpoint personal, professional, and legislative changes that may have a significant impact on an estate plan. Annual reviews will ensure that loved ones will be taken care of and property distributed according to an estate owner’s wishes in spite of unforeseen circumstances (good or bad) that have occurred since the plan was first drafted. Procrastinating can be a costly mistake.

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