

Going ... going ... gone at the end of 2012?

BY SHELBY L. WILSON

The potential repeal of the federal estate, gift and generation-skipping tax has been a politically charged issue for decades. The regime underwent a significant overhaul with the passage of the Bush tax cuts in 2001. As a result, over the next nine years, tax rates for estates of individuals passing away after 2001 gradually decreased, while the level of assets that could pass free of estate and gift taxes – referred to as “exemptions” – gradually increased. The federal estate tax was temporarily repealed for a single year in 2010, a year now commonly associated with the deaths of such legendary billionaires as former New York Yankees owner George Steinbrenner and Houston-based energy and pipeline tycoon Dan Duncan.

The most recent significant change in the federal estate and gift tax occurred in December 2010, with the passage of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010. In a congressional move that came as a surprise to estate planners, the federal estate and generation-skipping tax was reinstated retroactively for deaths occurring in 2010. What came as a greater surprise was an increase in both the federal estate and lifetime gift tax exemptions to \$5 million and a reduced top marginal tax rate of 35 percent, down from 55 percent



in 2001.

Prior to the 2010 legislation, the exemption for lifetime gifts was limited to \$1 million. The increased exemptions permit each individual to transfer up to \$5 million in a combination of lifetime gifts or transfers at death without incurring a federal estate or gift tax; indexed for inflation, this amount is increased to \$5.12 million for transfers in 2012. Moreover, the marital and charitable exemptions are still available and permit each individual to make unlimited lifetime gifts or transfers at death to a spouse or charitable organization without incurring federal estate or gift tax. If certain requirements are met, married couples have the ability to split lifetime gifts, regardless of which spouse makes the gift.

With appropriate planning, spouses may pass combined assets of up to \$10 million to family members or other individuals without incurring a federal estate or gift tax. On top of the exemption, individuals may still make annual gifts of up to \$13,000 per person without cutting into their exemption.

While the estate and gift tax exemptions have increased significantly, the 2010 legislation is scheduled to expire for decedents passing away after Dec. 31, 2012, and for lifetime gifts made after that date. If Congress fails to act by the end of this year, the exemption will decrease to \$1 million for lifetime gifts made after Dec. 31 and for transfer from decedents passing away after this date.

It is possible that Congress will vote to extend the current legislation and the \$5 million exemption will be available for life-

time gifts in 2013 and future years. Many estate planners predict that Congress and the president will refrain from taking any action on the estate and gift tax regime until after the fall elections. Others predict that there will be an effort to reduce the exemption amount for 2013 and beyond. Few anticipate that the exemption amount will increase in the coming years, and perceive the \$5 million as a temporary measure that will fade away almost as quickly as it seemed to appear.

While the actions of Congress are unpredictable, in the wake of uncertainty, 2012 presents an opportunity for affluent individuals and couples to consider making significant lifetime gifts to children, grandchildren and more remote descendants. These gifts may be in the form of outright transfers to specific family members or other individuals or may be in the form of one or more irrevocable trusts that will benefit younger generation family members or other individuals over a period of time. However, it is important to point out that Connecticut has its own independent estate and gift tax statutes and it is essential to understand any resulting state tax liability that may be incurred in making significant gifts.

For individuals and couples planning to make significant gifts, there is a lot to consider and it is important to begin the process of putting a plan into action in the near future.

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