LEGAL UPDATES

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"Fiscal Cliff" Agreement Changes Gift and Estate Tax Law

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The last-minute "fiscal cliff" agreement enacted on January 2, 2013, contains important provisions that affect estate, gift and generation-skipping transfer taxes. Further changes could be ahead as Congress debates the debt-ceiling issue and the president releases the next federal budget.

Highlights of the transfer tax provisions of the new law – known as the American Taxpayer Relief Act of 2012 – are as follows:

Transfer tax exemptions. The 2012 exemptions for estate, gift and generation-skipping transfer taxes remain in effect and are indexed for inflation.

The 2013 exemption is $5,250,000, which is $130,000 more than the 2012 exemption.

Due to this annual indexing, you can expect to acquire additional amounts of estate, gift and generation skipping transfer tax exemptions each year.

For example, if inflation is annually 2.4 percent, the exemption would be approximately $6,340,000 in 10 years.

Gift tax exclusion. The annual gift tax exclusion is also indexed to inflation. This year, the annual gift tax exclusion is $14,000 per recipient ($28,000 per recipient for a married couple).

Transfer tax rates. The tax rates for estate, gift and generation-skipping transfer taxes are increased from 35 percent (under the 2012 law) to 40 percent.

Portability. The portability provisions (allowing spouses to combine their respective estate tax exemptions) remain and have been clarified to improve their effectiveness.

Other provisions. All other transfer tax provisions from the 2001 and 2010 tax acts will continue.

Effective period. Most important, these provisions are "permanent" as opposed to merely temporarily extended for several years.

The permanence of these changes is welcome and will allow us to give you more certain guidance relating to your future tax planning. However, further changes relating to transfer tax laws and planning techniques may result from the ongoing debate regarding how best to address our country's $16 trillion national debt.

For example, President Barack Obama's most recent budget proposal includes significant changes to transfer tax provisions that would:

Limit the duration of dynasty trusts to 90 years;

Eliminate or curtail the ability to use grantor trusts – i.e., intentionally defective irrevocable trusts (IDITs) – for estate planning;

Reduce the availability of valuation discounts in gift transfers; and

Require at least a 10-year term for grantor retained annuity trusts (GRATs).

What This Means to You

Each one of the president's proposals would take effect prospectively, not retroactively. For now, these techniques remain available for planning. We will continue to closely follow developments regarding any changes to the transfer tax law and will issue another update, including ideas for planning in 2013, shortly after the debt ceiling issue has been resolved in early spring.

Contact Info

If you have questions about this or any other Trusts & Estates matter, contact your Husch Blackwell attorney.

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