Business & Estate Advisers, Inc.

With Your Interest In Mind

CASE OF THE QUARTER

CASE # 15

HYPOTHETICAL ESTATE ISSUE DURING 2011 & 2012

GOAL

To take advantage of a temporary Estate Tax without making the decision to "pass away."

FACTS

Congress passed a late hour Estate Tax reform in the final days of 2010. Basically it allows families with up to $10,000,000 of assets to totally escape Federal Estate Tax issues if they pass away in the next two years.

SOLUTIONS

1. Be careful what you do, as this law expires on December 31, 2012, where at that time it reverts to the $1,000,000 per person allowance. No one knows what Congress will do at that time but the "winds that blow" in November of 2012 might tell the story. Not having a crystal ball, we have no idea which way the winds will blow.
2. But what is absolute…the most absolute thing about the temporary Estate Tax law is the temporary Gift Tax law is permanent, for those that take advantage of its provisions.
    a. Anyone can gift up to $5,000,000 of property with no Gift Tax payable.
    b. This might make more sense for substantial families to gift away highly appreciating assets, as something worth $5,000,000 today might be worth $50,000,000 tomorrow.
    c. Gifts made during this law are permanently outside the Gift and Estate Tax rules, but they do not escape the "giftee" owing Capital Gains Tax at the time they sell.
3. What if hyper-inflation takes place?
    a. Hyper-inflation, if it happens, could make everyone's estate worth more than $10,000,000.
    b. If hyper-inflation takes place, the true value of the $1,000,000 exemption (Bush law) may be no different than $5,000,000 under this law, so be careful.
4. Fancy wills no longer required. For the first time, the law is going to allow a deceased spouse to "gift from the grave" any unused portion of their $5,000,000 exemptions. Thus, a family with no planning could still provide $10,000,000 Estate Tax free, where as under the old law, fancy wills and trusts were required.
5. Estate Planning continues to need flexibility as so much can change in two years. If the Government keeps messing with the Estate Laws, the long term estate plan will be a thing of the past.
6. Finally, don't forget that states have not changed their rules. Both Minnesota and Wisconsin still have $1,000,000 exemptions. Their tax rates may not be as high as the Federal rate, but paying 10% of $10,000,000 is still a $1,000,000.

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