von Briesen
von Briesen & Roper, s.c. | Attorneys at Law

Wealth Management Update

Feb 20 2009

Posted By: Terri S. Boxer

Practice Area: Trusts and Estates & Estate Planning

The purpose of this *Update* is to bring you up-to-date on some recent developments in the tax law and estate and financial planning areas.

Federal Estate Tax
On January 1st of this year, the lifetime exemption from estate tax was increased to $3,500,000 per person. With some basic planning, this translates to a $7,000,000 exemption for a married couple. These figures are large enough to eliminate federal estate tax concerns for many clients. If so, and if you have a formula credit-shelter trust in your estate plan, you may wish to consider if that is still desirable.

Because under current law the estate tax will be eliminated on January 1, 2010, only to return on January 1, 2011 with an exemption of $1,000,000, we expect Congress to deal with this illogical situation later this year. Most commentators expect the $3.5/$7.0 million exemption to be made permanent.

Wisconsin Estate Tax
The Wisconsin estate tax expired on December 31, 2007. However, with the state budget deficit growing, it is possible that this tax will return. The Wisconsin estate tax previously had a much lower lifetime exemption ($675,000), so to some extent estate tax avoidance still could be a planning goal. But note that the rate of Wisconsin estate tax was far less than the current federal estate tax rate of 45%.

Federal Gift Tax
The annual gift tax exclusion for each donor is now $13,000 per donee. The lifetime gift tax exemption remains $1,000,000. There are other types of gifts (besides the annual exclusion) that will not apply against the lifetime exemption, primarily certain tuition payments and medical expenses.

There is no Wisconsin tax on gifts.

Gift of Depressed Stock
If your investment portfolio contains depressed stock (and whose doesn't?), consider making a gift of those shares to family members. You will be gifting an asset that hopefully will appreciate in value when the economy improves. However, in the event of death, your heirs will not receive a step-up in basis.

If your desire is to make a gift of depressed stock to a charity and the value of the stock is less than your cost basis, you're better off selling the stock, recognizing the capital loss, and gifting the cash proceeds to the charity.

Interest Rates
With interest rates dropping to lows not seen for many years, there may be planning opportunities that provide particularly good estate and/or income tax advantages, especially in conjunction with gifts in trust to charity. At this writing, charitable lead trusts, in which a charity receives the income from the trust property for a fixed period of time and the trust remainder goes to the donor's chosen beneficiaries, have become especially popular.

IRA Distributions
An owner of an IRA who is over age 70 ½, or a participant in a qualified retirement plan who is over age 70 ½ and retired, must take a Required Minimum Distribution each year. This also may be true for a beneficiary of the foregoing. Due to recent legislation, however, there will be no distribution requirement with respect to calendar year 2009. Deferring income tax may be helpful for taxpayers who do not need to take a distribution. As with any act of Congress, there are details that should be checked depending upon the individual situation.

Conversion to Roth IRA
For many years, if an IRA owner met income limitations (usually $100,000), a traditional IRA could be converted directly to a Roth IRA. The conversion itself is taxable, but thereafter all withdrawals from the Roth IRA will be tax free. Beginning in 2008, distributions from many types of qualified retirement plan also can be converted directly into a Roth IRA. And starting in 2010, the income limitations are scheduled to be removed. For conversions completed in 2010 (and that year only), a taxpayer will recognize the converted amount as income ratably in 2011 and 2012 unless the taxpayer elects to recognize it all in 2010.

Please keep in mind that if the Roth IRA assets decrease in value after the conversion, the conversion itself may be "recharacterized" within certain time limits in the year following the year of conversion. Recharacterization allows the IRA owner to reverse the transfer and treat the conversion as if it never occurred. Thus the tax on the original conversion in retrospect would not apply.

Estate Planning
There are important reasons to keep your estate plan current. We generally recommend that your estate plan be reviewed when there is a substantial change in your family or financial circumstances. In addition, changes in the law can call for modifications to the disposition of your property. In these circumstances, we also recommend review of your retirement plan beneficiaries and life insurance beneficiaries.

FDIC
FDIC-covered accounts are now insured up to $250,000. The insurance limit reverts to $100,000 for solely-owned accounts on December 31, 2009. There may be additional insurance if the account is titled in a Revocable Trust. There are rules that apply in specific instances.

Arizona Trust Code
Our new Trust Code became effective on January 1. Most of the changes pertain to trusts signed after January 1. However, there are exceptions. For example, if you become legally incapacitated, the backup trustee has a statutory obligation to provide information about your Trust to your beneficiaries, which you may not want. A trust can be amended to work around this.

Arizona Gift and Estate Taxes
There are no Arizona taxes on gifts or estates.
