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By Leonard D. DuBoff

When an individual dies, the value of that person’s estate must be determined and if it exceeds a certain amount, it may be subject to a very steep tax. Congress provided every estate with a form of “safe harbor,” that is, there is a specified amount which is exempt from estate taxation.

In 2001, legislation was passed to gradually increase the size of the estate tax exemption to $3.5 million this year, and to repeal the estate tax for 2010. That legislation also provides that the estate tax will return in 2011 with an exemption of only $1 million.

While most commentators believe that the current federal exemption of $3.5 million will be extended, there are numerous proposals being considered and, until legislation is actually enacted, there is no certainty. There are, however, some steps you can take to reduce potential estate tax liability regardless of the version of the law passed.

If your taxable estate is likely to exceed $1 million, you may want to consider making gifts of your property now. Each person currently has an annual gift tax exclusion of $13,000 per recipient per year. That is, you could, for example, gift $13,000 to each of your 4 children every year without owing gift tax (for a total of $52,000) and if your spouse joins in the gift, then you could give $26,000 (for a total of $104,000). If those children all have spouses or domestic partners, you also have 8 grandchildren and your spouse joins in the gift, you would be able to remove $416,000 from your estate this year, with no tax liability.

You may also be able to gift ownership interests in the family business. If that business is growing, the value of the interests will increase over time, but the tax exemption is based on the value of the interest at the time of gifting. That is, if today, while the economy is down and values likely low, you give each of your 4 children a 10% interest in your business, valued at $13,000 each (for a total of $52,000), no tax is owed, even if when you die, the economy is booming and
those 10% interests are then each worth $500,000 (for a total of $2 million).

Note that if you are gifting anything other than cash or other item with an indisputable value, you should see your tax advisor first, in order to be sure that you can obtain the full exclusion, while reducing the risk of a challenge to the value by the IRS.

Traditional married couples can double the estate tax exemption by holding title to assets correctly and by using appropriate tax planning devices in their wills and/or trusts. In many states, same sex married couples and registered domestic partners can take advantage of comparable state estate tax benefits, though they are not able to do so with respect to federal estate taxes.

Another way to save taxes is to have a specific type of trust for your insurance policies in order to keep the life insurance proceeds from being included in your gross estate, or to have the recipient own the policy on your life.

There are a host of estate tax planning devices which may be available for you to reduce or eliminate estate tax. You should consult with your lawyer and accountant in order to determine your best course of action.

Please feel free to contact us if you have any questions about the above, or need assistance with your estate planning.

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