

CHANGES TO FEDERAL ESTATE AND GIFT TAX LAWS EXPAND PLANNING OPPORTUNITIES

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The final weeks of December 2010 brought about a flurry of tax-related activity in Congress, as the December 31st deadline for the “Bush tax cuts” loomed over a nervous economy. While most of the expiring tax provisions were temporarily extended through the end of 2012 without any changes, the Tax Relief Act of 2010 made significant changes to the federal estate and gift tax laws, changes which provide new planning opportunities and should benefit most individuals.

INCREASED ESTATE TAX EXEMPTION & LOWER TAX RATE

Most beneficial in the new tax act is an increase in the exemption from federal estate taxes of \$5 million per person, for anyone dying in 2011 or 2012. Without enactment of this legislation, the exemption was scheduled to become \$1 million per person for anyone dying after January 1, 2011. In prior years the exemption went as high as \$3.5 million, so an increase of more than 40% in the exemption is significant.

In practical terms, a \$5 million per person exemption should allow a husband and wife with an effective estate plan to pass assets totaling up to \$10 million to their children or other donees without incurring any liability for federal estate tax. For an estate with assets in excess of the exemption, a further positive development is a lower federal estate tax rate. If total assets passing to non-spousal beneficiaries exceed the \$5 million exemption, the estate is taxed at a rate of 35% on the excess over \$5 million. Previously, the maximum rate was scheduled to be 55% for 2011, and was 45% in 2009.

Keep in mind that New York State imposes its own estate tax on New York residents, with an exemption of \$1 million per person and tax rates ranging from 4% to 16%. For this reason, those with estates of less than \$5 million still need to engage in proper estate planning.

FAVORABLE CHANGES TO GIFT TAX PROVISIONS

Also modified in the new tax act is the federal gift tax regime, which now provides significant incentives for taxpayers to make gifts of assets during their lifetimes. For 2011 and 2012, each person has a lifetime exclusion from taxation on gifts of \$5 million, over and above the annual exclusion of \$13,000 per person, and unlimited exclusions for gifts made to spouses and qualified charities. In prior years, each person could make gifts during their lifetime up to \$1 million before incurring gift tax at a rate of up to 55%.

Why should someone consider making large gifts during his or her lifetime? Consider the owner of a family business who would like to give equity ownership in the business to a child working in the business as a reward for hard work. Making the ownership gift now allows the business owner to remove part of the business’ value from the owner’s estate at death, together with any appreciation in the business’ value after the date of the gift. If the gift is of a non-controlling interest in the business, it may be possible to reduce the gift’s value by application of various discounts, including discounts for minority interest or lack of marketability.

Alternatively, an elderly person may wish to protect assets from the possibility of long-term care expenses by giving away assets to children. With a lifetime exemption of \$5 million, most individuals interested in asset protection planning should be able to give away all or significantly all of their assets without any gift tax consequences.

PORTABILITY

A new concept included in the Tax Relief Act of 2010 is “portability”, or the ability of a surviving spouse to add the balance of the deceased spouse’s unused federal estate and gift tax exemptions to his or her own exemptions. The portability election can be made by the deceased spouse’s executor on a timely filed federal estate tax return. Traditionally, any unused exemption at death was lost permanently, potentially resulting in payment of unnecessary estate tax and a lost planning opportunity. With portability, it may be possible to minimize some of the harm done by failing to properly plan.

For example, if a husband dies in 2011 or 2012 having used only \$2 million of his \$5 million exemption, the surviving spouse can then add his unused exemption of \$3 million to her own \$5 million

LACY KATZEN REPRESENTS PATIENTS INJURED BY HEALTHCARE NEGLIGENCE

Medical malpractice cases are the most difficult claims to win at trial with court statistics showing a large percentage of cases resulting in a verdict for the defendant. Lacy Katzen LLP has been successfully representing victims of medical negligence for decades with a commitment to excellence in the preparation of each case and an understanding of the profound harm caused to a patient by medical negligence and error.

Medical malpractice can be described as a negligent act or failure to act by a healthcare professional. In order to succeed, the patient must prove that the doctor or other health provider did not follow the medical standard of care.

Working with experienced physicians, nurses, emergency medical providers, economists and life care planners, the lawyers at Lacy Katzen LLP determine how the medical standard of care has been violated and the extent of the harm to the patient. Potential cases are carefully analyzed by medical professionals and only meritorious cases are accepted. Some examples of medical liability cases successfully handled by the lawyers at Lacy Katzen LLP include:

- Failure to maintain a proper airway in a trauma patient resulting in an esophageal intubation and anoxic brain injury;
- Failure to properly manage the presentation of shoulder dystocia during labor resulting in Erb's Palsy;
- Failure to recognize fetal distress prior to birth resulting in severe neurologic injury to the baby including cerebral palsy;
- Failure to perform a lumbar puncture to diagnose meningitis in an immunocompromised patient presenting to the emergency room with fever, severe headache and altered mental status;
- Third degree burns suffered during hospitalization;
- Failure to diagnose the symptoms of a heart attack upon presentation to an emergency room resulting in death;
- Failure to diagnose cancers resulting in significant delay in treatment and the opportunity for cure or improved quality and span of life;
- Failure to provide a proper post surgical plan in a patient with a history of sleep apnea;
- Failure to diagnose a life threatening infectious process in patients immunocompromised as a result of rheumatoid arthritis and the use of remicade and methotrexate;
- Surgical errors including enterotomy of the small bowel and injury to bile and pancreatic ducts during laparoscopic cholecystectomy;
- Surgical errors including neurologic damage occurring during orthopedic surgery;
- Failure to properly treat orthopaedic injury and to accurately interpret post surgical x-rays demonstrating non-alignment or non-union of joints;
- Failure to diagnose cerebral hemorrhage in an emergency room setting;
- Failure to treat severe hypertension in a patient presenting to an emergency room resulting in a stroke or cerebral bleed;
- Failure to maintain appropriate cuff pressure in an intubated patient resulting in tracheal necrosis;
- Failure to promptly treat post neurological surgical bleeding as evidenced by high blood pressure and numbness in the extremities resulting in the loss of motor function;
- Improper placement of a PEG tube through the stomach wall and into the peritoneal cavity;

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Lacy Katzen announces new Associate

Lacy Katzen LLP is proud to welcome John M. Wells as an Associate to the firm. Mr. Wells practices in the areas of Commercial Litigation and Civil Litigation. He has represented clients in medical malpractice claims, personal injury claims, social security disability and workers' compensation claims. He is admitted to practice in New York State and is a member of New York State Bar Association, Monroe County Bar Association and Cattaraugus County Bar Association. Mr. Wells graduated Cum Laude from the State University of New York at Buffalo Law School where he received his Juris Doctorate degree. He also attended St. Bonaventure University where he received his undergraduate degree.

Mr. Wells has served as a guest instructor for St. Bonaventure University's mock trial team and as a guest lecturer at Olean Business Institute. Mr. Wells also served as a trustee for the Village of Cuba, New York.

NEWS WITH THE FIRM

Lisa Arrington was the guest speaker at two recently sold out elder law seminars sponsored by the Commonwealth Financial Group, also locally known as "The Money Doctors". Hosted by Chuck LaRocco of Commonwealth Financial Group, the "Dispel the Myth of Medicaid" seminars were attended by more than 200 people and focused on medicaid planning and asset protection. Lisa has also appeared on "The Money Doctors" popular Sunday morning radio talk show on radio station 1180 WHAM.

John Reformat recently lectured at a continuing legal education seminar for the Monroe County Bar Association, entitled "Nuts and Bolts of an Article 7 Proceeding, Challenging a Tax Assessment". Dan Bryson, Chairman of the Bar Association's Municipal Law Group chaired the panel discussion.

As part of the firm's commitment to give back to the community, Lacy Katzen recently collected food and cash donations for two local organizations to assist in the fight against hunger. The firm delivered more than 30 bags of

groceries to the Rochester Family Mission plus a check totaling \$896 to the Rochester Foodlink Chapter. The donations were the result of volunteer efforts of attorney Jennifer Chadwick and staff including Marianne Bailey and Kerry Vargulick.

Matthew Ryen has been honored with the 2011 JCC's Young Leadership Award, "who has exhibited personal commitment, strong leadership qualities, and dedicated involvement in the Jewish Community Center of Greater Rochester and its programs". Matthew Ryen has recently become a Trustee of the Max Adler charitable foundation.

Mark Stein has been appointed to the Board of Directors for the Commercial Lawyers Conference, Inc. This organization is part of the New York Creditor's Bar Association founded in 1964. The Board is active in its involvement of creditor rights' issues and the pursuit of interests of collection attorneys practicing within the state. The organization is based on Long Island.

LACY KATZEN REPRESENTS PATIENTS INJURED BY HEALTHCARE NEGLIGENCE

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- Failure to administer potassium to a patient who presents to the emergency room with vomiting, diarrhea and low potassium levels resulting in cardiac arrest.
- Failure to properly treat herpes simplex, virus keratitis, trabeculitis and uveitis;
- Failure to protect the patient's arm from neurological injury during rotator cuff surgery;
- Failure to diagnose endocarditis resulting in severe heart damage.

Attorney Peter Rodgers is listed in "Best Lawyers in America" and "New York Super Lawyers" in Medical Malpractice.

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exemption, giving her a total of \$8 million that she can pass free of federal estate tax to children at her death if she were to pass away in 2011 or 2012.

Portability is a positive development for estate tax planning but is no substitute for an effective estate plan. First, it may be advantageous to utilize the full exemption amount at the first spouse's death in order to remove appreciation in the assets from the surviving spouse's estate. Second, as currently contemplated, portability is limited only to 2011 and 2012 unless Congress changes the law again. Absent further action, starting in 2013 portability expires and the surviving spouse loses any exemptions carried over from his or her deceased spouse.

CONCLUSION

The temporary nature of these estate tax changes make it likely that further changes will occur before the end of 2012. Although a permanent solution to the federal estate and gift tax is preferable for taxpayers and estate planners alike, much of what happens will depend on the state of the U.S. economy and federal government's finances at the time Congress chooses to address the expiring provisions. While not a large tax in terms of the amount of revenue raised, the estate tax has shown itself to be a hot-button issue resulting in heated debate and rhetoric from both the left and right, making consensus difficult.

The challenges involved when dealing with planning for federal and state estate taxes can be overwhelming and complex. Significant opportunities for minimizing or avoiding estate tax may be lost or overlooked. If you wish to learn more about estate planning, both Tim Muck, at 324-5727 and Karen Schaefer, at 324-5718, of our Trusts and Estates Department are available to discuss your estate planning needs.

Legal Notes

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Legal Notes

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