

IT'S BEGINNING TO LOOK A LOT LIKE... \$5 MILLION EXEMPTION & MAXIMUM RATE OF 35%

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With the holiday break just around the corner for Congress, the Administration and our Congressional leaders have reached a compromise on several issues, one of which creates a \$5 million dollar estate tax exemption per individual (\$10 million dollar exemption per couple) and a maximum estate tax rate of 35% above the \$5 million dollar exemption +for the next two years+. We have been waiting for Congress to create permanent estate tax reform during the past year, and although this proposed legislation has not yet become law, it appears that this compromise will create a holiday gift for large estates for the next two years, even though it fails to permanently address estate tax reform.

If Congress fails to pass this compromise legislation by the end of the year, current law provides that on January 1, 2011, Americans will only be able to leave their beneficiaries \$1 million dollars estate tax free - limits that haven't been so low since 2003. Yesterday, the Obama Administration and leaders of both houses of Congress reached a compromise that will increase the \$1 million dollar estate tax exemption to \$5 million dollars, and reduce the 55% maximum estate tax rate to 35% of that portion of estates exceeding the \$5 million dollar exemption. If this compromise passes and becomes law, these new limits will be in effect through 2013.

Even if Congress does pass the compromise legislation, it is still unknown what the estate tax laws will be after 2013. Don't be complacent and believe that your short-term estate planning goals will be met with the increased exemption level and reduced estate tax rates, because if changes do not become permanent after 2013, you may be in the same position as you are today. In analyzing your long-term estate planning goals, evaluate whether it is beneficial to utilize gifting options this year to avoid a problem two years from now. The options addressed below should be considered **TODAY** if Congress adopts an estate tax law compromise that will expire in **2013**.

These gifting opportunities may save your estate significant dollars and end up with a larger portion of your estate passing to your beneficiaries, regardless of the compromise legislation:

Complete annual exclusion gifts of \$13,000 (\$26,000 for a married couple) by the end of the year!

For anyone who has the ability to make up to a \$13,000 gift per individual without significantly compromising his standard of living, do so! Gifts up to \$13,000 per individual per year can be made without any income, gift, or estate tax consequences. If you can't afford such a gift this year without significant adverse consequences to your standard of living, consider a smaller gift rather than no gift at all. The benefit of such gifting is that the gift will be out of your estate and will avoid estate taxes on that money. Rather than having this amount grow with time in your estate (and subjecting the increased asset to be taxed at either a 55% or 35% rate), the person receiving the gift will experience the growth instead.

Consider gifting up to \$1 million (\$2 million for a married couple) before the end of the year!

Each person can gift during his or her lifetime up to \$1 million dollars without any gift tax consequence. If, before the end of the year (in addition to a \$13,000 gift discussed above) you can afford to gift additional assets up to \$1 million dollars, you should strongly consider doing so, as this gifted portion will appreciate in someone else's estate, not yours. You will not be experiencing any estate tax consequence under the present law or the compromise legislation.

Benefit from the Absence of GST Tax!

In 2010, the Generation Skipping Transfer ("GST") Tax was repealed. This results in the ability to gift to a grandchild before the end of this year without any GST tax, and your gift will only be subject to a 35% federal gift tax limit. You should discuss with an attorney the ages of the grandchildren to fully understand the advantages and disadvantages of this option and how gifts to trusts or transfers to minors' accounts can avoid GST tax in later years.

Conclusion

You still have time this month to see if the compromise estate tax legislation will become law. But don't assume that these laws will solve your long-term estate planning goals. This short two-year "fix" by Congress might result in a nightmare for your estate planning goals in 2013. As a result, consider before the end of the year the estate planning suggestions noted above, as well as other opportunities such as Qualified Personal Residence Trusts or Qualified Terminable Interest Property Trusts that may help to achieve your goals. You are encouraged to contact our firm to discuss your unique estate plan and, if necessary, revise it before the end of the year.