The Tax Man Giveth...

– Gift Tax Exclusions Present –

ESTATE PLANNING OPPORTUNITIES

On December 17, 2010, President Barack Obama signed the "Tax Relief Unemployment Insurance Reauthorization and Job Creation Act of 2010" (the Act). The Act creates significant planning opportunities for individuals who are interested in transferring wealth and avoiding taxes through strategic lifetime giving. Because the provisions of the Act are scheduled to "sunset" after December 31, 2012, those who wish to take the fullest advantage of its generous provisions should act promptly.

The use of lifetime gifting has long been a mainstay of passing wealth to future generations in the most tax efficient manner possible. Individuals may make annual gifts of $13,000 per recipient without gift tax consequences. In addition, tax free gifts may be made through use of the lifetime exclusion. The gift tax exclusion was increased to $5,000,000 through December 31, 2012, but is scheduled to sunset back to $1,000,000 in 2013. For a married couple, the combined gift tax exclusion is $10,000,000 through December 31, 2012.

Gifting through use of the lifetime exclusion typically is much more effective than using the estate tax for several reasons. Strategic lifetime gifts will frequently take advantage of recognized discounting techniques, which often employ the use of special trusts or business designs which will result in the donor conveying less than full control or assets with a limited marketability. The result is that the size of the gift may be legally reported to the IRS at a reduced value, thus expanding the tax efficiency of the transfer.

As gifted assets grow in value over time, that growth will be outside the donor's taxable estate, further expanding the amount of wealth that will pass between generations tax free. In today's economy, where business and real estate assets have a depressed value, the potential for future growth creates an ideal environment for those prepared to make strategic lifetime gifts.

An important consideration for Michigan residents is maximizing the use of the generation-skipping tax exemption (GST) which was also increased to $5,000,000 ($10,000,000 for a couple) through December 31, 2012. For most assets, Michigan has eliminated the "Rule against Perpetuities" – a law that required trusts to end after a finite period of time. Therefore, trusts may now be established in Michigan which will pass from children to grandchildren and beyond to their future children indefinitely without the imposition of the estate tax. These trusts, often referred to as "Dynasty Trusts," can be designed to protect against the creditors and predators of the heirs.

Dynasty Trusts were recently addressed in President Obama's 2012 budget proposal, which would limit the duration of Dynasty Trusts to 90 years. The longer these trusts continue the more tax efficient they become. Gifts made through the use of Dynasty Trusts in advance of any law change would be, as currently proposed, grandfathered in. Therefore, those seeking to take full advantage of inter-generational lifetime gifting should implement strategic gift planning now.

Please give our office a call to schedule a session with an estate planning attorney to make sure that your objectives and planning goals are accomplished.

Personal Services
Thomas J. Mohan 248.267.3298