HOT TOPICS IN ESTATE PLANNING LAW

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Transfer Taxes

• Estate Tax
• Gift Tax
• Generation Skipping Transfer Tax
• Higher exemptions and lower rates through 2012
• This presentation will not address changes in income tax law
Transfer Tax Highlights
2010 Tax Relief Act

• 2010
  – $5.0 million exemption for estate tax purposes with 35% tax rate*+
  – $5.0 million exemption for GST purposes with 0% tax rate
  – $1.0 million exemption for gift tax purposes with 35% tax rate
*Executor can opt out of estate tax by electing carryover basis for income tax purposes
+Does not include North Carolina Estate Tax
Estate, Gift and Generation Skipping Transfer Tax Highlights

• 2011 and 2012
  – $5.0 million exemption for estate tax purposes with 35% tax rate*+
  – $5.0 million exemption for GST purposes with 35% tax rate*
  – $5.0 million exemption for gift tax purposes with 35% tax rate*

*All exemptions adjusted for inflation beginning in 2012 (from 2010)
+Does not include North Carolina Estate Tax
Estate, Gift and Generation Skipping Transfer Tax Highlights

- 2013 (if new legislation is not passed)
  - $1.0 million exemption for estate tax purposes with highest tax rate of 55%+
  - $1.0 million exemption for GST purposes with highest tax rate of 55%*
  - $1.0 million exemption for gift tax purposes with highest tax rate of 55%

*GST exemption adjusted for inflation from 1997
+Does not include North Carolina Estate Tax
Tax Election for 2010 Estates

• Default is estate tax regime with $5.0 million exemption
• Executor can opt out of estate tax for carryover basis by filing Form 8939 due on or before January 17, 2012
• $1.3 million basis increase in discretion of Executor
• Additional $3.0 million basis step up for assets passing to spouse or to a QTIP Trust for spouse’s benefit
PORTABILITY

• Executor can elect to use unused estate tax exemption of last deceased spouse without need for a Credit Shelter Trust by filing a Federal Estate Tax Return and checking the portability box
• 2011 and 2012 only
• Does not apply to unused gift or GST exemption
Portability

• Will portability eliminate the need to use Credit Shelter Trusts to make use of deceased spouse’s estate tax exemption?
• What if the surviving spouse remarries?
• What if surviving spouse passes away when the law no longer allows for portability?
DRAFTING CONSIDERATIONS

• Credit Shelter Trusts vs. Portability for those with taxable estates?
• Use of flexible planning techniques such as disclaimer trusts due to uncertainty as to whether estate will be taxable
• Review formula provisions in existing documents
USE OF LIFETIME GIFT TAX EXEMPTION

– Increased federal gift tax exemption of $5.0 million for 2011 & 2012
– Annual Exclusion still $13,000
– No North Carolina gift tax
– Possible reduction of estate, gift and GST tax exemptions in 2013
USE OF LIFETIME GIFT TAX EXEMPTION

– Potential Clawback of gifts in excess of applicable estate tax exemption at death?
– Carryover basis vs. stepped up basis
– Reduced Asset Values
– Low Interest Rates
ATTRACTIVE GIFT TECHNIQUES

The following advanced techniques may be effective because of the current low interest rate environment:

– Grantor Retained Annuity Trust (GRAT)
– Charitable Lead Annuity Trust (CLAT)
– Qualified Personal Residence Trust (QPRT)
– Low Interest Family Loans
ASSET PROTECTION

- Tenants by the Entirety Real Estate
- Life Insurance
- Retirement Plans (QualifiedPlans and IRAs)
- LLCs/FLPs
- Spendthrift Trusts for children/beneficiaries
- Self Settled Asset Protection Trusts in some states and off shore
Charitable Planning

• Lifetime vs. testamentary transfers
  – 5 year carry forward for unused income tax deduction
  – Unlimited charitable deduction for estate and gift tax purposes
• Private foundations vs. community foundations & other public charities
• Charitable Remainder Trusts
• Charitable Lead Trust
• Charitable Gift Annuities
• IRA Charitable Rollover
Durable Powers of Attorney and Health Care Directives

• Review existing Durable Powers of Attorney and Health Care Powers of Attorney

• New statutory Health Care Powers of Attorney and Living Wills since 2007
Conclusion

• Review your existing plans in light of these recent changes in laws that may have an impact on your estate plan.

• Seek counsel from a qualified estate planning attorney