ESTATE PLANNING IN 2009 AND BEYOND

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TIMELY ISSUES

- ROTH IRAs
- CHARITABLE ROLLOVER FROM IRA
- INCREASED ANNUAL GIFT TAX EXCLUSIONS
- REPEAL OF NORTH CAROLINA GIFT TAX
- ESTATE TAXES
- LOOKING AHEAD
- BASIC ESTATE PLANNING

ROTH IRA

- No required distributions during lifetime.
- Can make contributions after age 70 ½.
- Tax-Free distributions to you and your beneficiaries.
- Ability to set up a Roth IRA or convert from a Traditional IRA depends on level of Adjusted Gross Income.

ROTH IRA (Continued)

- Maximum amount you can contribute to a Roth IRA is reduced by amounts contributed to a Traditional IRA.
- Contributions to 401(k) plans or 403(b) plans do not reduce the amount you can contribute to a Roth IRA.

CONVERSION TO ROTH IRA IN 2010

- Can convert from a Traditional IRA to a Roth IRA regardless of AGI and Taxpayer Filing Status.
- For example, a taxpayer with AGI over $100,000 can convert even if he or she is married and files a separate tax return.

CHARITABLE IRA ROLLOVERS

- Allows for “Qualified Charitable Distributions” from an IRA.
- Applies to Traditional IRAs and Roth IRAs.
- Donor must be age 70 ½ or older at the time the gift is made.
- Transfer must go directly from the IRA to charity.

CHARITABLE IRA ROLLOVER

- The charitable contribution cannot exceed $100,000 per taxpayer per year.
- Must be outright gift/Donor receives no benefit (No CRTs or Gift Annuities).
- Gift must occur in 2009 or 2010 unless extended further.
- No charitable deduction allowed.

CHARITABLE IRA ROLLOVERS

- Amount distributed to charity deemed to come first from taxable portion of IRA (deductible contributions and earnings) before non-taxable portion (non-deductible contributions).
- Charitable Transfers count towards Donor’s Required Minimum Distribution.

INCREASED ANNUAL GIFT TAX EXCLUSION

- Now $13,000 per recipient per year.
- No gift tax on education or medical expenses paid directly to provider.
- For gifts in excess of those discussed above, there is a Federal gift tax exemption of $1,000,000.
- As before, no gift tax on gifts to spouses or charities.

GIFTS (Continued)

- Gifts may take the form of cash or property.
- Any gift taxes incurred will be paid by Donor.
- Gifts are not taxable as income to recipient although Donee receives carry over cost basis in asset received.
- Good time to make Gifts?

ELIMINATION OF NORTH CAROLINA GIFT TAX

- Abolished as of January 1, 2009
- NC gift tax had lifetime exemption for gifts in excess of the annual exclusion, and gifts not made for health/education, of only $100,000.
- $100,000 NC exemption applied only to gifts to Class A beneficiaries.

Estate Taxes

- 2009: Exemption Amount is $3.5 million.
- 2010: One Year Repeal currently scheduled with carry over cost basis for inherited assets.
- 2011: Sunset year when exemption is scheduled to return to 2002 level of $1.0 million.

What Is Your Estate?

- Everything you own or control.
- Life Insurance transferred within 3 years of death.
- Gift taxes paid within 3 years of death.

How Do You Minimize Estate Taxes?

- Married couples can use Trusts to use both exemptions.
- Trusts can be set up for automatic funding or disclaimer funding.
- Leave Assets to Charity.
- Make gifts to reduce the size of your estate.

LOOKING AHEAD

- New Federal Estate Tax Legislation expected by ________?
- Not clear whether new law will be passed or what rates and exemptions will be after 2010.
- Possible Portability of exemption between spouses?

LOOKING AHEAD (cont.)

- Possible targeting of certain techniques to raise revenue for health care reform or other projects.
- Possible change in rules relating to GRATs. Minimum 10 year term.
- Possible new rules relating to valuation discounts, especially in the context of transfers of interests in family entities such as a Family Limited Partnerships or LLCs.

Estate Planning Basics

- Planning For Incapacity
- Planning For Death

Planning for Incapacity

- General Power of Attorney
- Health Care Power of Attorney
- Living Will

Planning For Death

- Property passing by right of survivorship
- Property passing by beneficiary designation
- Property passing through Probate (Will or no Will)
- Property passing through a Trust

Property Passing by Right of Survivorship

- Any bank or brokerage accounts designated JTWROS.
- Real estate owned by Husband and Wife as Tenants by the Entirety, or by non-married persons as Joint Tenants with Rights of Survivorship.
- Not property owned as Tenants in Common.

Property Passing by Beneficiary Designation

- IRAs
- 401(k)
- 403(b)
- Annuities
- Life Insurance
- Some Bank and Brokerage Accounts (TOD or POD)

Probate

- Court supervised process of administering an estate.
- Public Process
- Executor/Administrator required to gather assets, notify and satisfy creditors and distribute remaining assets to beneficiaries.
- Will does not avoid probate.

Probate Assets

- Assets that do not pass by right of survivorship, beneficiary designation or through a trust.
- Whether probate is required depends on how assets are owned or how beneficiaries have been designated.

Trusts

- Trusts can be used to avoid probate
- Trusts can be used to minimize estate taxes (but so can a Will).
- Trusts can be used to control distributions to a beneficiary to ensure property is used in a productive manner.

RECOMMENDATIONS

- Meet with Attorney every 5 years to review existing Wills, Trusts, Powers of Attorneys and Health Care Directives as well as current laws.
- Also, review after change in life circumstances such as a move to a new state.
- Re-evaluate objectives.