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COUNSELORS AT LAW

Newsletter

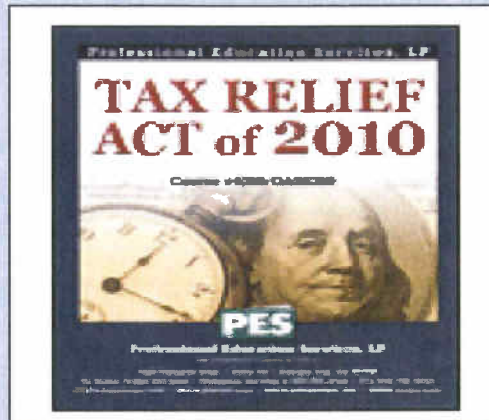
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Mattioni, Ltd.
399 Market Street
Suite 200
Philadelphia, PA 19106
(215)-629-1600
firmmail@Mattioni.com
www.mattioni.com

Estate Planning to Avoid Estate Tax

By Jennifer Iacono, Esq.



With the recent enactment of the Tax Relief Act of 2010, now is a crucial time to review current estate plans. There are many estate planning techniques that can be utilized to avoid federal estate tax or minimize the estate tax that will be owed. This article will address some of the most common techniques used.

Lifetime Gifts

Individuals can reduce the size of their estates by taking advantage of the annual \$13,000.00 gift tax exclusion. By making annual gifts to donees up to \$13,000.00 per donee, a person can significantly reduce the size of their estate with no gift tax implications. Lifetime gifts decrease the person's estate and could help bring their estate under the \$5 million estate tax exclusion amount.

Credit Shelter Trusts

A credit shelter trust is a common technique used by married couples to avoid estate tax. Credit shelter trust provisions can be included in a will or revocable living trust. Upon the death of the first spouse,

continued on page 2...

Inside this issue:

Estate Planning to Avoid Estate Tax

1

A Look at the New Federal Estate and Gift Tax

1

Paid Sick Leave for Philadelphia Workers – What Does it Mean?

6

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A Look at the New Federal Estate and Gift Tax

By Jennifer Iacono, Esq.

The Tax Relief Act of 2010 makes substantial changes to federal estate and gift tax laws. However, the Act is only applicable for the next two years as it will sunset in December 2012. This Article describes some of the key provisions of the Act.

Estate Tax

Starting January 1, 2011, the applicable exclusion for estate tax is \$5 million. This means that a person may pass up to \$5 million to beneficiaries

continued on page 4...

Estate Planning to Avoid Tax

continued from page 1

an amount equal to the estate tax exclusion is given to the trust, free of estate tax, for the beneficiaries named, often the couple's children. The surviving spouse will receive income from the trust during his or her lifetime, and may be able to receive principal in certain circumstances. Upon the death of the surviving spouse, the assets of the trust are transferred to the beneficiaries without incurring any estate tax.

A credit shelter trust helps avoid a situation where the surviving spouse incurs significant estate tax upon their death because they have a large estate based on their own wealth and that they gained from their spouse's death. The trust allows the surviving spouse to still have the benefit and use of their deceased spouse's assets during their lifetime, but not have to incur estate tax because of it on their death.

The new concept of portability, introduced by the 2010 Tax Relief Act, helps avoid the need for a credit shelter trust. Portability allows surviving spouses to utilize unused portions of the lifetime \$5 million estate tax exclusion of their predeceased spouse. However, credit shelter trusts still offer additional benefits, such as ensuring proceeds will pass to the couple's children upon the survivor's death and protecting the assets from creditors of the surviving spouse.

Irrevocable Life Insurance Trusts

The proceeds of a life insurance policy are considered part of a person's estate for federal estate tax purposes. To avoid this result, an irrevocable life insurance trust may be established. Once this trust is set up, ownership of the policy is transferred to the trustee. Because ownership of the trust is transferred, it will no longer be considered part of your estate. The trust should also be designated as the beneficiary of the life insurance policy.

continued on page 3...

Estate Planning to Avoid Estate Tax

continued from page 2

Upon death, the insurance proceeds will be given to the trust for the benefit of the named beneficiaries. The named beneficiaries are often the decedent's spouse for his/her lifetime, with the balance passing to the couple's children upon the surviving spouse's death. This method will also keep the proceeds out of the surviving spouse's estate, allowing them to pass to the children free of estate tax.

These are just a few techniques that can be useful for the avoidance of estate tax. What techniques are appropriate will vary for every individual. In light of the new estate and gift tax laws, it is important to review your current estate plans with a professional to make sure you are taking advantage of the best techniques to assure you can pass the maximum amount to your heirs and beneficiaries with the least amount of estate and gift tax implications.

This article provides some basic information regarding some common estate planning techniques. Any one who is contemplating estate planning should meet with an attorney as this article highlights only some estate planning issues. Every individual has their own special circumstances, and this article does not address specific circumstances.





A Look at the New Federal Estate and Gift Tax

continued from page 1

without incurring any federal estate tax. If a person's estate exceeds the exclusion, the applicable tax rate is 35 percent.

The Act reinstates the concept of stepped-up basis for capital gains purposes, with a capital gains tax rate of 15 percent. Stepped-up basis means the basis of estate assets will be the lower of cost or fair market value at the time of the decedent's death.

In 2010, modified carryover basis applied, which required valuing assets based on the purchase price paid by the decedent, plus adjustments for improvements or depreciation. The 2010 regime also included a limited step-up in basis of up to \$1.3 million, plus an additional \$3 million when there was a surviving spouse. This limited step-up allowed executors to choose to which assets to the step-up would be allocated. Beyond the limited step-up amount, the basis of the estate assets would be determined by carryover basis.

A significant change in estate tax is the concept of "portability" between spouses; however, it is only applicable if both die within the next two years. Portability allows surviving spouses to utilize unused portions of the estate tax exclusion of their predeceased spouse. For example, if Husband dies in 2011 with an estate of \$4 million, the unused \$1 million of the exclusion can be used by Wife who dies in 2012. Wife's estate will have an exclusion of \$6 million, rather than \$5 million. To take advantage of portability, the executor of Husband's estate will have to file a federal estate tax return and make the portability election, even if no federal estate tax is owed by Husband.

Gift Tax

For gifts made in 2011 and 2012, the maximum gift tax is 35 percent. The lifetime exclusion amount is \$5 million. The annual

continued on page 5...

Year	Estate Tax Exclusion	Top Marginal Estate & Gift Tax Rates	Gift Tax Exclusion	GST Tax Exemption	Basis
2005	\$1.5	47%	\$1	\$1.5	Step-up
2006	\$2	46%	\$1	\$2	Step-up
2007	\$2	45%	\$1	\$2	Step-up
2008	\$2	45%	\$1	\$2	Step-up
2009	\$3.5	45%	\$1	\$3.5	Step-up
2010	N/A	0% Estate Tax 35% Gift Tax	\$1	N/A	Carry-over + \$1.3
2011+	\$1	55%	\$1	\$1.4 (est.)	Step-up

A Look at the New Federal Estate and Gift Tax

continued from page 4

gift tax exclusion of \$13,000.00 per donee still applies. Individuals may gift up to \$13,000.00 a year, per donee, without having to use the exclusion or having to file a federal gift tax return.

For gifts made in 2010, the applicable exclusion amount was \$1 million. This change will allow individuals to utilize gifts to reduce the size of their estate without adverse tax consequences.

2010 Decedents

Under the Act, executors of those who died in 2010 have two options with regard to federal estate tax: 1) apply the 2010 law; or 2) apply the 2011-2012 law.

If the 2010 law is chosen, no federal estate tax is owed but the modified carryover basis rules apply to estate assets. Thus, while there are savings in federal estate tax, there may be significant capital gains tax incurred. If the 2011-2012 regime is chosen, the estate will owe federal estate tax if it exceeds \$5 million, but the stepped-up basis rules apply.

If an estate is under \$5 million, the best option is to apply the 2011-2012 regime because there will be no estate tax, and the advantageous stepped-up basis rules apply. However, for estates over \$5 million the choice is not as simple. It seems that the 2010 regime is better because there will be no estate tax. However, the choice is difficult because there may be highly appreciated assets, or it may be difficult to determine the basis of assets; thus, the 2011-2012 regime may be advantageous because of the simplified stepped-up basis.

In light of these changes in federal estate and gift tax, it is important to review current estate plans with a professional to insure you are taking advantage of the most appropriate techniques to maximize tax benefits.

Paid Sick Leave for Philadelphia Workers – What Does it Mean?

By Regina Parker, Esquire

In Philadelphia, there are currently no laws requiring employers to provide paid sick leave to employees. The Council of the City of Philadelphia is considering Bill No. 080474, the “Promoting Healthy Families and Workplaces” ordinance. If this bill becomes law, businesses in Philadelphia would be required to provide paid sick leave to employees under certain terms and conditions.

One purpose of the proposed law is to ensure that workers employed in Philadelphia can address their health needs and the health needs of family members by requiring employers to provide a minimum level of paid sick days including time for family care. Also noted in the ordinance is that the proposed law will safeguard the public welfare, health, safety and prosperity of the people of and visitors to the City of Philadelphia.

Specifically, the proposed law states that employees would be able to earn a minimum of one hour of paid sick time for every 30 hours worked up to a maximum of 72 hours per year. For small businesses with 10 employees or less, an employee could earn up to a maximum of 40 hours of sick time per year, unless the employer selects a higher limit. The proposed law defines an employee as being any individual employed by an employer within the geographic boundaries of Philadelphia; but excluding independent contractors, seasonal workers, employees hired for a term of less than six months, and State and Federal employees.

Paid sick time will accrue at the commencement of employment and employees will be entitled to use this sick time after three months of employment. Any unused time will be carried over to the following calendar year; however, an employee’s use of paid sick time per year cannot exceed 40 hours for employees of small businesses and 72 hours for employees of larger employers as previously described.

continued on page 7...



Paid Sick Leave for Philadelphia Workers – What Does it Mean?

continued from page 6

The event of termination, resignation, or other separation from employment, the employer will not be required to reimburse an employee for any accrued sick time that has not been used. When there is a separation from employment and the employee is rehired within 12 months of separation by the same employer, previously accrued paid sick time that had not been used shall be reinstated. The employee will then be entitled to use accrued paid sick time and accrue additional sick time.

In order to use this paid sick leave, the proposed law provides that an employee meet certain conditions. The sick time must be used for an employee's mental or physical illness, injury or health condition; need for medical diagnosis or treatment; and need for preventive medical care. For sick leave of more than 3 consecutive days, an employer may require documentation such as a note from a medical provider or treating doctor that the sick time is covered. The sick time can also be used by an employee to take care of a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis or treatment; and care of a family member who needs preventive medical care.

Under the proposed law, the definition of family is broad. A family member can include (a) biological, adopted or foster child, stepchild or legal ward or a child to whom the employee stands in loco parentis; (b) biological, foster, stepparent or adoptive parent or legal guardian of an employee or an employee's spouse or a person who stood in loco parentis when the employee was a minor child; (c) person to whom the employee is legally married; (d) grandparent or spouse of a grandparent; (e) grandchild; (f) biological, foster, or adopted sibling or spouse of a biological, foster, or adopted sibling; (g) life partner; or (h) any other individual related by blood or affinity whose close association with the employee is equivalent of a family relationship.



Firm News and Updates

Eugene Mattioni, Esquire, Shareholder and Vice President/Secretary, has been elected to the Board of Directors of the Maritime Exchange for the Delaware River and Bay. The Exchange is an association dedicated to promoting commerce on the Delaware River and Bay and supports many associated businesses in the industry.

Mr. Mattioni's maritime practice involves investigation of casualties and the handling of claims for pier damage, collision, pollution and personal injury and death. He is a licensed Master Mariner of steam and motor vessels and has experience in ship handling, cargo operations and vessel management.

Eugene Mattioni, Esquire, attended the Phantasy Phillies Camp in Clearwater, Florida, where he played second base at the Camp's Brighthouse Field. The team was coached by Phillies' Legends, Greg Luzinski and Terry Harmon. Eugene was named team MVP for his play and spirit both on and off the field.

Ronald R. Donatucci, Esquire, Counsel to the Firm, will be honored at the Annual Grand Gala Celebration sponsored by the Lubavitch organization of Bucks County on Wednesday, April 6, 2011 at the Crystal Tea Room of the Wanamaker Building, Philadelphia. The Hon. Lt. Governor Jim Cawley will be the Guest of Honor and John Fox will be honored in memoriam. The Honorees are being recognized for their outstanding contribution to knowledge, education and religious study of everyone regardless of affiliation. The Mattioni firm extends its congratulations to the Honorees.

Jennifer Iacono, Esquire, Associate, will be featured in the upcoming issue of Widener Law Review. Ms. Iacono's Student Note, "The Sex Offender Registration and Notification Act and its Commerce Clause Implications," was chosen among approximately twenty entries for publication, earning the award for Most Outstanding Paper of Publishable Quality. The Note will appear in Widener Law Review Volume XVII, Issue I.

Michael Mattioni, Esquire and Dawn Tancredi, Esquire, Shareholders, were speakers at a presentation on March 1, 2011, Practical Guide to Zoning and Land Use Law, sponsored by the National Business Institute.

MATTIONI, LTD.

COUNSELORS AT LAW

Philadelphia Office

399 Market Street, Suite 200
Philadelphia, PA 19106

Phone:

(215)-629-1600

Fax:

(215)-923-2227

E-Mail:

firmmail@Mattioni.com

New Jersey Office

1316 Kings Highway
Swedesboro, NJ 08085

Phone:

(856)-241-9779

Fax:

(856)-241-9989

We're on the Web!
www.Mattioni.com