

FEDERAL & CONNECTICUT ESTATE TAX UPDATE “ARE WE THERE YET? HOW ABOUT NOW?”

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The Trusts & Estates Group at Murtha Cullina is pleased to provide clients and friends with information about topics of interest in the estate planning area.

If you have questions about the issues addressed in this newsletter, or any other matters involving estate planning issues, please feel free to contact any of the following attorneys:

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The above line comes from an old comedy routine about a family driving vacation. The little kids in the back seat, restless and bored, ask “Are we there yet?” and three seconds later, ask “How about now?”

In the land of federal and Connecticut estate tax planning, we seem to be on a never-ending car ride, stuck in the back seat as Congress and the Connecticut General Assembly drive the family car to places unknown, lost, with no destination in sight, and we are left to wonder where we are going and when we will get there.

Estate Tax Developments

Contrary to all rational expectations, Congress let the federal estate and generation-skipping transfer taxes expire as the ball dropped on New Year’s Eve. As of today, there is no federal estate tax and no federal generation-skipping transfer tax. There is a federal gift tax with a \$1 million lifetime exemption

and a 35% tax rate thereafter. Present law states that both the estate tax and the GST tax will be reborn on January 1, 2011, but with the 2001 exemption of \$1 million and the 2001 top tax rate of 55%.

Congress may: (i) leave things as they are for 2010 and let the old tax regime revert in 2011; (ii) apply a fix retroactive to January 1, 2010 as soon as they get around to it (although whether that would be constitutional is a significant issue); or (iii) make a change effective either in mid-2010 or on January 1, 2011. Many exemption levels and maximum tax rates have been bandied about, but there appears to be no consensus.

In the meantime, last summer Connecticut revamped its gift and estate taxes to provide for a lifetime exemption of \$3.5 million and tax rates 20% lower than they were before, effective on January 1, 2010. However, in December’s budget emergency, the General Assembly attempted to postpone this estate tax change for two years, and

in the interim, raise the rates above what they currently are. Governor Rell vetoed the legislation. Whether there will be an override by the General Assembly, and what else might be done, are unknown as of this writing.

In this maelstrom, our clients and others are left to wonder what should be done with their estate plans. Many, if not most, estate planning documents of married couples make reference to federal and state estate tax concepts in dividing the estate upon the death of the first spouse between an exempt family trust (based on federal or state exemptions) and one or more marital trusts or marital bequests. At present, it is unclear how some of these documents will be interpreted and how the estate of the first spouse to die will be divided. It is conceivable that no matter how the documents have been drafted, and no matter when, neither the drafter's intent nor the optimal tax result may be achieved.

Given the uncertainty of what federal and Connecticut estate tax law may look like in the near- and far-term, it may be appropriate for married couples to revise estate planning documents to incorporate more flexible formulas and dispositive provisions. Above all else, it is certain that taking no action to update a plan is much more dangerous than doing the best one can do under the circumstances with as much flexibility as possible. The best solutions for each family will depend on the values of their assets, their ages and health circumstances, and the ages of their beneficiaries.

Thinking Ahead – Be Proactive

Although many things are uncertain about estate and GST taxes, it is highly likely that there will always be some form of transfer taxation

at either the federal or state level, or both. In this environment, as always, it makes sense to consider and implement appropriate gifting strategies to shift wealth in ways that protect beneficiaries and avoid transfer taxes. Today, these gifting strategies deserve your serious consideration.

Please contact a Murtha Cullina attorney if you would like to discuss your current circumstances, review your current plan, and discuss gifting strategies and an estate plan design that may better accomplish your goals.

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