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Trusts & Estates Newsletter

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Trusts & Estates

Stuyvesant K. Bearns
James T. Betts
Coleman H. Casey
Bernardo G. Cuadra
Danielle P. Ferrucci
Stephen K. Gellman
Bryon W. Harmon
Charles B. Kaufmann, III
Lori E. Romano
Lesley I. B. Schless
Lyn Gammill Walker

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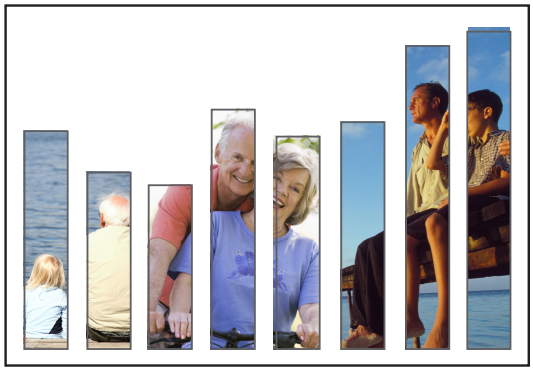
Federal and Connecticut Estate Tax Recap

Federal Estate, Gift and Generation-Skipping Transfer Taxes

Although rumors circulated recently about potential "Super Committee" proposals to modify the federal estate and gift tax in the near term, no such proposal materialized. Thus, as a result of legislation passed late last year, for decedents dying in 2011, the federal estate tax exemption remains at $5 million per person and the exemption for decedents dying in 2012 will be $5,120,000 per person. The maximum federal estate tax rate remains at 35%. Similarly, the generation-skipping transfer tax ("GSTT") exemption and federal gift tax exemption for lifetime transfers made in 2011 and 2012 is $5 million and $5,120,000, respectively with a 35% rate. Unless Congress takes action, the federal estate, gift and GSTT tax exemptions are scheduled to decrease to $1 million, and the maximum federal estate, gift and GSTT tax rates are scheduled to increase to 55% in 2013. While we do not expect this decrease in exemption and increase in rates to become a permanent feature, Congressional gridlock could lead to a temporary period at those levels.



Additionally, the legislation passed last year includes a provision which permits the unused estate tax exemption of the first spouse to die to be transferred to a surviving spouse, ("portability") with certain restrictions. Based on current law, this provision applies only to the estates of 2011 and 2012 decedents. Due to the uncertain future of portability, combined with the decoupling of the federal and Connecticut exemptions discussed below, the use of credit shelter trusts in estate plans remains an important planning technique.

Connecticut Estate and Gift Tax

The Connecticut General Assembly passed legislation earlier this year that reduced the Connecticut estate tax exemption to $2 million for Connecticut residents dying after December 31, 2010. The Connecticut gift tax exemption is also now $2 million for gifts made by Connecticut residents. The maximum tax rate applicable to taxable estates and gifts remains 12%. Unlike the federal exemption amount, there is no scheduled

change in the Connecticut exemption. That said, historically, the Connecticut legislature has shown a willingness to adjust the exemption amount and, therefore, the $2 million exemption should be viewed as subject to change.

The Impact of Federal and Connecticut Tax Law Changes on Your Estate Plan

Changes to the federal and Connecticut estate, gift and GSTT tax laws have resulted in substantial uncertainty in planning for these taxes. While we have resisted the temptation over the last few years to encourage our clients to revise their estate plans based on the shifting legislative winds, the federal and Connecticut legislation passed within the last year creates a significant difference (known as decoupling) between the federal and Connecticut exemption amounts, which may require changes to your estate plan. Specifically, the difference between the federal and state exemptions could be problematic as many current estate planning documents contain formula clauses that reference only the federal exemption and therefore could cause a Connecticut estate tax to be due at the death of the first spouse. Most clients should consider contacting their attorney in the Trusts & Estates practice group to review the impact of these legislative changes if they have not already done so.

Federal Gift Tax Annual Exclusion 2012

The Federal Gift Tax annual exclusion remains at $13,000 for 2012.

Opportunities for Lifetime Gifts

The federal gift tax exemption which is $5 million in 2011 (and to $5,120,000 in 2012), is scheduled to decrease to approximately $1 million in 2013. The current $5 million gift tax exemption, together with the increase in the federal generation-skipping transfer tax exemption to $5 million in 2011 and $5,120,000 in 2012, may provide certain clients with unique opportunities to make large lifetime gifts before the end of 2012. Clients interested in making such gifts, either outright or in trust, should contact their attorney in the Trusts & Estates practice group to discuss the possibilities for such gifts during this window of opportunity.

Charitable Gifts From IRAs

Individual taxpayers who are at least age 70 1/2 may make charitable contributions directly from an IRA until the end of 2011 in certain circumstances. Qualifying contributions made directly from an IRA to the charity are not taxed as income to the taxpayer. To qualify, certain requirements must be met, including the following:

- The individual making the contribution must be at least 70 ½
- The charitable contribution is limited to $100,000 per individual
- The contribution must be made directly from the IRA to the charity
- The recipient charity must be a public charity or private conduit foundation; contributions may not be made to donor-advised funds or supporting organizations.

The window for making charitable contributions from IRAs is closing quickly. Therefore, you should contact your IRA custodian immediately if you wish to make a transfer prior to year-end.

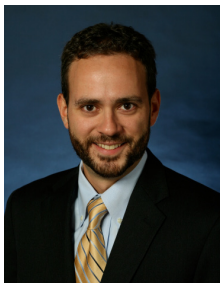
Postnuptial Agreements Held as Valid in Connecticut

Postnuptial agreements are agreements that spouses execute after marriage to provide for property distribution in the event of death or divorce; they are essentially the after-marriage equivalent of such agreements made prior to marriage (prenuptial agreements). In a case of first impression, the Connecticut Supreme Court held in Bedrick v. Bedrick that postnuptial agreements are valid and enforceable in Connecticut. The Court's endorsement was constrained, however, by its concern over the heightened potential for one party's overreaching in the context of the marital relationship. Thus, the Court imposed a stricter standard of judicial review over postnuptial agreements than that required for prenuptial agreements. Notwithstanding this greater burden, properly drafted postnuptial agreements may be an option for married couples who wish to provide for the division of property in the event of a divorce or upon their deaths.

News from Our Trusts & Estates Group

Bryon Harmon was recently elected as a member of The American College of Trust and Estate Counsel ("ACTEC"). ACTEC is a national organization of approximately 2,600 trusts and estates attorneys elected to membership by demonstrating the highest level of integrity, commitment to the profession, competence and experience as trust and estate counselors. One of the central purposes of ACTEC is to study and improve trust, estate and tax laws, procedures and professional responsibility. Its members work to teach those who aspire to enter the field and to improve and reform laws, procedures and standards while working with their peers and other professional organizations. ACTEC and its Fellows file amicus briefs in appropriate cases, testify before Congress, provide in-depth analysis of administrative positions to the Internal Revenue Service, and assist in the development of best practices for trust and estate lawyers. We congratulate Bryon on this noteworthy accomplishment.

We are also pleased to announce that Bernardo Cuadra has joined the firm as an associate in the Trusts & Estates Practice Group. Prior to joining Shipman & Goodwin, Bernardo was a law clerk for the Honorable Flemming L. Norcott, Jr. of the Connecticut Supreme Court. While in law school, Bernardo participated in the National First Amendment Moot Court Competition, externed for the Honorable U.S. Magistrate Judge Kenneth P. Neiman of the U.S. Federal District Court District of Massachusetts, and was Managing Editor of the Western New England Law Review. He also received the Abraham Smith Award for excellence in probate related classes. Bernardo may be reached at (860) 251-5770 or bcuadra@goodwin.com.



Trusts & Estates

Stuyvesant K. Bearns
(860) 435-2330
sbearns@goodwin.com

James T. Betts
(860) 251-5150
jbetts@goodwin.com

Coleman H. Casey
(860) 251-5112
ccasey@goodwin.com

Bernardo G. Cuadra
(860) 251-5770
bcuadra@goodwin.com

Danielle P. Ferrucci
(860) 251-5105
dferrucci@goodwin.com

Stephen K. Gellman
(860) 251-5109
sgellman@goodwin.com

Bryon W. Harmon
(860) 251-5106
bharmon@goodwin.com

Charles B. Kaufmann, III
(203) 869-5600
ckaufmann@goodwin.com

Lori E. Romano
(203) 869-5600
lromano@goodwin.com

Lesley I. B. Schless
(203) 863-6431
lschless@goodwin.com

Lyn Gammill Walker
(860) 251-5146
lwalker@goodwin.com

www.shipmangoodwin.com/trustsandestates/

One Constitution Plaza
Hartford, CT 06103-1919
860-251-5000

300 Atlantic Street
Stamford, CT 06901-3522
203-324-8100

1133 Connecticut Avenue NW
Washington, DC 20036-4305
202-469-7750

289 Greenwich Avenue
Greenwich, CT 06830-6595
203-869-5600

12 Porter Street
Lakeville, CT 06039-1809
860-435-2539

www.shipmangoodwin.com

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