

WILLMS, S.C.

MEMORANDUM

TO: Clients and Friends of Willms, S.C.

FROM: Andrew J. Willms
Maureen L. O'Leary
Jessica Liebau

DATE: January 3, 2012

RE: "Permanent" changes to estate, gift and generation-skipping taxes

On New Year's Day, Congress and President Obama reached a deal that prevented the U.S. from going over the so-called fiscal cliff, if only for the time being. The new law included several provisions that are intended to help shift a larger share of the tax burden to wealthier Americans. Some of these changes will have a significant impact on our clients' estate planning, including:

1. The amount that every person can give during life or bequeath at death without incurring federal transfer taxes (which includes gift, estate and generation-skipping taxes) remains at \$5 million. However, because the "unified exemption amount" (the amount that can be transferred without incurring any form of transfer tax) is indexed for inflation, it is actually \$5.25 million in 2013.
2. If a married person does not make full use of his or her unified exemption amount, the surviving spouse may make use of the deceased spouse's unused exemption amount. However, the generation-skipping tax exemption amount is not "portable".
3. The rate of tax on transfers that exceed the unified exemption amount has been raised to 40%.

For the first time in 12 years, we now supposedly have a "permanent" set of rules in place regarding the manner in which gifts and estates are taxed. However, given that Congress and the President have only postponed until the end of February the automatic spending cuts that were supposed to occur at year end, we wonder if it is ever appropriate to consider any tax law as being permanent.

Many of our clients took steps during 2012 to reduce the size of their taxable estates. The new law does not make such planning obsolete for several reasons:

1. The new law did little to slow the growth of the federal deficit, and the more progressive members in Congress feel the new law did not go nearly far enough with regard to wealth redistribution. As a result, as far as transfer taxes are concerned we may find that "permanent" merely means "uncertain in duration".
2. Assets given to irrevocable trusts can often be protected from creditors and predators.
3. The generation-skipping tax exemption is not portable, which means both spouses must make use of that exemption separately. Lifetime transfers can therefore be particularly useful in this regard.

For these and other reasons, we believe clients who made use of their exemption amount in 2012 will be glad they have done so. We also think that if you were unable to complete such planning last year, then there is no time like the present to do so.

Please feel free to call any of us if you would like to discuss how the new law could impact your estate planning. We would enjoy hearing from you.

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