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WINNER, WINNER CHICKEN DINNER!

About 18 months from now, the estate/gift and generation skipping tax (GST) will jump to a 55% maximum tax rate on amounts larger than a \$1,000,000 tax-free estate. That sobering thought, of course, assumes members of Congress cannot agree on some other form of estate/gift/GST tax to be effective January 1, 2013. A failure to enact a new estate tax law means the existing laws are like an ace and a face card in blackjack, the hand that draws a "winner, winner, chicken dinner" shout from a dealer.

For the next 18 months or so, married couples have a combined tax-free estate of \$10 million which is \$5 million tax-free in the first estate with a carryover of any unused part of that \$5 million exemption to the second estate. However, tempting as that big tax-free estate may sound, we doubt if any of our clients are planning to die during the next 18 months just for the estate tax break.

On the other hand, the \$10 million exemption also applies to gifts. That means if you and your spouse are thinking about large tax-free gifts to children or grandchildren, it would be a good idea to make those transfers within the next 18 months. You might want to make those transfers in 2011, since the President's 2012 budget proposal includes a permanent return to the 2009 estate/gift/GST level. That would make the top tax rate 45%, set a \$3.5M tax-free estate and a \$1,000,000 tax-free lifetime gift exclusion.

Another reason to give this year would be take advantage of low interest rates if the form of your gift is intended to be a cheap interfamily loan of one or two million dollars. The adjusted federal rate is likely to go up later this year, not down.

If you and your spouse do not want to do anything about gifts but are simply curious about the effect of the present estate/gift/GST laws on your current estate documents, you might want to check with your estate attorney. Most of our clients have what are commonly called A/B trust wills. These are wills in which assets in the name of the first-to-die pass to a testamentary family trust up to the level of a tax free estate (presently \$5M). The remainder passes to a marital trust for the surviving spouse. Most of the trustees of these family trusts are the parent's children.

This A/B trust setup is not a big deal for most people, although a few have noted they could just have simple wills with no trusts and still have \$10M tax-free estates. True. But before you throw out those old wills with the family and marital trusts in favor of new, simple wills, ask yourself what the tax-free estate will be in 18 months and whether or not any unused exemption in the first estate will pass to the second estate. As topsy-turvy as the estate/gift/GST world is, those old A/B wills may turn out to be hot stuff again in 18 months.

In any case, now is the time to focus on big gifts to your children and/or making taxable transfers to a Roth IRA in order to benefit your children or grandchildren. Gifting and Roth conversions are the blackjack hands on the table. Please call us if you would like to discuss how to put these options into action for your family. We'll worry about what the next winning hands in the estate/gift/GST game might be in 18 months!