

The Tax Installment

Presented as a courtesy to the clients and friends of:

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DECEMBER 2008

Hyden, Miron & Foster, PLLC stands ready to assist you with the new issues that abound in tax, estate, trust, business and litigation matters.

“The Tax Installment” is only part of our commitment to serve our clients and friends. Our goal is to educate you on the options available for your specific circumstances and the reasoning behind those options. You remain our top priority and we will continue to serve you throughout the years to come.

GIFTED GIFTING

In this season of giving, how much do you really know about gifting? The following is a look at the tax side of gifting. With an understanding of the rules, gifting may be done by the individual; however, if you anticipate having a taxable estate or other concerns, you should consult with a tax and estate planning professional before proceeding.

Every time you make a gift, no matter how big or small, there are tax implications. This does not mean, however, that you owe back taxes, with interest and penalties, for all of those Christmas, birthday, and anniversary gifts for prior years. You actually have an annual exclusion (currently \$12,000) for each person to whom you make a gift. The annual exclusion is subject to cost-of-living increases and will be \$13,000 for the 2009 tax year. A husband and wife may combine their annual exclusions in what is called “gift splitting.” This is where a gift is considered made one-half by the husband and one-half by the wife. In 2008, gift splitting would allow a married couple to give up to \$24,000 to a person without exceeding the annual exclusion amount.

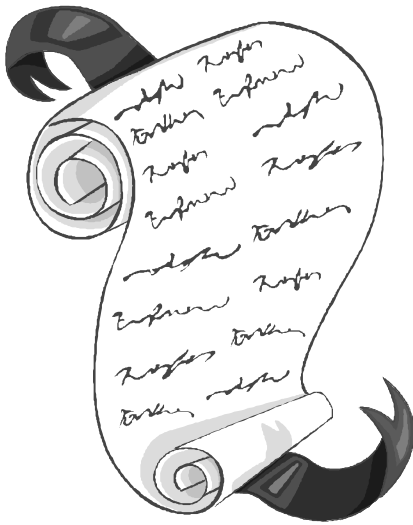


In addition, you have a lifetime unified credit (currently \$1 million). The unified credit applies to both the gift tax and the estate tax. You would only use the unified credit for gift tax purposes if your gift exceeds the annual exclusion amount for the year. You would owe no tax on the amount the gift exceeded the annual exclusion, but your unified credit would be reduced by the excess amount.

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A LIST TO AVOID!



The holiday season is full of lists — Christmas card lists, party lists, and, most importantly, Santa’s list. However, you would be wise to avoid the list that follows. It is a list of the top ten estate and business planning mistakes. If you should find

yourself on this list, take heart; a consultation with a tax, estate and business planning professional at Hyden, Miron & Foster, PLLC is likely all you need.

FIVE ESTATE PLANNING MISTAKES

Mistake # 1 – I know I won’t live forever, but I’m sure those I’ve entrusted will. Assuming that your designated personal representative, attorney-in-fact, health care proxy, trustee or guardian is going to outlive you is a bad assumption. To avoid this unwanted outcome, name at least two people for every position you need to fill in your estate plan.

Mistake # 2 – It’s all about me. A well planned marital estate plan will fully utilize the tax exemptions available to both spouses. A review of your current documents will determine the extent to which both spouse’s tax exemptions are being employed.

Mistake # 3 – I’m sure that’s what I put. Improper beneficiary designations on IRAs, retirement plans, and life insurance policies may wreak havoc on your estate plan. Not only could unintended beneficiaries inherit, but your trust may not be funded. If the trust is not funded, then all of your assets will have to go through probate.

Please don’t think that your beneficiary designations are correct — check them every time you update your estate plan.

Mistake # 4 – I don’t need a trust. Trusts are not just for the extremely wealthy. A trust is a useful planning device for people who would like to control the use and distribution of their assets after their death. In addition, a trust avoids the expense and public nature of probate.

Mistake # 5 – I won’t live that long. With people living longer than ever before, the need for long-term care planning and long-term care insurance is increasing. It is quickly becoming a reality that “saving for retirement” alone is not enough to allow us to live comfortably until the end. Consult with an insurance agent about long-term care insurance options. (Also review our article “Arkansas Long-Term Care Insurance Partnership” on page 4.)

FIVE BUSINESS PLANNING MISTAKES

Mistake # 6 – Bad entity selection. The most important part of planning a business is selecting an entity that will allow you to accomplish your business goals while protecting your personal assets. Because there is no “one size fits all” entity, consult with a tax and business planning professional regarding which of the many entities is right for you.

Mistake # 7 – Agreeing to disagree. It may be fine to agree to disagree about topics between friends, but it could be potentially disastrous for co-owners of a business. Disagreements are just one reason why business owners should have ownership agreements and binding, fully funded buy-sell arrangements in place. These agreements outline how interests in the business will be bought and sold in the event of divorce, death, disability, bankruptcy, an outside offer to purchase the entity or any number of other circumstances.

Mistake # 8 – What meeting? Most business entities have formalities that need to be followed. These formalities may require things like having an annual meeting, preparing written minutes, or keeping a corporate book. While these may seem insignificant, failing to follow these formalities may result in the entity being disregarded and your personal assets being available to pay a claim or liability of the business.

Mistake # 9 – Jones & Son. Planning for a family member to take over the family business is not as easy as it sounds. Really evaluate the interest that the family member has in the business. Also, since some types of entities lend themselves to family succession better than others, try to avoid Mistake #6.

Mistake # 10 – Who knew they taxed that? Every investment or business decision you make has income tax implications and, since tax laws change every year, you should consult with an estate, tax or business planning professional before making any significant decisions regarding personal or business assets.

This newsletter presents general informational material only and is not intended to offer legal advice. You should not rely on or use information presented here without consulting an attorney regarding your specific circumstances, changes to applicable laws, rules and regulations, and other legal issues.

Receipt of this newsletter does not establish an attorney-client relationship. If you desire representation, please contact our office.

UPDATE FROM THE INTERNAL REVENUE SERVICE



Wondering where your economic stimulus payment or tax refund is?

The IRS estimates that more than 279,000 economic stimulus checks and more than 104,000 regular refund checks were returned to them due to mailing address errors. This amounts to about \$266 million.

To receive your check, you'll need to update your address with the IRS. If you are due an economic stimulus check, you need to do so immediately because, by law, those checks must be mailed by December 31, 2008. Check out the IRS website to determine if you should have received a check and what its status is.

To avoid this problem in the future, update your address with the IRS every time it changes. The IRS also recommends using direct deposit to receive refunds because it eliminates lost, stolen or undeliverable checks.



The IRS recently announced inflation adjustments for several key exemptions and deductions for the 2009 tax year.

Personal and dependency exemptions for returns for tax year 2009 will be \$3,650, up \$150 from 2008. The standard deduction for your 2009 return will be \$11,400 for married couples filing jointly and \$5,700 for singles or married filing separately. Finally, the annual gift exclusion for 2009 will be \$13,000, up from the current \$12,000.

For further information about taxes and issues relating to the Internal Revenue Service, visit the IRS website at www.irs.gov.

ARKANSAS LONG-TERM CARE PARTNERSHIP

Effective July 1, 2008, Arkansas has modified its Medicaid rules to reflect its adoption of the Qualified State Long-Term Care Partnership Program for Arkansas residents. This plan allows Medicaid officials to disregard assets as an available resource when determining Medicaid eligibility. An amount up to the total amount of benefits paid out of a long-term care insurance partnership policy may be disregarded for Medicaid purposes under the new law. This new program encourages individuals to accept personal responsibility for their future long-term care needs by purchasing insurance and it also reduces their incentive to transfer or hide assets that may now be protected legally.

To illustrate these new rules, Jane purchases a qualified long-term care insurance policy with a guaranteed \$100,000 in benefits. If Jane required skilled care in the future, her long term care policy pays \$100,000 toward her care and under the new law, she may keep, gift during her lifetime, or transfer on her death \$100,000 of her other assets and still be or remain eligible for Medicaid benefits. The asset protection offered by the new program means that Jane may protect \$1 of her assets for every \$1 of insurance used under this new plan.

Not all long term-care policies meet these new requirements to be considered a “qualified long-term care insurance policy.” However, an individual may be able to convert an existing long-term care policy to one that does qualify. There are many different companies which offer qualified policies. If you have any questions about how this new law might affect your estate planning objectives, please give one of the attorneys at Hyden, Miron & Foster, PLLC a call. If you wish to purchase such a policy or review your existing policy, you should contact your insurance representative.

Giving (continued from page 1)

Finally, if you make a gift to someone who is two or more generations below your generation (i.e., grandchildren), then you will also need to address the generation-skipping transfer (GST) tax. You have a GST exemption equal to the applicable exclusion amount for the year (currently \$2 million). Similar to the unified credit, you would not owe tax on a GST, but your GST exemption would be reduced by the amount of the gift.

Generally, you do not need to file a gift tax return unless you give someone, other than your spouse, money or property worth more than the annual exclusion for that year or a gift not subject to the annual exclusion. However, if you utilize gift splitting, you must file a gift tax return.

A final consideration in gifting is basis. Basis is generally the amount of your investment in property and is a consideration for gifts other than cash. This is usually not a problem for property with a basis close to fair market value. However, when property has a basis significantly lower than fair market value, there may be significant tax consequences to the donee if they sell the property. Please consult with a tax or estate planning professional before gifting property with a basis significantly lower than fair market value.





At Hyden, Miron & Foster, PLLC one of our **2009 resolutions** is to **reduce paper usage**. One way we'd like to do this is by sending our newsletter electronically to as many of our friends and clients as possible. Help us serve you better by simply visiting www.hmflaw.net/Newsletters.htm and following the links to **register**.

Of course, Hyden, Miron & Foster, PLLC will treat your email address as confidential. We will continue to use the US Mail for all other correspondence.

THE EMERGENCY ECONOMIC STIMULATION ACT OF 2008

Signed into law by President Bush on October 3, 2008, the Emergency Economic Stabilization Act of 2008 (EESA) is designed to provide the Treasury Department with broad powers to address the financial crisis that is occurring in the United States and around the world.

The measure gives the Treasury Department \$250 billion immediately and requires the President to certify if an additional \$100 billion is necessary. In addition, Congress may approve an additional \$350 billion if needed.

While the Treasury Department may use these funds as needed, they are largely intended for purchasing bad assets from companies. The legislation requires the Treasury Department to report on the use of the funds and the progress made in addressing the crisis. It also creates an oversight board and a special inspector general to monitor the Treasury Department.

The law also requires the Treasury Department to modify troubled loans wherever possible to help families keep their homes. Other federal agencies

are directed to do the same with any loans they own or control. The measure expands eligibility for the HOPE for Homeowners program, a program which allows those at risk of default and foreclosure options to refinance into more affordable loans.

The EESA also addresses corporations. Companies that sell their bad assets to the government are required to provide warrants so that taxpayers benefit from any future growth the companies experience as a result of participating in the program created by the EESA. In addition, certain limits are placed on executive compensation. Finally, to cover any losses suffered by the taxpayers resulting from this program, the President must submit legislation that will charge a small, broad-based fee to all financial institutions.

The EESA also contains a hodge-podge of other measures including a one year "patch" for the alternative minimum tax, disaster relief for those impacted by recent hurricanes and flooding, energy-related tax provisions, and a temporary increase in the FDIC insurance cap from \$100,000 to \$250,000.

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