HMF UPDATE

HYDEN, MIRON & FOSTER, PLLC

Coming Soon...2013 Estate Tax Changes

by Lori L. Holzwarth

In trying to understand the current estate, gift and generation-skipping tax rules, it is helpful to start with a brief history lesson. In 2001, the Economic Growth and Tax Relief Reconciliation Act ("EGTRRA") brought about sweeping estate and gift tax reforms with some politicians proclaiming that "estate taxes have been repealed." The problem was this repeal was only good for one year, 2010. In 2011, EGTRRA was scheduled to sunset, so that the estate and gift tax rules in place pre-2001 would return. Those rules were set by the Taxpayer Relief Act of 1997. President Obama and Congress passed the Tax Relief Act of 2010 ("TRA"), that was a short-term fix that is set to expire on December 31, 2012. This means the 1997 tax act provisions are coming back January 1, 2013. Or are they? Congress and the President may agree to extend the 2010 TRA provisions or come up with a whole new set of provisions.

It is unknown whether or not the long dead estate tax provisions will return and join the party, kind of like the dead guy in Weekend at Bernie's, or if we are all worked up about an unknown and unseen evil that never actually materializes, as in Blair Witch Project. The only thing that seems to be certain is that the Democrats and Republicans are lined up to not budge an inch and fight to the death, as in War of the Roses.

Take a look at what we do know about the estate, gift and generation-skipping tax rules. The current 2012 provisions and what will be in 2013 if Congress does nothing are outlined on the chart below.

What should you do? Everyone, regardless of net worth, should take out his or her estate planning documents and review them. If it has been a number of years since you

(Continued on inside flap)

	2012	2013
Applicable Exclusion at Death	$5,120,000	$1,000,000
Estate and Gift Tax Rates	Flat 35%	Graduated 41%-55%
Surtax on Estates Above $10 million	Not applicable	Graduated up to 5% (phases out exclusion on first million)
Lifetime Gift Exclusion	$5,120,000	$1,000,000
Generation-Skipping Tax Exemption	$5,120,000	Approx. $1,400,000
Generation-Skipping Tax Rate	35%	55%
"Portability" of Unused Exclusion of Spouse	Available if both spouse's die in 2011-2012	Repealed
Effect of State Death Taxes	State death taxes are deducted from the federal taxable estate	State death taxes are offset by a credit against federal estate tax

Time for a Fresh Start with the IRS?

by Jane F. Strike

Earlier this year, the Internal Revenue Service ("IRS") announced new provisions under its "Fresh Start Initiative." This initiative is intended to benefit taxpayers who are struggling financially due to the national economic downturn. The IRS has changed several of its rules for handling collection alternatives, like installment agreements and offers in compromise, which may make it easier to qualify for this relief.

In March, the IRS posted new guidelines for its "streamlined" installment agreements. In an installment agreement, the taxpayer agrees to make monthly payments to the IRS over an extended period of time. For a standard installment agreement, the taxpayer is required to submit a Collection Information Statement (Form 433-A or Form 433-B). These forms are invasive and time-consuming to complete. One of the major benefits of a "streamlined" installment agreement is that submission of Form 433-A or Form 433-B is not required. The streamlined agreement allows the taxpayer to receive an almost automatic approval without analysis of his or her finances.

The IRS raised the maximum amount allowable for streamlined installment agreements from $25,000 to $50,000. Taxpayers are permitted to "pay down" their liability to $50,000 and then qualify for the streamlined agreement. The new rules also allow payment over a seventy-two (72) month period. Previously, the maximum timeframe for an installment agreement was sixty (60) months. To qualify under the expanded program, taxpayers must commit to payment by monthly direct debits.

In May, the IRS published changes to its offer in compromise program. In an offer in compromise ("OIC"), the IRS allows the taxpayer to settle outstanding liabilities for less than the actual amount owed. The OIC process typically requires a detailed analysis of the taxpayer's financial situation, in order to determine the taxpayer's potential for paying the outstanding tax owed. The IRS calculates the payment potential by looking at future income multiplied by a certain number of years. The new rules require only one (1) year of future income (down from two (2) years) be considered where the offer will be paid in five (5) or less months. For offers to be paid in six (6) to twenty-four (24) months, the calculation has been changed to two (2) years (reduced from five (5) years). By reducing the number of years of future income considered, the IRS is saying it is willing to accept offers for lesser amounts than under the previous standards.

The changes to the OIC process also include revisions to the IRS' Allowable Living Expenses. Certain expenses now qualify as Miscellaneous Allowable Living Expenses:

1. Credit card payments;
2. Bank fees and charges;
3. Student loan payments; and
4. Delinquent state and local taxes.

These costs had previously been excluded from consideration as allowable living expenses. By expanding the list of permissible expenses, the taxpayer's remaining disposable income is reduced and therefore the amount needed for an acceptable offer may be reduced as well.

Only time will tell if these adjustments to installment agreements and offers in compromise will truly provide a "Fresh Start" to taxpayers who have outstanding balances. The changes certainly make it easier to qualify for these collection alternatives.

This may be a good opportunity to review your situation with one of the attorneys at HYDEN, MIRON & FOSTER, PLLC, in order to determine if any of these collection alternatives would be helpful to you.

Rights of a Surviving Spouse

by Nick Livers

Upon the death of a spouse, the surviving spouse has certain rights and interests he or she may assert in the estate of the deceased spouse. There are times when disagreements may arise in the estate administration process, and it is important for the surviving spouse to know how to protect his or her rights in the estate. A few of these important rights are discussed herein.

Dower and Curtesy

A surviving spouse has a dower or curtesy right in the interest of property held by his or her spouse. A surviving spouse has the right to a one-third (1/3) life estate in any real estate owned by his or her spouse during the marriage, and to one-third (1/3) of the personal property owned at the time of the spouse's death. With respect to real estate, if the real estate is transferred during marriage, the spouse must relinquish his or her dower or curtesy in the property at the time the property is deeded or mortgaged. If the spouse does not relinquish dower or curtesy in the property, then the spouse will continue to hold an interest in the property. With respect to personal property, dower or curtesy vests in the spouse at death.

Elect against the Will

A surviving spouse has a right under Arkansas law to elect to take against the Will. This means instead of receiving the assets the surviving spouse is entitled to receive under the terms of the Will, he or she has a right to receive an amount of assets equal to his or her dower or curtesy in the estate. In many situations, a person will want to elect to take against the Will.

This option will most often be beneficial to the surviving spouse in situations where the surviving spouse does not receive the entire estate under the deceased spouse's Last Will and Testament, or where an estate is burdened by debt. When a surviving spouse elects to take against the Will, the share of the surviving spouse will be set aside and will have priority over the debts and claims against the estate. It is important to note in deciding whether to elect against the Will, that as to the surviving spouse, the terms of the Will pertaining to distribution of assets will no longer apply. If it is beneficial for the surviving spouse to make the election, the election must be made within a strict time period after opening the estate, or the right will be lost.

Homestead

A person has a right of homestead in the home of his or her spouse. The homestead is the primary residence of a person plus a limited amount of land attached to the home. With the exception of a mortgage on the home, a person's homestead is exempt from claims of creditors. Therefore, if there has been a judgment in the favor of a creditor against a person or his or her spouse, then the creditor cannot force the person or the spouse to sell the home to satisfy the judgment.

A surviving spouse has many rights under Arkansas law. If your spouse has passed away, please consider calling one of the attorneys at HYDEN, MIRON & FOSTER, PLLC.

Small Business Owner Tax Credits

By Carrie E. Bumgardner

Two key tax credits and a special relief program could provide significant tax benefits during 2012 for small business owners.

Expanded Tax Credit for Hiring Veterans

A law enacted late last year now provides an expanded Work Opportunity Tax Credit (WOTC) to employers that hire eligible unemployed veterans. The credit can be as high as $9,600 per veteran for for-profit employers or up to $6,240 for tax-exempt organizations. The amount of the credit depends on a number of factors, including the length of the veteran's unemployment before hire, hours a veteran works and the amount of first -year wages paid. Employers who hire veterans with service-related disabilities may be eligible for the maximum credit.

Certification requirements apply to these new hires. Normally, an eligible employer must file Form 8850 with the state workforce agency within twenty-eight (28) days after the eligible worker begins work. This form can be faxed or electronically transmitted to the state workforce agency, as long as the agency will receive the forms that way.

Credit Helps Small Employers Provide Health Care Coverage

Small employers that pay at least half of the premiums for employee health insurance coverage under a qualifying arrangement may be eligible for the small business health care tax credit. Enacted two years ago, the credit is designed to encourage small employers to offer health insurance coverage for the first time or maintain coverage they already have.

Eligible small employers can claim the credit for 2010 through 2013 and for two (2) additional years beginning in 2014. Targeted to small employers that primarily employ low-and moderate-income workers, the maximum credit, in tax-years 2010 through 2013, is thirty-five percent (35%) of premiums paid by small businesses and

(Continued on next page)

Coming Soon...2013 Estate Tax Changes (continued from front cover)

updated your documents, if you had a change in your personal circumstances (birth, death, divorce, inheritance or significant change of assets), or if the documents simply do not say what you want anymore, then it is time for a meeting with your attorney. If you are one of those waiting to complete your estate planning documents to see what the estate tax laws will be, get off that fence and have your documents prepared NOW. Estate taxes are only part of the estate planning equation. Asset management, probate avoidance, protection for future generations and other non-tax goals remain unchanged by the estate tax laws.

Estates between $1,000,000 and $5,120,000 may or may not be subject to estate taxes. For married couples, it is important for your estate planning documents to take advantage of the exclusion amounts available to both spouses. How property is titled and beneficiary designations on assets should be reviewed to ensure you are maximizing your potential estate tax savings. The gifting choices described below should also be considered by people in this category.

Estates with values larger than $5,120,000 should seriously consider and implement advanced wealth-transfer planning before the end of 2012. The $5,120,000 gift tax exclusion is at a historic high, although experts project that only 10% of those with estate of more than $10 million have taken advantage of this opportunity. Gifting property in 2012 to future generations, either outright or in trust, will also remove the appreciation of the gifted assets from the donor's taxable estate at death. If gifting is not right for you, historically low interest rates present a great opportunity for intra-family sales, grantor retained annuity trusts and charitable lead trusts. Valuation discounts for intra-family transfers are a common target for tax reform from various sides, so gifting should be done now under the current rules and before these rules get any tighter.

Income tax provisions are changing in 2013 as well. The tax rate on qualified dividends in 2012 is 15%, but this is scheduled to increase to 43.4% in 2013. Corporations with retained earnings and available cash should seriously consider distributions to its shareholders in 2012. The maximum capital gains rate in 2012 is 15%, but will increase to 23.8% in 2013. If sales of appreciated assets or business interests are planned, 2012 is a much more favorable time for the seller than 2013 looks to be.

If you have any questions about how the anticipated changes in 2013 will impact you, please give one of the attorneys at Hyden, Miron & Foster, PLLC a call to discuss your particular situation.

Tips for Dealing with the IRS and Other Taxing Authorities

By Tiffany R. Parker

There is nothing like the fear and panic that strikes when you see a letter from the Internal Revenue Service ("IRS") in your mailbox. The IRS sends millions of letters and notices to taxpayers each year. Not all correspondence means that the IRS is assessing additional tax. However, most correspondence does require action on your part.

In the previous edition of *HMF Update*, we addressed what to do when the IRS visits your place of business; this article addresses tips for dealing with the IRS when you, as a business owner or individual, receive correspondence from the IRS. These tips can also be helpful in dealing with other taxing authorities such as the Department of Finance and Administration and the Department of Workforce Services.

Do not ignore the IRS. They will not go away. The fear and panic increase when you actually open the letter. However, do not avoid this added anxiety by tossing the letter in the trash or the junk mail drawer. It is very important that you take time to read the letter and respond appropriately.

Keep copies of all correspondence from the IRS. Do not throw away any correspondence from the IRS. ***Organization Tip:*** Put the correspondence with the applicable tax return. For example, if the correspondence relates to the 2009 tax return, put the letter with the 2009 tax return and supporting documentation. Also, if you contact the IRS by telephone, take the name and badge number of the agent with which you spoke.

Respond timely to deadlines. The letter or notice you receive from the IRS will include specific instructions on how and when the correspondence needs to be resolved. It is very important to respond by this deadline. If you see you are unable to respond by the stated time, call the IRS telephone number listed on the correspondence and request additional time.

You may have legal counsel or your accountant contact the IRS to resolve your issue. It is important that you contact your representative before the response deadline expires. You want to give your representative adequate time to look over your records and assess the issue(s) before contacting the IRS.

Whenever you are contacted by the IRS or other taxing authority, whether it is a notice received in the mail, or a knock at your door, remember the attorneys at Hyden, Miron & Foster, PLLC are here to assist you.

Small Business Owner Tax Credits (continued from previous page)

twenty-five percent (25%) of premiums paid by tax-exempt organizations, increasing to fifty percent (50%) and thirty-five percent (35%), respectively, in 2014.

Many Businesses can Qualify for Substantial Payroll Tax Relief

Many businesses can now resolve past worker classification issues at a low cost by voluntarily reclassifying their workers. By prospectively reclassifying workers, making a minimal payment and meeting a few other requirements, eligible businesses can achieve greater certainty for themselves, their workers and the government. The Voluntary Classification Settlement Program ("VCSP") is available to many businesses that currently treat their workers as independent contractors, and now want to correctly treat these workers as employees in the future. Employers must meet certain conditions to be eligible and will pay an amount effectively equaling just over one percent (1%) of the wages paid to the reclassified workers for the past year.

Please give one of the attorneys at Hyden, Miron & Foster, PLLC a call to discuss your particular situation.

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