

# **THE FUTURE OF THE ESTATE TAX?**

## **By Kevin Lanigan, Carlson Estate Planning**

Now that the first half of 2012 has drawn to a close, many of us are wondering what will happen with the estate tax at the end of 2012. Unfortunately, the answer to this question remains unclear. At this point we can only look at the proposals that have been put forward to date, along with the default plan under existing law.

Default Plan: If Congress does nothing, the federal estate tax exemption and gift tax exemption both fall to \$1 million, and the 55% maximum tax rate becomes law on January 1, 2013.

Proposals: In November of 2011, two Democratic Representatives, Jim McDermott of Washington and Charles Rangel of New York, introduced the “Sensible Estate Tax Act of 2011,” as HR3467. Although this bill is extremely unlikely to progress in the current legislative climate, this bill in part would: (1) reunify the gift and estate tax exclusion and generation skipping transfer tax (GST) exemption at \$1 million, indexed for inflation as of 2000; (2) reinstate progressive rates, including the 45% rate on taxable transfers over \$1.5 million but below \$5 million, a 50% rate on taxable transfers between \$5 and \$10 million, and a 55% tax rate on taxable transfers over \$10 million; (3) reinstate the state death tax credit; (4) limit valuation discounts for certain transfers of “non-business assets;” (5) require consistent basis reporting for gift and estate purposes, that is, do away with step-up basis and continue the carryover basis method for gift and estate purposes; and (6) limit the GST protection of long-term trusts to a protected term of 90 years. This estate tax bill also proposed to limit grantor annuity trusts to require a minimum 10-year term and require at least some gift be present at the trust creation.

In his budget proposal for 2012, President Obama included an estate tax with a \$3.5 million exemption and a tax rate of 45%. In other words, Obama would leave the estate tax rate at the 2009 levels. While historically Obama's proposal results in a relatively high exemption and an average estate tax rate, we have now had two years with a \$5 million exemption and a 35% tax rate. Therefore, Republicans have already voiced strong opposition to this proposal.

In response, on March 28, 2012, Senator John Thune introduced the Death Tax Repeal Permanency Act to abolish the federal estate tax. Representative Kevin Brady introduced identical legislation in the House that same day. In addition to repealing the federal estate tax, this legislation would repeal the GST tax, make permanent the \$5 million lifetime gift tax exemption and maximum 35% gift tax rate, and maintain the stepped-up basis provisions for transfers at death. In very recent news, former President Bill Clinton and Speaker John Boehner have both advocated extending the current law for one year.

How to plan in this environment? The only certainty is the \$5 million gift tax exemption through the end of 2012. If you have an estate of at least \$1 million (\$2 million for married couples) and desire to make gifts to your children, you should consider some vehicle to take advantage of the high gift tax exemption available this year if your goal is to reduce estate taxes. This is particularly critical if you have assets such as a closely held business or other such assets susceptible to valuation discounts. The valuation experts will be exceedingly busy until the end of this year and there likely will be a rush to make gifts at or before calendar year-end.

If you plan to make a gift before year end we encourage you to contact your estate planning attorney now to begin the process in order to take advantage of this opportunity.