

CLIENT NEWSLETTER - FEBRUARY, 2012

Impact of President Obama's 2013 Proposed Budget Plan

The current estate and gift tax laws enacted as part of the 2010 Tax Act are set to expire at the end of this year. Although we cannot predict with certainty whether Congress will act before the end of 2012 to prevent reversion to the pre-2001 Tax Act laws (\$1 million exemptions for estate and gift tax purposes, and \$1.4 million exemption for generation-skipping transfer ("GST") tax purposes, with a 55% maximum tax rate), it is likely that some action will be taken before year-end, or shortly thereafter.

A major component of the 2010 Tax Act was the increase in the lifetime gift tax exemption from \$1 million to \$5 million. The significant estate planning opportunities that have arisen as a result of this 500% increase in the lifetime gift tax exemption amount will not exist after the end of this year, if Congress decides to adopt President Obama's fiscal 2013 Budget Plan to restore the lifetime gift tax exemption to its 2009 level (\$1 million, with a maximum 45% gift tax rate). The President's proposals would also eliminate the ability to make current gifts utilizing so-called "grantor trusts" for income tax purposes, a change which, if enacted, would dramatically reduce the ability of clients to shift taxable wealth.

Finally, especially with historically low interest rates, certain other lifetime gift planning techniques and trusts (some of which would be significantly restricted if the President's proposals are passed) now also offer historically high estate planning benefits.

Interested clients should therefore act quickly to take advantage of the current \$5 million lifetime gift tax exemption and other existing estate planning techniques which can significantly reduce the size of their taxable estates at death, including the establishment of tax-advantaged irrevocable trusts which can benefit the client and/or the client's spouse during their lifetimes.

Another estate planning tool that may be significantly limited after this year if Congress follows the President's fiscal 2013 Budget Plan is the ability to continually pass trust assets down to subsequent generations free of estate and GST tax, through the use of generational trusts in perpetuity. President Obama proposes a 90-year limit on the duration of generation-skipping transfers in trust. This means that the estate and GST tax-exempt status of the trusts will end 90 years after the trust's original creation date.

Although the current federal estate tax exemption is \$5.12 million for decedents dying in 2012, with a maximum tax rate of 35%, the estate tax exemption for decedents dying in the year 2013 and thereafter would be reduced to \$3.5 million under President Obama's proposals, and the maximum tax rate would return to 45%. Therefore, estate planning for married couples should continue to focus on ensuring that the value of the survivor's taxable estate does not exceed \$3.5 million. (Note that return to a \$1 million estate tax exemption, though theoretically possible, does not appear likely at this time.)

Due to the many changes in the federal estate tax related laws since 2009, we strongly encourage individuals and married couples who have a total net worth (including life insurance death benefits) in excess of \$1 million and who have not updated their estate planning documents within the last three years, do so as soon as possible. Through the end of June of this year, we are offering complimentary, no obligation initial consultations to individuals and married couples who have not updated their estate plans within the past three years.

New Missouri Qualified Spousal Trust

Transferring jointly owned husband and wife property ("tenancy by the entirety property") into the name of a trust (whether it be a joint trust or separate trusts) has historically been somewhat problematic, in that property owned jointly by a husband and wife in Missouri is generally protected from all but joint lawsuits, whereas property owned individually or in trust is completely unprotected. In possibly the first statute of its kind in the United States, late last summer the "Qualified Spousal Trust" became effective in Missouri. This new trust allows married couples to eliminate or minimize their federal estate taxes, without exposing themselves to lawsuits (or unintended marital property consequences), by preserving the creditor protected character of tenancy by the entirety property even though such property has been transferred to a revocable trust.

For married clients who do not have taxable estates (i.e., because of the high federal estate tax exemption level), utilization of a joint revocable trust has already allowed such clients the opportunity to avoid probate without creating potential creditor and/or divorce issues. However, for married clients with net worths approaching or above the federal estate tax exemption level (whatever one determines that level is likely to be after 2012), the new Missouri Qualified Spousal Trust can be a very valuable tool in achieving all of the clients' central estate planning goals of minimizing taxes and probate, but without exposing themselves to potential lawsuits.

In anticipation of the fact that many married couple clients will want to make use of the protections afforded by the new law, we have prepared the new trust forms which are intended to comply with the Qualified Spousal Trust requirements. We have also written a new article entitled "The Missouri Qualified Spousal Trust: A Potential Estate Planning Panacea," which article explains the requirements of the new law, examines potential issues we discovered upon analysis of the statute, and suggests solutions to the identified issues for Missouri attorneys and the Missouri legislature. **An advance copy of this new article, which was written as a companion piece to our article published in the March 2005 issue of the *Journal of the Missouri Bar* entitled "The Missouri Asset Protection Trust," can be read in its entirety at our website, www.blaselaw.com.** Please call us if you would like to set a meeting to further discuss this new technique and why it may be an important strategy to incorporate into your estate plan.

Long-Term Care and Medicaid Planning

We are often asked to consult with clients or their parents regarding long-term care planning issues. Specifically, we receive questions about long-term care insurance and about qualifying to have Medicaid pay all or a portion of nursing home care costs. Generally, in order for an individual to qualify for Medicaid (known in Missouri as "MO HealthNet"), the individual must (i) be age 65 or older, blind, OR disabled, (ii) not receive monthly income in excess of the proscribed maximum limit, AND (iii) not own or possess nonexempt assets having a total value which exceeds the proscribed maximum limit.

Various strategies and options are available to assist clients and their parents in qualifying for Medicaid coverage while preserving the assets they have worked so hard to accumulate over the years. **However, the best and most effective strategies must generally be utilized at least five years prior to applying for Medicaid coverage.** Therefore, it is better to take a proactive approach when it comes to long term-care planning and begin planning now rather than wait until the actual need arises for expensive long-term care. Please call us if you would like to discuss your or your parents' options for long-term care insurance (including the potential favorable tax consequences associated with the same) and/or future qualification for Medicaid.

* * *

Please contact us if you would like to arrange a meeting to discuss any of the areas outlined in this Newsletter, or if you qualify for the above-mentioned complimentary update meeting.