

# Essential Questions to Ask Your Estate Planning Professional

Discussion Leader: Chris Hesse, CPA  
Firm-wide Federal Tax Resource Group  
CliftonLarsonAllen LLP  
Minneapolis, MN

"In this world nothing can be said to be certain, except death and taxes." --Benjamin Franklin, letter to Jean Baptiste Le Roy, Nov. 13, 1789

"At least," as one man said, "there's one advantage about death; it doesn't get worse every time Congress meets." --Erwin N. Griswold

"Those who support the death tax generally do so not for economic reasons but for political ones. They want to make the tax code 'fair' by taxing away the lifetime wealth of others." --William Beach

“Those who have large estates and watchful lawyers will find ways of minimizing these tax burdens.” --Robert H. Jackson, Supreme Court Justice

# Overview of Federal Taxes

## Summary of Estate, Gift and Generation Skipping Transfer Act Provisions

	2011	2012	2013 +
Gift Tax - Exemption	\$5 Million	\$5,120,000 Indexed for Inflation	\$1 Million
Gift Tax - Rate	35%	35%	55%
Estate Tax - Exemption	\$5 Million	\$5,120,000 Indexed for Inflation	\$1 Million
Estate Tax - Rate	35%	35%	55%
Basis of Inherited Assets	Fair Market Value	Fair Market Value	Fair Market Value
Is Exemption "Portable"?	YES	YES	NO
GST Tax - Exemption	\$5 Million	\$5,120,000 Indexed for Inflation	\$1 Million
GST Tax - Rate	35%	35%	55%

# Estate Tax Statistics—filed in 2009

- Most are based upon 2008 exemption, which was \$2.0 million
- Total number of estate tax returns = 33,515 (out of 2.4 million deaths)
- Number showing farm assets = 4,480
- Farm asset value reported = \$7,201,298

# Estate Tax Return Projection

- 2011 exemption level of \$5 million
- Less than 0.3% of deaths in the year are subject to federal estate tax
- Greater concern is with state estate taxes
  - Rates range upwards to 19%

# 1. How do I Determine My Taxable Estate?

Combine the following:

- Fair market value of assets
- Add back prior year gifts in excess of the annual exclusion
- Less liabilities
- Less estate administration and funeral costs
- Less the marital deduction (for transfers to surviving spouse)
- Less charitable deduction

# Assets

- Fair market value at highest and best use
  - Could be lowered if strict requirements of “special use valuation” are met
    - ◇ Participation by decedent or family members
    - ◇ Continued use of farm by family members
- Includes property which the decedent doesn't own
  - Too much control
  - Retained interests

## 2. What is the Current Tax Rate & Exemption?

- Federal
  - 2011 = \$5 million @ 35%
  - 2012 = \$5,120,000 @ 35%
  - 2013 and later = \$1 million @ 55%
- State
  - Depends upon domicile
  - Some states exempt farm assets and liabilities if certain participation tests are met
- Due nine months from date of death
  - Extension available for illiquid estates

# “Small” Estates

- Planning keeps surviving spouse’s estate from becoming subject to estate tax
- Planning may be necessary
  - To protect assets from creditors
  - To make provisions for family members with special needs
- A will is necessary to name guardians

# 3. Should I Hold My Assets in Trust?

- Formation of trust during life (*inter vivos*)
  - Versus distribution of estate through your will
  - Versus having no will or trust
- From a tax viewpoint, a will may accomplish the same result as a trust
  - Wills often contain trust provisions (*testamentary*, or arising upon death)
- A trust might reduce probate costs
  - Either may reduce estate tax
- Need for trust to avoid ancillary probate
  - Assets in other states

# Will, Trust and Beneficiary Designations

- Beneficiary designations control
  - Payable on death clauses
  - JTWROS
- No will, trust, or beneficiary designation
  - State laws of intestacy control
- Documents need to be updated
  - Later-born children
  - Descendants of now-deceased children
  - Disinherit
  - Wealth or other circumstances have changed

# 4. Will Giving Away Assets Avoid Estate Tax?

- Taxable gifts are added back to arrive at taxable estate
  - Gifts less than the annual gift tax exclusion are not added back
    - ◇ \$13,000 per donor, per donee
- Most states do NOT have a gift tax
  - Taxable gifts (i.e., gifts in excess of annual gift tax exclusion) reduce state, but not federal, estate tax
- Gifts must be complete
  - Property in which rights are retained (i.e., control, use) will be included in the taxable estate

# 5. How Can I Efficiently Give Assets to the Kids?

- Value of fractional interests
- Formation of family partnerships
  - Fractional discount benefit on gifts
  - Fractional discount benefit on assets included in estate
  - Be careful not to damage needed ag payment limitations
- Voting and nonvoting interests
- Value of property subject to long-term leases combined with fractional interests

# 6. How do I Keep My Estate Plan Flexible?

- Disclaimer provisions
  - Property passes outright or in trust to surviving spouse
  - Surviving spouse chooses to disclaim and amount to limit value includible in her estate
    - ◇ Separate elections for marital deduction for state v. Federal purposes
- Tying funding of trust upon death to exemption amounts
- Portability provisions

# 7. What is “Basis Step-Up” in the Farm Context?

- Adjustment of tax basis to fair market value
- Assets held at date of death
  - Equipment and depreciation
  - Growing and harvested crop and sale by successor
- Items not benefiting
  - Retirement plans
  - Receivables
- Assets held individually v. inside corporation

# 8. Should I Purchase Life Insurance?

- Assess need for life insurance
  - What is the purpose of the life insurance?
    - ◇ Fund cash flow for estate taxes
    - ◇ Provide liquidity to the family
    - ◇ Provide assets for non-farm heirs
- You should not own life insurance on yourself
  - Life insurance is taxable in estate of owner
- Ownership by children or trust for benefit of children
  - Funding of premiums by gifts

# 9. How Do I Keep My Estate from Appreciating?

- Provide income opportunities for children
- Family partnerships
  - Land purchases
  - Expansion of operations
    - ◇ Farming additional land
    - ◇ Value added processing
- Operating corporations
- Annual gifts
  - Interests in entities
- Using estate tax exemption

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# 10. How Do I Divide My Estate?

- On-farm v. off-farm heirs
- Family entities
  - Operating entities to children active in farm operations
  - Land-holding partnerships
    - ◇ Children active in farm operations
    - ◇ Non-farm children v. other assets
- Life insurance
- Evaluate concepts of “fair” versus “equal” in bequeathing assets

# Questions?



# Contact information

- THANK YOU for your attendance and participation
- For follow-up questions, please contact:

Chris Hesse, CPA

CliftonLarsonAllen LLP

Chris.hesse@cliftonlarsonallen.com

612-397-3071