

## Year-End Estate Tax Planning

By Jane Higgins Marx

To complement income tax planning, this article summarizes some year-end estate planning tips.

**Review Your Current Estate Plan.** Year-end is a good time to review your estate plan in light of current marital status, family circumstances and financial condition. We recommend you conduct a thorough review of your plan at least every 3-5 years, however, if you have experienced a life-changing event in the past year, you may wish to adjust your plan sooner. Examples of life-changing events are marriage, divorce, death of a spouse, birth of a child, adoption of a child or death of a child.

Even if you have not had a life-changing event, you may have experienced a change in your financial situation that warrants adjusting your estate plan. If, in the last year, you received an inheritance, purchased life insurance or otherwise increased assets, you have experienced a change in your financial situation that may increase your need for estate tax planning.

If you do not have an estate plan in place, set the important goal of selecting a lawyer who can assist you in developing a plan that is right for you. Make sure he or she is familiar with the concepts and techniques of estate planning and estate taxes. You should be sure to discuss with your lawyer the following questions:

- What happens if I die without a will?
- What happens if I am unable to make medical decisions for myself?
- What happens if I am temporarily or permanently unable to manage my personal affairs?

**Annual Exclusion Gifts.** Annual exclusion giving is an excellent way to reduce your taxable estate. You may make gifts of up to \$13,000 per year per individual (or \$26,000 per year per individual, if you are married and gift-splitting) without being subject to gift tax. Gifts in excess of \$13,000 per year per person (or \$26,000 per year per person, if you are married and gift-splitting) are subject to gift taxes; however, the excess, up to the gift tax lifetime exclusion amount of \$1,000,000, may be made without any actual payment of gift tax. Gifts exceeding the lifetime exclusion amount will be subject to gift tax, which is currently the highest estate tax rate.

The estate taxes ultimately saved by gifting can be significant. If your estate is currently in the 45% federal estate tax bracket (which applies to every dollar over \$3,500,000 that is subject to estate tax at death), 45¢ will go to pay federal estate taxes at your death. Conversely, for every \$1 you give away during your lifetime, you will save 45¢ in federal estate taxes.

The advantages of outright gifts of property are: (1) the entire property is removed from your taxable estate; (2) future appreciation of the property is removed from your taxable estate; and (3) the income earned on the gifted assets can be shifted to lower bracket taxpayers.

There are a few items you should be mindful of when making gifts. First, if you elect to gift-split with your spouse, or if you make gifts in excess of the annual exclusion limitations, you must file a gift tax

return. Your accountant or attorney can assist you in preparing this return. For gifts made in 2009, a gift tax return is due April 15, 2010. Second, if you make gifts by personal check near the end of the year, timing is crucial. The person to whom you are giving the gift must be in receipt of the check and must present it for payment on or before December 31st. Otherwise, the gift will be considered to have been made in 2010.

**Advance Tuition and Medical Payments.** Payment of an individual's tuition directly to the educational institution is not a taxable gift and is not applied to the annual exclusion limit. Therefore, if you are considering paying all, or a portion, of an individual's tuition, you should make the payment directly to the educational institution and not to the individual. Direct payments to a medical-care provider for an individual's medical expenses also qualify as non-taxable gifts which are not subject to the annual exclusion limit.

**Establish or Contribute to a Section 529 College Savings Account.** Most states sponsor Section 529 plans. Ohio has its own Section 529 College Savings Plan called the CollegeAdvantage Plan. Participating in the Plan is an excellent way to set aside money for the education of your children and grandchildren. The Plan gives participants the option of investing up to \$331,000 per beneficiary (this limit is adjusted annually) in selected mutual funds. Special provisions in the tax code allow funds deposited in the Plan to grow tax free for the benefit of the beneficiary. The money invested in the mutual funds may be used to pay for a beneficiary's tuition, room, board, books and other qualified college expenses at any accredited college in the country.

To participate in the Plan, either the account owner or the beneficiary must be an Ohio resident. The initial contribution may be as low as \$25. Once the account is open, anyone may contribute money to the account. Donors may give up to \$13,000 per beneficiary each year without incurring gift tax. The Plan allows donors to accelerate five years of gifts into one by giving up to \$65,000 per beneficiary in one year without triggering gift tax and allowing the gift to be pro-rated over a 5 years.

An account may have only one beneficiary, but the account owner may change the beneficiary at any time. For instance, if an account is opened for a beneficiary who does not go to college, drops out or finishes college without using the full amount of money saved, the account owner may change the beneficiary to another child or family member. Further, the account owner controls the distributions even after the beneficiary reaches the age of 18.

Money in a 529 Account grows tax-free and, as long as the money withdrawn is used for qualified education expenses, withdrawals from the account are income tax free. However, withdrawals taken by a beneficiary that are not used for qualified education expenses are taxed at the beneficiary's income tax rate and are subject to an additional 10% penalty on earnings. Should the account owner decide to withdraw the money and use it for another purpose, the account owner will incur a 10% penalty on the earnings and pay income tax on the earnings at the account owner's income tax rate. The money may be withdrawn penalty-free if a beneficiary dies or becomes permanently disabled, although income tax will still be owed on the earnings.

Ohio residents may deduct up to \$2,000 of contributions to Section 529 savings accounts per beneficiary on their Ohio income tax returns. If a contribution for a beneficiary is greater than \$2,000 in any one year, the donor may carry forward the rest of the deduction into future years. For more information on tax and estate planning suggestions, please contact Jane Higgins Marx or your CPM attorney.