AUTUMN NEWS

Tax changes are looming in 2011 unless Congress takes action by December 31, 2010. The new estate exemption allowance will be $1,000,000 per person, and anything over that amount will get taxed at the rate of 55%. Now may be the time to consider some additional planning if you fall within that taxable bracket.

Here are some ideas to consider:

Tax Planning for the Future

Charitable Remainder Trusts (CRTs)

A charitable remainder trust (CRT) allows an individual to give an asset to charity while retaining an interest in the asset during his or her lifetime. This can help the donor increase income, reduce estate and income taxes, avoid taxes on gains, and make a significant charitable contribution without reducing his or her family's inheritance.

It is generally best to fund a CRT with an asset that would produce substantial long-term capital gain tax if sold outside the trust. After the trust is executed, the donor transfers the appreciated asset to the CRT, which sells the asset and gives the donor an income for life, or a term of years, or for joint lives. At the death of the donor or other named beneficiary, the remaining trust assets pass to the charity. Here are some benefits of using this strategy:

- When the trust is created, the donor gets a current income tax deduction based on the future amount passing to the charity.
- The trust pays no capital gain tax when it sells the asset.
- The trust can invest in assets paying a higher rate of return than the donated asset was producing, and the trust has more to invest, since it doesn't pay tax on the gain. This can result in increased income for the donor.
- Estate taxes are reduced, since the asset placed in the trust has been removed from the estate.

Upon the donor’s death, assets remaining in the CRT pass to the charity.

Irrevocable Life Insurance trusts (ILITs)

As you may remember, life insurance proceeds are includable in your estate for estate tax purposes. To avoid having your insurance proceeds includable in your estate and to pass your insurance estate tax free, an estate planning technique called an “Irrevocable Life Insurance Trust,” or ILIT, can be created.

The idea is to create a trust to hold your life insurance policy. You name the ILIT as the owner and beneficiary of the policy, and you name whomever you want to receive the proceeds as the beneficiaries of the ILIT.

If it's done right, the policy proceeds will go to the beneficiaries you select and not be included in your taxable estate.

When you die, the policy proceeds will be paid to the ILIT, and will be disbursed according to the terms of the trust. In many cases, they will simply be turned over to the beneficiaries.

But you can also create other options as part of your estate planning. For instance, the trust could continue, invest the proceeds, and provide funds to the beneficiaries over time.

It's also possible to use an ILIT to create liquidity for your estate to pay the estate taxes, by permitting the ILIT to purchase estate assets for cash or loan the estate money.

In general, ILITs work best if you set them up before you obtain a life insurance policy. If you transfer an existing policy to an ILIT, then the estate tax benefits will be lost if you happen to die within three years of the transfer. Of course, this may be a gamble that is well worth taking.

Family Limited Partnerships

Over the past many years the Family Limited Partnership has evolved as an important tool in asset protection planning due to its multi-faceted ability to insulate assets from outside interference, transfer them to family members, de-value them for estate tax purposes and retain control of them all at the same time.

A Family Limited Partnership is a specially designed limited partnership, consisting of one or more general partners and one or more limited partners. The general partners are responsible for managing partnership affairs while the limited partners have no management rights. In the typical scenario, selected family assets are transferred to the FLP and the husband and wife are named as General Partners and limited partners. The plan is to make the children limited partners over time.

The FLP is used for asset protection because it allows an individual to maintain full control and enjoyment of his property while divesting himself or herself of legal ownership. The law provides that a creditor of a partner cannot reach the assets of the

partnership to satisfy an obligation of the partner since it is the partnership as an entity, not the partner, that now owns the asset. Instead, the creditor receives a charging order which in essence causes the creditor to be taxed for income never received. (This can be very discouraging to potential lawsuits!)

One more important feature of the FLP is the discounting of its assets. Because the assets are held in limited partnership units, the assets become fractionalized and less marketable

allowing as much as 40% discounts to be applied to the value of the unit shares of the assets. These discounts result in substantial devaluation for estate tax purposes.

Please call if you would like to schedule a consultation on how one of these techniques might benefit your estate planning objectives.