



BY BRUCE D. ARMON, ESQUIRE, and BOB LOUIS, ESQUIRE

Sharing your wealth

Changes in federal estate and gift taxes offer planning opportunities

Benjamin Franklin said that nothing is certain in life but death and taxes. As someone said more recently, taxes are the only one of the two that you can postpone or reduce.

Though you can't avoid the inevitable, you can and should take steps to protect those closest to you with careful estate planning. This applies whether you are a multimillionaire at the twilight of your career or a physician who recently finished or is about to finish training.

In the last few weeks of 2010, Congress and the president agreed to extend the so-called Bush tax cuts through 2012. The same law made several very favorable changes in federal estate and gift taxes, and these changes offer opportunities for significant tax savings.

Where we started

In 2001, the federal tax law was amended to increase the threshold exemption from federal estate taxes. Over a period of years, the exemption rose to \$3.5 million per person, which meant that, with careful planning, a husband and wife could pass as much as \$7 million to the next generation free of federal estate tax.

Then, in 2010, the federal estate tax expired for one year. Those who died during 2010, which included some very wealthy people, could avoid the estate tax altogether. Many people thought Congress would act long before the year of a no estate tax arrived, but

stalemate in Washington, D.C., prevented any action from being taken.

The 2001 law provided that the estate tax was to spring back into existence in 2011, but at the rates and with the exemption that were in effect before the 2001 law. That meant that the estate tax rate could be as high as 55 percent, with an exemption of only \$1 million. A reversion to that law would have "caught" many people in the federal estate tax, since the tax is imposed on, among other assets, retirement accounts, certain life insurance and homes owned.

What is the law in 2011?

Beginning in 2011, there is a \$5 million exemption from federal estate tax for each person, and the tax will be imposed at a flat 35 percent rate for assets in excess of the exemption.

A married couple will be able to pass up to \$10 million free of tax. But there is a very important change in the rules applicable to husbands and wives.

Under the prior law, to get the maximum benefit of the estate tax exemption, husbands and wives often had to rearrange the ownership of assets, so that each could take advantage of the exemption. Now, that will not be necessary. If one of a married couple dies and does not have sufficient assets to use the \$5 million exemption, the unused portion will be available to the surviving spouse. Here is an example: Suppose the

Continued

Continued from previous page

husband dies and has only \$1 million in his own name. The wife will have her own exemption of \$5 million plus the husband's unused \$4 million, or a total of \$9 million. This will simplify estate planning for married couples.

Gift tax changes

Many people want to start transferring assets to family members, such as children and grandchildren, while they are still alive, and the new law makes this easier, too.

The law already permits gifts each of up to \$13,000 to any number of recipients. Beyond that, the law has provided for a lifetime exemption of \$1 million of gifts. The new law raises the lifetime gift tax exemption to \$5 million, a huge increase that will permit much larger lifetime gifts.

How long will these changes last?

Unfortunately, these very positive changes in the law only extend through the end of 2012—they are not permanent. Congress will have to revisit these taxes before the end of 2012. We will have to stay tuned for changes beginning in 2013.

What should I do if my assets are far less than \$10 million?

Many of us might never reach the \$10 million threshold. However, if you have not reached the point of having to worry about federal estate and gift taxes, there is still planning you should do.

Everyone should have a will, even if there is no federal estate tax problem. A will establishes what happens to whatever assets you own in the event of your death, and it names someone to administer the estate. If you do nothing, state law will determine who receives your assets. If you have minor children, you can select in your will those people who will raise them if both parents die. The alternative is that a court will decide who will raise the children. Some people include in their wills instructions on how their children should be raised: please keep them together, have them live near our current home, send them to particular types of schools, etc.

A will does not govern the passage of all assets. Beneficiary designations will determine who receives life insurance and retirement accounts. While most people might know what their wills provide and where they are, most have misplaced their life insur-

You can and should take steps to protect those closest to you with careful estate planning. This applies whether you are a multimillionaire at the twilight of your career or a physician who recently finished or is about to finish training.

ance and retirement account beneficiary forms. Yet these are very similar to a will, and estate planning includes consideration of who should be the beneficiaries.

In addition, whatever one's level of assets, it is essential to have a power of attorney and a health care directive. A power of attorney is a document that names someone to take care of finances, paying bills, etc., when one is disabled.

The health care directive determines choices for medical care in various circumstances. Doctors and lawyers have worked together in recent years to make health care directives clearer and to take the burden of decision-making off of family members and medical professionals.

Next steps

Tax laws governing estates seem to change frequently and with little notice. It is important to know something about the federal estate and gift tax rules. Perhaps more importantly, it is essential that every doctor, at every stage of his or her career, have a will, a power of attorney and a health care directive. It is the best form of preventive medicine for you and your loved ones. ●

Bruce D. Armon, Esquire (barmon@saul.com) is the managing partner of the Philadelphia office of Saul Ewing LLP and focuses his practice on health care contractual, regulatory and compliance issues. He regularly speaks to physician audiences. **Bob Louis, Esquire** (rlouis@saul.com) is a co-chair of Saul Ewing's Personal Wealth Estates and Trusts practice and is a frequent lecturer on retirement, tax and estate planning topics.

* **Physicians, start your job search at PracticeLink.com/Register**