ESTATE TAX TIME BOMB'S CLOCK IS TICKING!

FYI

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It's been almost a year since my last article on the subject of estate planning, and congress' extension of the federal lifetime Exemption of $5 million dollars per person. But time has passed and this lifetime exemption is set to expire on Dec. 31, 2012 and revert back to $1 million dollars per person. This is a ticking time bomb for most farm estates in this country, as a $1 million dollar gift exemption really doesn't go very far in succession planning.

Most of us realize what is going on today in these ever increasing turbulent times for producers. Futures markets drive us crazy and the media continues its barrage on commodities, and crops, whether they are growing or not, which tends to sway markets, (at least in my mind) in the wrong direction, making any long term planning decisions on your operations next to impossible. But estate and succession planning both long-term and short-term are both beneficial and possible with the right team in place.

Movement across the aisle?

In August, the Republican controlled House of Representatives voted in favor to uphold the current estate tax limits extending them through 2014, (keeping the lifetime exemption at $5 million dollars per person, and up to $10 million dollars for a married couple). This passage is what most of us anticipated and we know this is not the real problem.

The Democrat controlled Senate; however, which most of us have heard where they stand regarding income tax increases for the "Rich," (those making over $250,000 per year.) But there could be some hope on the horizon, as it's been reported that some Democratic members in the Senate have been siding with House Republicans on allowing their version of the $5 million dollar lifetime exclusion pass permanently. Whether this is an issue of compromising with the opposition going on or these Senate members see the real picture of the economy and realize that raising taxes on anybody does not bode well for their reelection campaigns remains to be seen.

But we really don't know what will happen to the current law right now. The $5 million dollar exclusion may permanently pass, may be extending for some short timeframe, or lapse, and we may be back to a $1 million dollar exclusion as of January 1st, or even do something completely different we haven't even heard of yet! What we do know is that everyone should have a plan in place regardless of what happens.

What planning can do

As a quick recap of what some simple estate and succession planning can do, for example, if you have farm property, or partnership interests that have the potential to keep appreciating over time, and you have your younger family members working on the farm that have shown you strong commitment to the continued success of the farming operation, now would be a good time to consider taking advantage of the gifting opportunities to make some efficient transfers of the business into their name.

Doing so removes the future appreciation of the transferred portion of the asset from your estate, which is a great idea considering where most of us believe this country is heading regarding taxes and the overall spending habits of our past and current administrations. Protecting the integrity of your family farming operation is paramount with everyone. Now if you are one of the forward planning individuals that have already absorbed your $1 million dollar lifetime gift exemption, you still have time before the end of this year to make an additional lifetime gifts of $4 million dollars.

Annual exclusion remains same

Non-taxable gifts, known as the Annual Exclusion remains at $13,000 per person for 2012 and more than likely will be the same in 2013. Gifts made to each person at or below this amount do not need to be reported, and payments made directly for health and education expenses on any individuals' behalf do not count in the annual exclusion and do not need to be reported.

Time is precious

But again, I believe time is of the essence in getting work accomplished. If you and your spouse, along with your business advisory team have carefully evaluated your potential taxable estate and other factors, and have come to the decision that your younger family members are ready to take on more ownership on the farm, now is the time to complete a tax efficient transfer of property or partnership interest. Current appraisals must to be completed by a qualified, licensed professional, specializing in the field of expertise for your business, and the appraisals must be dated within three months of the date of the gift. This is especially important to act now engaging an appraiser because they will be extremely busy and the longer one waits, they may be completely booked up as they also realize the clock on the current exemption is ticking!

Update appraisals

As a reminder, appraisals that were completed in the past for you will not be sufficient protection if the gifting transaction is challenged by the Internal Revenue Service, even if you feel that your intended property to gift has not gone up significantly in value since the date of the last appraisal. The appraisals will incur additional costs to you, but the estate tax savings down the road may be immense in relation to your entire family's net worth. Also, when the gifts have been made, a Federal gift tax return for the 2012 calendar year must be filed by the donor and as long as you have made qualified gifts under the lifetime limit of $5 million dollars, you will have no gift tax due. ❐