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## NEWSLETTER

The purpose of this newsletters is to inform you of certain provisions of the December, 2010 tax law that may affect your estate and business planning, and to make you aware of current planning issues being addressed by other clients at this time.

There are many provisions of the new tax law but generally the tax law is a two (2) year extension of the income tax brackets that have been in effect, a surprise two (2) year estate tax reduction planning opportunity and two percent (2%) more in your employee's paycheck.

### Income Tax Provisions

- Income Tax Brackets stay the same in 2011 and 2012 as they were in 2010. For higher income earners, there will be a substantial increase in income taxes in 2013, as well as new payroll taxes and passive income taxes as a result of the new health care law.
- The fifteen percent (15%) tax rate on capital gains and dividends will continue in 2011 and 2012.
- After 2012 the capital gains rates will increase to twenty percent (20%) and dividends will be taxed as ordinary income much, much higher.

### Estate Tax Exemption Depends of the Year of Death

- For 2010 deaths, the estate can elect to pay no estate taxes (an unlimited estate tax exemption) and receive an income tax benefit on up to \$3 Million passing to a surviving spouse and \$1.3 Million passing to others, or the estate can elect to only have a \$5 Million estate tax exemption for distributions to non-spouse, non-charitable beneficiaries and receive an income tax benefit on all assets passing as a result of the death.
- For 2011 and 2012 deaths the estate tax exemption is increased to \$5 Million and the maximum estate tax rate is dropped to thirty-five percent (35%).
- For deaths after 2012 the estate tax exemption is only \$1 Million and the maximum estate tax rate is fifty-five percent (55%).

## Gift Tax Provisions

- For 2010 a maximum of \$1 Million can be transferred gift tax free during lifetime.
- For 2011 and 2012 a maximum of \$5 Million can be transferred gift tax free during lifetime.
- After 2012 a maximum of only \$1 Million can be transferred gift tax free during lifetime.

## Payroll Tax Benefit for Employees

Normally an employee's pay has 7.65% subtracted from it for FICA and Medicare taxes and the employer matches that amount. The new law continues to require employers to pay 7.65% but employees only pay 5.65% which means that employees will take home an additional 2% of their gross compensation amount.

## Important Planning Considerations as a Result of the New Tax Law

1. For deaths which occurred in 2010 a decision needs to be made whether or not the income tax benefit with only a \$5 Million estate tax exemption outweighs the potential estate tax detriment. Since there is a choice, estates should calculate the cost of either choice. This is a very important decision to be made with regard to every death which occurred in 2010 which involved more than \$1.3 Million of assets.

2. If you have an estate in excess of \$1 Million, you need to do estate tax reduction planning over the next couple of years to prepare your estate for a return to an environment in 2013 which only permits \$1 Million to pass estate tax free to beneficiaries other than a spouse or charities. We may very well be in the same situation in the Fall of 2012 that we were in in 2010 with estate tax provisions which are scheduled for a dramatic change at the end of an election year. In 2010, the election results allowed this tax law to go into effect which changed the estate tax exemption from what would have been \$1 Million in 2011 and 2012 to \$5 Million in 2011 and 2012. The election results in 2012 may not be the same at all and barring any future legislation, the estate tax exemption will be \$1 Million in 2013, so clients need to prepare accordingly.

3. For estates of \$5 Million or more, particularly even larger estates, 2011 and 2012 allow you what could be a once in a lifetime opportunity to plan to transfer your eventual estate tax free to the next generation(s). Having a \$5 Million gift tax exemption for an individual or \$10 Million gift tax exemption for a couple provides a significant lifetime planning opportunity to eliminate future estate taxes for large estates. This is very complicated planning, but the combination of these large gift tax exemptions and the current deflated real estate and other asset values, provide this once in a lifetime opportunity. The planning in this regard is very sophisticated, but can generally be accomplished with the client continuing to control their estate. The time for planning for large estates is right now. This type of planning can take many months if not longer, so it is not something that should be decided in the Fall of 2012, when the next election may not go the way you want it to.

4. Any large dividends or large capital gains should be triggered in 2011 or 2012, when these tax rates are fifteen percent (15%). For example, selling your business or your share of your business,

particularly if you already have a non-tax reason such as retirement, health concerns or other reasons is a very smart move during these next couple of years.

## Other Important Planning that Clients are Accomplishing at the Current Time

Asset Protection. I am continuing to see a lot of claims or potential claims against my clients. It is important to make sure that your assets and businesses are structured properly. Cars should generally be owned by the primary driver of the vehicle. Umbrella insurance policies should be in place. Your businesses need to be structured in such a way so that the claims against any one activity of yours do not reach your other activities or your own personal assets. In addition, claims against you personally should not be able to reach your business assets and activities. It appears that litigation, particularly frivolous litigation, is at an all time high, so you need to protect your assets accordingly. Clients with large estates, who are in high risk businesses such as engineers, attorneys, doctors, accountants, etc., need to pay particular attention to these issues.

Basic Estate Planning. Typical probate and guardianship avoidance planning involving designations of health care, durable powers of attorney, revocable trusts, should be in place to avoid complexity in the future in the event of incapacity or death. In addition, clients with businesses should have employment agreements, shareholder agreements and business succession plans in place.

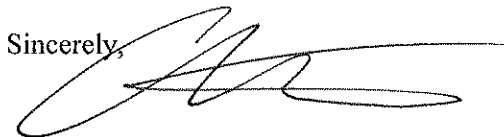
Prices Continue to be Deflated for Business. It appears to be a good time buy out partners or to buy other businesses in order to remove potential competitors and achieve economies of scale. Since bank financing is scarce at the current time, I am seeing a lot of private transactions whereby partners are buying out other partners, or competitors are being purchased and the seller is financing the transaction rather than a bank.

Probate Proceedings. I continue to assist heirs representing estates in probate proceedings. Generally, these proceedings are estates of previously non-clients of mine since most of my planning does involve probate avoidance using revocable trusts and other planning.

Other than these issues, it is business as usual for everybody. We do have a new website and that can be found at [chuckstarklawfirm.com](http://chuckstarklawfirm.com). Otherwise, good luck continuing to withstand the current poor economic environment and the short two (2) year window of tax relief.

Please call if I can assist you or others with regard to any of the planning described in this Newsletter.

Sincerely,



Charles H. Stark