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Re: New Minnesota Estate and Gift Tax Laws

Dear Clients and Friends:

The Minnesota Legislature recently passed, and the Governor has signed, an omnibus tax bill which has wide-ranging tax consequences. Many of those consequences have been covered by local media, and the purpose of this letter is to share with you a few concerns regarding some of the estate and gift tax changes. These changes may increase the amount of Minnesota taxes you have to pay (or your estate may have to pay) in order to make gifts to your family during life or after death.

Summary:

- Prior to the omnibus tax bill, Minnesota did not have a gift tax.
- The omnibus tax bill created a new gift tax. The rate of tax imposed on taxable gifts is 10%. The lifetime Minnesota gift tax exemption is $1,000,000 per person ($2,000,000 per married couple). Similar to federal law, an annual exclusion from the gift tax is available ($14,000 for 2013). Also similar to federal law, an unlimited amount may be gifted (with certain limitations) directly to educational institutions and medical care providers without the imposition of a gift tax.
- While some favorable tax provisions were included, certain others are not. If you have not reviewed your estate plans recently with your estate planning attorney, this summer would be a good time to do so.
- The Minnesota estate tax exemption remains at $1,000,000 ($2,000,000 per married couple).
- The federal gift and estate tax exemption for 2013 is $5,250,000. Many individuals with little or no federal estate or gift tax exposure may now have material exposure to Minnesota estate and gift taxes.
- The omnibus tax bill also extends certain tax consequences to taxable gifts made within three years of death. This may reduce certain previously available benefits of making taxable gifts shortly before death. It may also have unanticipated tax consequences to those who made large taxable gifts prior to 2013.
- Under some circumstances, the omnibus tax bill taxes individuals who are not Minnesota residents at death or who are not residents when a gift is made. It does this through new and expanded “look-through” rules concerning tangible property, including tangible assets owned by income tax pass-through entities taxed as S corporations, partnerships and divisions. Moreover, the new “look-through” rules seemingly do not allow tangible property to be discounted in a way similar to certain discounts available under federal law.
- There are, of course, new procedural rules and legal obligations for taxpayers in light of the changes, including expanded return obligations for residents and non-residents and expanded

powers for taxing authorities to gain information concerning the value of transfers subject to the tax.

- In general, the estate tax changes are effective for deaths after December 31, 2012, and the gift tax changes are effective for gifts made after June 30, 2013.
- There are also some generally beneficial rules retroactively applicable to deaths after June 30, 2011. These rules call for certain benefits (e.g., special lower valuation rules/deductions) to estates containing certain “qualified small businesses” or parcels of “qualified farm property.”

Conclusion:

The law is new. Many technical and administrative issues are unclear. There are ways to avoid or minimize your exposure to these expanded taxes however. Some of these may include:

- Make a large gift before July 1, 2013.
- For retirees and certain others, these taxes may be another reason to talk to your advisors in deciding where you choose to reside. We can help you navigate the complex residency rules.
- Sell a Minnesota-based business using an efficient income-tax method and establish or retain valid residency in another state for your intangible assets, such as stocks, bonds, mutual funds, etc.
- A non-resident may want to use family wealth to make loans to Minnesota based pass-through entities, instead of purchasing or taking an equity interest.
- This may also impact decisions about where to build or expand your business if you are a non-resident business owner.

We expect many of our clients and friends will want to revisit their plans with their Henson & Efron, P.A. attorney sometime this summer. We look forward to hearing from you.

Yours truly,

H&E Estate Planning, Probate, and Trust Administration Department

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This letter does not provide a comprehensive statement of the law and is meant as a basic summary. For information specific to you, please contact us.