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SUGGESTIONS FOR PRESERVING WEALTH

This newsletter was prepared by Glenn Booker. Glenn's practice centers around estate planning for property transfers and estate/trust administration. He also specializes in appraising closely-held business interests. Glenn advises clients on complex accounting and finance issues, yet his conversational approach enables him to explain such issues in simple and understandable terms. You may contact Glenn at (229)883-2441 or e-mail him at glenn.booker @gwsh-law.com.

EXPIRING TAX PROVISIONS MAY BE EXTENDED

Congress has approved the extension of various tax provisions that expired at the end of 2013. The Senate will likely approve same, and President Obama will likely sign the extension bill into law.

The following provisions seem likely to be applicable for 2014 tax planning:

1. Increased expense and bonus depreciation allowances. The Section 179 deduction will likely be set at $500,000, with a qualifying property limit of $2,000,000. If the extension bill fails, the Section 179 deduction will be limited to $25,000 with a qualifying property limit of $200,000.
2. Discharge of indebtedness on principal residence excluded from gross income of individuals. This provision allows an exception to the general rule that discharge of indebtedness -- including mortgage debt -- is included in taxable income of an individual in the year in which the debt is discharged. Since 2007, homeowners were given a fresh start by taking advantage of an exception to this general rule that excluded discharge of indebtedness income for tax purposes. This especially applies to individuals who are "under water" on their mortgage and it has been foreclosed and discharged by the lender.
3. Tax-free distributions from IRAs for charitable purposes. This provision allowed an IRA owner aged 70-1/2 or older to exclude up to $100,000 per year from gross income if IRA funds were paid directly to certain public charities. If this provision is not extended, an IRA owner must pay tax on the IRA funds when withdrawn -- even if donated to a qualified charity.
4. Bonus depreciation for qualified property. If this provision is extended, it will reflect what was the case in prior years: deduct 50% of the cost of depreciable personal property placed in service during the first year. Remaining costs could be deducted over several years using regular depreciation or Section 179 expenses as explained above.
5. Extension of above-the-line deduction for qualified tuition and related expenses. The provision would extend through 2014 the above-the-line deduction for qualified tuition and related expenses for higher education. The deduction is capped at $4,000 for an individual whose adjusted gross income does not exceed $65,000 ($150,000 for joint filers), and $2,000 for an individual whose adjusted gross income does not exceed $80,000 ($160,000 for joint filers).

The import of these selected extenders would be to put pressure on taxpayers to tax plan quickly with regard to capital expenditures and IRS distributions. Be on alert to quickly take advantage of the foregoing provisions that offer promising benefits for taxpayers.

PORTABILITY OF ESTATE TAX EXEMPTION

The portability of a spouse's estate tax exemption (currently $5,340,000 -- $5,430,000 for 2015) has been made permanent in the United States Tax Code. Portability of the federal estate tax exemption between married couples means that if the first spouse dies and the value of the estate does not require the use of all of the deceased spouse's federal exemption from estate taxes, then the amount of the exemption that was not used for the deceased spouse's estate may be transferred to the surviving spouse's exemption so that he or she can use the deceased spouse's unused exemption plus his or her own exemption when a surviving spouse later dies.

Example: Husband and wife have only been married to each other. Wife owns $3,000,000 and Husband owns $7,680,000 in assets. Wife dies in 2014 and funds a family trust with her $3,000,000, using $3,000,000 of her exclusion to shield it from estate taxes. Wife's unused exemption amount is $2,340,000 (her exclusion of $5,340,000 less the $3,000,000 is used to shield the family trust). Husband's exclusion in 2014, for gift and/or estate tax purposes, is $7,680,000 (his own $5,340,000 plus the $2,340,000 "ported" from Wife's estate (i.e., her unused exemption amount)). Husband could make gifts of $7,680,000 in 2014 and fully shield those gifts. If Husband did not make gifts, but died later in 2014, he could fully shield his $7,680,000 estate from estate taxes.

Portability, however, has many requirements and restrictions. Only two will be mentioned here. For example, in order for the surviving spouse to be able to use the unused exemption amount, the executor of the first-to-die estate must make an election on a timely-filed estate tax return. This could necessitate the preparation and filing of the return just to make this election when a return might not otherwise be needed.

Further, normally the statute of limitations for a properly filed estate tax return is 3 years. That is, the IRS has 3 years from the initial filing deadline to challenge the estate tax return. However, if the estate tax return includes an election to allow portability of the unused exemption amount to the surviving spouse, then the time limit on when the IRS can review the first-to-die's return is extended until the statute of limitations runs on the survivor's estate (i.e., generally 3 years after the estate tax return is filed for the survivor's estate).

Wills with an A/B trust structure should be reviewed -- as well as how property is titled -- on a regular basis. If significant assets are passed outside of the probate estate (i.e., life insurance, payable on death or transfer on death accounts), portability or disclaimers could be considered to minimize federal estate taxes.