ESTATE PLANNING MADE SIMPLE FOR 2009

The current economic downturn provides an opportune time to do some planning for whatever is left of your estate.

Neither the federal transfer tax nor the Oregon inheritance tax is going away anytime soon. The budget needs on both the state and federal level will stop that from happening. President Obama recently announced that each person's federal exemption at death (which exempts non-spouse and noncharitable transfers from any federal transfer taxes) should remain permanent at $3.5 million, the level to which it increased this year. The huge fiscal stimulus amounts and the Democratic majority in Congress probably signals the final death knell to recent, repeated attempts to abolish the federal estate tax. So both taxes are here to stay, and, with the Oregon inheritance tax exemption at only $1 million, many Oregonians should be aware that their estates may be taxed at death.

Some wise and somewhat simple estate planning moves may avoid or minimize these taxes. Why is it a good time for estate planning? Two reasons – Low asset values and low interest rates.

The two lifetime federal transfer taxes, the gift and generation skipping transfer tax, are both assessed on asset values – the lower the value of the asset transferred, the lower the tax, or perhaps the greater the chance a transfer may escape tax altogether. Presently, we have severely depressed asset values, so the bite of these taxes can be minimized. By selling property, or by making gifts or loans to lower generation family members now, it is a good bet you will save death taxes in the long run.

Both gift and generation skipping taxes exempt certain transfers. The annual exclusion, the amount you can give every year to as many people as you like without gift tax consequences, has risen to $13,000 this year. If you are married, that doubles to $26,000 with the consent of your spouse. On top of that, you can give away, tax-free, an additional $1 million during your lifetime. Although gifts that are offset by this additional $1 million exemption require the filing of a gift tax return, no gift tax or generation skipping tax is due. With asset values currently depressed, more transfers of eventually more valuable assets can be made under these exclusion and exemption limits without the need to pay a transfer tax.

There is added benefit on the Oregon level when making gift transfers. In computing the federal estate tax at death, both your reported lifetime gifts and your assets at death are added together. In other words, that $1 million you think you are getting totally out of your estate gift tax-free is actually added back to your estate in determining your final federal transfer tax liability. Oregon, however, has no gift tax, and the tax at death is assessed only on the property you own at death. So if you can get assets out of your estate before death, they can generally escape the Oregon inheritance tax altogether. This applies to last minute gifts as well, which could reduce an estate valued at just over $1 million to below that amount and so avoid the Oregon tax. In all of these situations, do not forget the grandchildren or great-grandchildren. If your estate is large enough, an effective tax-free

“generation skipping” gift will not be subject to death taxes until the death of the grandchild or great-grandchild. That is a long period of tax deferral.

Low asset values are only one incentive to make transfers now. The other is low interest rates. Low interest rates make transfers attractive in two ways. First, low interest loans can be made by parents to lower generation family members. How low these rates can go is determined by the IRS, on a monthly basis. Loans in May, 2009, can be made at rates at anywhere between 1% to about 3.5% depending on the term of the loan. Deferred balances due on property sales can use the same low interest rates, thus lowering the cash flow needed by the buying family member.

Second, “split” gifts made during life become much more attractive, two types especially: “Grantor retained annuity trusts,” in which the person making a gift in trust retains an annuity interest for a period of years, and “charitable lead trusts,” in which an income interest is given to charity. In both of these situations, the value of the gift made is equal to what is left over after the grantor or charity enjoys the income interest. Again, this value is partially based on low IRS interest rates. If the trust earns a rate of return greater than the IRS rate, the excess return increases the left-over gift value free of any more gift tax consequences.

It is when the recovery comes that these types of gifts, sales or loans made during the recession become much more valuable from a tax-savings standpoint. Appreciated asset values will far exceed their gifted values. More valuable assets will make low interest loans easier to repay and purchased assets easier to pay off. Higher rates of return will allow higher value assets to be transferred to lower generation beneficiaries of certain split interest trusts. These appreciated assets will now be “out” of your estate, decreasing its value, and either reducing your death tax transfer burden or perhaps eliminating it altogether.