

# Rosen Seymour Shapss Martin & Company LLP

*Certified Public Accountants & Profitability Consultants*

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## LIFELINES BLAST

### Greetings!

*Welcome to the Fiduciary Services Group's Lifelines Blast!* (a publication of Rosen Seymour Shapss Martin & Company). Here is where you will receive periodic updates on all your trust and estate needs.

We welcome your questions or comments about topics discussed or related ones. Please feel free to contact us at 212-303-1012 or e-mail us at [awillinger@rsmcpa.com](mailto:awillinger@rsmcpa.com) and let us know how we can be of assistance.

Sincerely,

Alan M. Willinger, CPA, JD  
Partner-in-Charge of Fiduciary Services

### Estate Tax Repeal - Planning in an Uncertain Future

Under current law the estate tax is scheduled to be repealed effective for decedents dying during 2010. However, this repeal is temporary due to a sunset provision that brings the estate tax back in 2011. Moreover, even this one year repeal has an uncertain future given the current political climate. Many experts are anticipating that should the democrats retain control of Congress an estate tax exemption of between \$3.5-\$5.0 million will be made permanent, thus eliminating the one year repeal. However, should this one year repeal be left standing, heirs will be faced with new rules on assets they inherit. No longer will all assets basis be "stepped up" to fair market value as under current law. In its place, the law provides that heirs will receive a "stepped-up" basis only to the extent of \$4.3 million of assets passing to a spouse and to \$1.3 million in assets inherited by non-spouses. Assets received in excess of these limits will have a

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carry over basis from the decedent. Additionally, although the estate tax is currently set for "one year" repeal, the gift tax was not repealed. Instead the law retains the \$1 million gift tax exemption, thus preventing the possibility of large gifts to family members in lower income tax brackets.

With the future of the estate tax uncertain, effective estate planning remains crucial. For wealthy individuals who may have ceased wealth transfer planning due to the rise in the estate tax exemption to \$3.5 million or the presumption of repeal, it would be unfortunate and ironic if they discovered too late that they either did not die during the requisite time frame or legislation is enacted to further delay or undo the repeal resulting in their estates paying in much higher taxes than they would have under the current tax regime had proper planning been done. Examples of some of the strategies that can be helpful aspects in developing an estate plan now and in the future are outlined below.

### **Lifetime Gifts**

Outright gifts to family members or other individuals made during one's lifetime can reduce estate tax exposure. The current annual gift tax exclusion is \$12,000 per donee (\$24,000 with spousal consent). The gift tax exemption is \$1,000,000. Utilizing gift tax strategies can shift income to lower brackets, move appreciated assets to the next generation and take advantage of valuation discounts.

### **Family Limited Partnerships (FLP)**

Use of a Family Limited Partnership can provide substantial tax savings. In general, an FLP is formed to hold assets that are expected to appreciate in the future, such as real estate or a closely held business, and then gifting minority interests in the FLP to the next generation. This strategy can allow a substantial minority discount in valuing the gift while moving future appreciation to the next generation. FLPs must be structured carefully due to continued IRS scrutiny of FLPs.

### **Charitable Giving**

Charitable planning through the use of outright gifts to charity, charitable lead trusts and other planning tools can generate current income tax deductions and avoid capital gains tax on donated appreciated assets. Although testamentary transfers to a charity are deductible in full in calculating your estate tax, lifetime gifts to charity both reduce your estate and create a deduction for income tax purposes.

### **Credit Shelter Trusts**

For married couples the creation of a credit shelter trust remains a building block in any carefully drafted estate plan. The credit shelter trust is intended to ensure the estate tax exemption amount for the first estate will be fully utilized and thereby allow these assets to bypass the second estate and be passed to the next generation free of estate tax. These trusts may be flexible designed to provide for the benefit of the spouse or any other beneficiary.

### **Medical and Tuition Expenses**

Payments made directly to qualified institutions for tuition or medical expenses can reduce estate tax exposure and are not counted against the \$12,000 annual gift tax exclusion or the lifetime gift tax exemption. Qualifying payments may be made for donees whether they are related or not.

Estate planning is more than just a tool to reduce estate taxes. Avoiding probate, ensuring assets are received by the intended beneficiaries and asset protection from the folly of future generations are just some of the important goals in any effective estate plan. Accordingly, additional strategies, such as a "dynasty trust" may be appropriate in your estate plan.

If you would like advice how these and other estate planning strategies can benefit you, please contact us.

### **New Law Benefits Surviving Spouse on Sale of Residence**

The recently enacted Mortgage Forgiveness Debt Relief Act of 2007 (MRA) contains an underpublicized provision which may provide a helpful break to surviving spouses when they sell their homes.

The new law allows surviving single spouses to qualify for the \$500,000 exclusion of the profit from the sale of a principle residence if the sale occurs not later than two years of the death of the spouse. Apart from this exclusion the surviving spouse's basis in the decedent's half of the property is stepped up to fair market value on the date of death or alternate valuation date, thus eliminating most if not all of the gain on one half of the property.

This represents a big change from the old law, which generally allowed for the full \$500,000 tax break only if the house were sold in the very same year in which the spouse died. It didn't matter when the spouse died - in January, in December, or at any point in between. The house had to be sold by December 31 of that year if the surviving spouse wanted to take advantage of the full \$500,000 exclusion.

## FIDUCIARY SERVICES GROUP

### Rosen Seymour Shapss Martin & Company LLP

RSSM's Fiduciary Services Group offers a wide range of fiduciary services. We assist and guide fiduciaries as they perform their duties and fulfill their obligations. In appropriate circumstances, we can also serve as trustee, and/or executor for you and your family. We will provide your family with protection and security by helping you plan for the future with incapacity protection, probate avoidance, planning for minor children, distribution planning and estate tax planning. Our team approach allows us to provide you with the most basic protection and our experience enables us to assist you with the most complex arrangements, including charitable giving and sophisticated estate tax strategies.

## HAVE A HAPPY AND HEALTHY NEW YEAR

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