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Elder Law: Middle ground on Death Tax found

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By Julian Gray and Frank Petrich /

Two major anticipated crises have disappeared for now: The Mayan calendar and the fiscal cliff. While some people may still be hoarding bottled water, flashlights and ammunition just in case, at least Congress has done something to put our minds at ease (for now) about a variety of tax issues.

While many of us were out to the wee hours of the morning ringing in the new year, Congress was at work (finally) constructing the American Taxpayer Relief Act, which was signed into law Jan. 2. Like any compromised legislation, there are many facets to review. So, while there are significant changes to a variety of tax issues, we're examining the one issue that seems to garner more questions from our readers than any other -- the federal Estate and Gift Tax (otherwise affectionately known as the Death Tax).

In previous columns, we have discussed the great concern many people have over the pending "reset" of the lifetime federal Estate and Gift Tax exemption. Without the passage of American Taxpayer Relief Act, U.S. citizens would have been limited to transferring at death (or during lifetime via gift) $1 million tax free to successive generations Jan. 1. Transfers in excess of this amount would have been subject to a top Death Tax rate of 55 percent.

Remember, this would include the value of investments, a home or other real estate, individually owned life insurance, and other assets. Reaching this limit is more likely when considering the broad scope of taxable assets. Until the expiration of the current tax law Dec. 31, 2012, the exemption was $5 million (indexed for inflation).

Fortunately, Congress was able to compromise on this issue for the benefit of taxpayers so that the $5 million exemption remains intact, which with inflation is $5.25 million for this year.

The tax rate for transfers in excess of this amount has been raised from 35 percent to 40 percent (but that's still way better than 55 percent). This provides a variety of planning options for families with significant wealth or interests in assets that may be of low value now but have the possibility of significant increases in value in the future. (As a bonus planning opportunity, taxpayers can also give $14,000 per recipient annually without using any of the aforementioned lifetime exemption, which has been increased from $13,000 per recipient in 2012.)

Another benefit of the estate tax provisions makes "portability" between spouses permanent. Under existing law, portability was only applicable to decedents dying in calendar years 2011 and 2012. Practically speaking, this means that a married couple can transfer approximately $10.5

million to a successive generation free of the Death Tax provided that certain elections are made upon the death of the first spouse, even if the first spouse's estate is not significantly valuable.

Sounds like Congress finally got together on an important issue that will put our minds at ease, right? Not so fast. Unfortunately, Congress delayed the resolution of spending cuts and the debt ceiling. So, it is possible that when these important issues are revisited in the next two to three months we may see a trade-off against these perceived tax loopholes. For now, there still exist several opportunities before Congress takes up the issue again and it is not too late to plan, but time is of the essence for many families hoping to utilize the current generous Estate and Gift Tax rules.

The Class Act

The New Year's Day budget agreement also repealed the Community Living Assistance Services and Supports (Class) Act and created a new national commission to develop a plan for better financing and delivery of long-term care services.

The act, part of the 2010 health overhaul law, was supposed to create a new national, voluntary long-term care insurance program, but that ran into a lot of opposition. It was determined that, without some significant changes, the program's premiums would probably be too expensive for most buyers and that it could be financially unsustainable.

The new 15-member commission is to include members appointed by the White House as well as Democratic and Republican leaders of the House and Senate to help "develop a plan for the establishment, implementation, and financing of a comprehensive, coordinated, and high-quality system that ensures the availability of long-term services and supports for individuals in need of such services and supports ... and individuals desiring to plan for future long-term care needs."

With our aging population, the crisis in long-term care planning and the noncongressional cooperation we have been subject to, it will be interesting to see if this commission even gets off of the ground.

'Plateauing' follow-up

Our November column discussed a proposed federal settlement agreement relative to "plateauing," a term applied to a condition wherein a Medicare beneficiary was deemed to have reached a certain physical or mental level where there was no further room for improvement and thus the individual was denied Medicare coverage for ongoing, needed skilled services.

That agreement was approved Thursday and will help assure that Medicare coverage is available for skilled maintenance services in the home health, nursing home and outpatient settings. The U.S. Centers for Medicare & Medicaid Services must develop and implement a nationwide education campaign for all who make Medicare determinations to ensure that beneficiaries with chronic conditions are not denied coverage for critical services because their underlying conditions will not improve.

Kudos to the Center for Medicare Advocacy along with Vermont Legal Aid for effecting this agreement.

Julian Gray and Frank Petrich are both certified elder law attorneys with over 55 years of combined experience in the Pittsburgh area at Gray Elder Law. Send questions for consideration in this column to elderlawguys@gra yelderlaw.com. Visit www.grayelderlaw.com

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