No Better Time for Making Taxable Gifts

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The tax benefits of making taxable gifts during your lifetime – and paying the gift tax – can be significantly better than being subject to estate tax at your death. This strategy may be even more beneficial this year because the current top gift tax marginal rate should remain at 35%, while the tax rate increases scheduled to take effect January 1, 2011 will result in estate and gift tax maximum rates of 55%.

The benefits of this strategy can be seen in this example:

- Assume Don, who is single, has a $5 million estate and has not used any of his gift tax exemption (currently $1 million). If he were to gift $2 million of those assets in 2010, he would pay a 35% gift tax, amounting to $350,000. In addition to removing the appreciation on the gifted assets from Don's estate, the amount of gift tax paid will also be excluded from estate taxation, provided Don lives for three more years. So if Don lives at least three more years, his estate tax owing would be $1,427,750, assuming no asset appreciation. The total taxes paid would be $1,777,750.

- Alternatively, if Don makes this gift in 2011, the gift tax on $2 million of assets would be $560,250. If he then dies more than three years later, the estate tax owing would be $1,312,113. The total taxes paid would be $1,872,363.

Essentially, taxable gifts made in 2011 may be subject to a 20% higher tax rate than those made in 2010.

As outlined in Frank Henke's article, we cannot be certain these laws won't be changed, either for the balance of this year or retroactively to the beginning of the year. Nor do we know what changes may take place next year. There are strategies available to protect you from paying higher taxes as a result of retroactive tax law changes.

Regardless of what changes are made, it is almost certain that gift tax rates will never be any lower than they are this year. Contact your Warner estate planning attorney to take advantage of these opportunities.