remain protected in 2013 and beyond

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On January 1, the U.S. Senate passed legislation to avoid the 'fiscal cliff,' and nearly 20 hours later the House of Representatives followed suit. The deal's affect on tax laws are broad, and greatly effect estate taxation. Estate planning experts say this makes it critical that Americans affected by the tax laws revisit their estate plans.

New York-based McManus & Associates, a top-rated law firm specializing in estates and trusts, has released the recording of a conference call with clients that highlights important issues to consider based on the new estate planning environment. That conference call is available on their website at http://mcmanuslegal.com. The firm also has offices in New Jersey and serves clients throughout the tri-state area.

"Many Americans will experience significant income tax increases as a result of the 'fiscal cliff' deal, but there is good news with respect to the estate tax," commented John O. McManus, a top AV-rated attorney and founding principal of McManus & Associates. "The newly established permanent estate tax gives wealth planners certainty that has been lacking for more than a decade – but what if Connecticut's law encourages other states to also create a gift tax even lower than the federal exemption amount? The fact that they could do it retroactively is a real concern."

The firm has offered the following tips:

Post-Fiscal Cliff Estate Planning: Top 10 Questions Answered in Light of the Deal

1. The new tax rates and exemption amounts are set. What can you expect to pay for estates over $5.25MM?

a. Federal estate tax rate moves up from 35% to 40% with the

income, capital gains and dividends that was enacted to fund Obamacare.
d. Anyone earning less than $400K will continue at the 'Bush era' tax rates. However, the payroll tax for Social Security has been restored from 4% to 6% so paychecks will be smaller.
e. Two limits on tax exemptions and deductions will be reinstated: Personal Exemption Phase-out will be set at $250K, and the Itemized Deduction Limitation kicks in at $300K.

2. What are the estate-tax "traps" to be wary of?

a. The exemption amounts for state estate taxes are much lower than the federal exemption amount. While no federal estate tax will be paid on an estate up to $5.25MM, a large state estate tax liability could be due in certain states.
b. For anyone owning Real Property in a state that is outside of one's primary residence, one's heirs will have to endure the arduous and often expensive process of out of state probate, or ancillary probate in addition to probate in one's state of primary residence. Employing a Revocable Living Trust can eliminate the need to undertake probate in multiple states.

3. Lifetime gifts in excess of $2MM in CT are subject to tax; is this a warning for similar gift limitations in other states?

a. When the federal lifetime gift exemption amount jumped to $5MM, the state of Connecticut passed legislation to tax any gifts made over $2MM.
b. With the precedent set and with states looking for additional

income, it is possible that others states will follow. Additionally,

b. Taxpayers whose net worth continues to grow in excess of $5.25MM will look to transfer assets and pay the gift tax.
c. Gifts made during one's lifetime will enjoy a more favorable tax treatment, will suffer less shrinkage due to taxes, will avoid state estate taxes and will enjoy future growth free of any state and gift tax.

5. For estates below $5.25MM, who should employ trusts in their wills?

a. Trusts provide a greater level of asset protection, so one can be assured that, in the event of reversals in life including divorce (the single largest creditor attack on wealthy families), trust assets will be protected and can continue to grow tax-free and provide for heirs.
b. Flexibility in trusts even allows access to trust assets via a power to appoint and to remove trustees. Trusts protect the value and future growth of any discounted assets and can employ generation skipping tax free.
c. Trusts also allow for the minimization of state estate taxes.

6. What is meant by "spousal portability" and "unification" of the exemption amounts? Does this eliminate the need for certain planning?

a. Portability allows the surviving spouse to utilize any remaining portion of their deceased spouse's Federal Estate Tax exemption amount. To elect portability, the executor handling the estate of the spouse who died must file an estate tax return (Internal Revenue Service Form 706), even if no tax is due. This return is due nine months after death.
b. Unification: The federal exemption amount for estate tax and

lifetime gifting has been unified. That means both exemption

generation tax-free. Such a skip would normally constitute a generation-skipping tax event, which imposes a 40% tax.
b. The GST exemption employed in trust can avoid taxes for transferees for 100 years or more, including all the growth in the portfolio.
c. The most widespread use of the GST exemption is for wealthy individuals whose children already enjoy enough assets, will be earning enough assets, or will inherit enough assets to assure the greatest likelihood the trust assets will not be spent during the children's lifetimes.

8. Looking forward to March 2013 and the "debt ceiling" debates, what detrimental effect could such negotiations have on state estate taxes?

a. Regarding revenue to individual states, the high federal estate tax exemption amount will ultimately reduce the states' future estate tax revenue due to lifetime gifts.
b. Previously, there was a state "pick-up" estate tax that allowed states to collect estate tax from the federal government without additionally charging the estate of the decedent. This was accomplished by giving taxpayers a dollar-for-dollar credit for any state estate taxes paid. The credit expired, which caused most pick-up taxes to automatically expire.
c. It is possible that states will construct new methods to make up for budget shortfalls, particularly if the debt ceiling debates carry on.

9. What are the trust and non-trust estate planning strategies that married and single persons should undertake in 2013?

a. Foundations: With increased taxes, gifts to charity have a

loved ones receive the remainder.

c. Family mission planning: The family mission and preparing heirs for inheritances will be a critical to ensure that conflict is minimized and harmony maximized, to ensure motivation to grow the assets and to support charitable endeavors.

10. What critical gift tax consequences must be avoided for gifts made in 2012? When does the statute of limitations clock begin?

a. The final step to ensure the completion of any gift you have made to a trust is the timely filing of a gift tax return. Avoid professionals who do not have expertise in making significant gifts into trust.

b. Filing of a complete return starts the 3-year clock with the federal government. Once the statute of limitations has run, the IRS can no longer audit the return.

c. If a return is prepared but does not meet the specific adequate disclosure requirement, the statute of limitation does not begin to run.

"Several valuable opportunities emerged as part of the 'fiscal cliff' negotiations that pleasantly surprised the estate planning community, but we're not completely out of the woods – the 'debt ceiling' debates, for example, are just around the corner," said McManus. "Keeping track of how the ever-evolving legal landscape impacts wealth preservation is a full-time job, but one that we're here to help with."

Tax Planning