



ESTATE PLANNING AND TAX CHANGES IN 2009

By: Tom Olejniczak & Fred Schmidt
Liebmann, Conway, Olejniczak & Jerry, S.C.

ESTATE TAX. The dawn of the New Year brought with it an increase in the exclusion amount for the federal estate tax. For persons dying after December 31, 2008, the exclusion is now \$3,500,000, a large increase over the \$2,000,000 exclusion of the past year. While the increase is a large benefit to most taxpayers, persons with estate tax exposure may want to look at their portfolios to determine whether it makes sense in this market to take advantage of wealth transfer opportunities.

The federal estate tax rate remains unchanged at 45%.

No Wisconsin estate tax is payable for deaths in 2009.

GIFT TAX. As of January 1, the annual Gift Tax exclusion is increased to \$13,000. This is an additional \$1,000 above the 2008 limit and provides additional wealth transfer opportunities.

The lifetime gift tax exclusion amount remains unchanged at \$1,000,000.

Payments for some tuition or medical expenses continue to be free of gift tax, provided such payments are made directly to the qualified educational institution or medical provider.

Wisconsin does not have a gift tax.

GENERATION SKIPPING EXEMPTION. In 2009 the amount of the GST exemption increases from \$2 million to \$3.5 million. While use of the GST exemption can provide a substantial benefit for your descendants over time, care must be taken to minimize incurring federal gift tax on GST transfers.

NON-CITIZEN SPOUSE. Gift and estate tax laws provide strict rules regarding transfer of funds to a spouse who is not a U. S. citizen. In 2009, the amount of the non-citizen spouse annual exemption increases to \$128,000. That amount may be transferred to a non-citizen spouse each year without causing adverse gift tax implications.

WHAT WILL THE NEW CONGRESS DO? This is the big question; the answer to which depends on how Congress and the President deal with the economic stimulus package, large state budget deficits, the wars in Iraq and Afghanistan and the phase out of the federal estate tax scheduled for 2010. The bad news is that the federal estate tax law is scheduled to come

back in 2011, with a reduced exemption of \$1,000,000. It seems likely, if not certain, that Congress will make changes to the estate tax laws in 2009.

FLEXIBILITY IMPORTANT. Because estate tax laws and exemptions are a moving target, it is important that your estate planning documents be flexible. Flexibility is important in 2009 for a myriad of reasons, including the continuing uncertainty of federal tax law changes, the current Wisconsin state budget shortfall which could result in another temporary state estate tax, the historic volatility in asset values, the possibility of changes in residency to other states, and changes in health and life circumstances.

We look forward to the challenges ahead and will keep you abreast of the changes and how to deal with them as we progress through 2009.