News | APPAREL AND FASHION

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Don't Miss Out: 2012 Offers Apparel Company Owners Unique Estate Planning Advantages

Legislation passed in December 2010 created a window of opportunity for apparel company owners and investors to take advantage of estate and gift tax exclusions that will likely be legislated away by this year's-end. With valuations still somewhat depressed in many markets as a result of the struggling economy, owners still have a unique opportunity to maximize their opportunity for wealth transfer, which may not exist in years to come.

Understanding the Opportunity

On December 17, 2010, President Obama signed legislation, following Congressional approval, of a tax bill that extends the Bush-era tax cuts through 2012. Not only did the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 ("the Act") eliminate much of the uncertainty that was being faced regarding what the tax rates and rules would be for 2011 and 2012, but it also included extensions of many expired provisions along with planning opportunities for income, estate, and gift taxes.

Though doubts still exist regarding what will happen after December 31, 2012, the estate tax exclusion amount has for now increased to $5,120,000 per individual and $10,240,000 per married couple. The top tax rate for estates in excess of the exclusion amount is currently 35 percent.

Also for 2012 (everything may change as of January 1, 2013), the gift tax continues to be reunified with the estate tax, meaning that an individual's exclusion may be used for gifts during life or for assets passing upon death. By example, an individual who has used their $1 million lifetime gift tax exclusion now has an additional $4,120,000 of available exclusion. Lifetime gifts over $5,120,000 are taxed at 35 percent. Further, there is a $5,120,000 generation-skipping tax ("GST") exclusion for 2012.

The technical concept of portability must also be considered. It allows a surviving spouse's estate to use any unused Federal estate and gift tax exclusion based on the last deceased spouse. For example, if a husband dies survived by his wife and his estate only needed to use $3.5 million of his exclusion, his wife can combine the unused portion of $1.5 million with her $5 million exclusion (plus indexing), thereby passing an additional $6.5 million estate tax free. The estate will be required to file a return and make an election by the first decedent's executor to transfer the unused portion to the surviving spouse. Portability should not serve as an alternative to proper estate planning. Portability does not take into account appreciation in the assets nor does it offer any asset protection. In addition, the portability provision does not apply to the GST, nor does it assure the intended result. Only the unused exclusion of the last deceased spouse is available to be used.

Absent action by Washington, the above rules sunset back to a $1 million estate/gift tax exclusion and a 55percent tax rate. Also, the GST exclusion returns to $1 million (indexed for inflation from 1997).

Summary of Estate and Gift Tax Changes

	2009	2010	2011	2012*
Estate tax exclusion	$3.5 million	May elect $5 million or no Federal estate tax	$5 million	$5,120,000
Lifetime gift tax exclusion	$1 million	$1 million	$5 million	$5,120,000
GST tax exclusion	$3.5 million	$5 million	$5 million	$5,120,000
Maximum estate, gift, and GST tax rates	45 percent	35 percent (but 0 percent GST tax in 2010)	35 percent	55 percent
Basis adjustment upon upon death	For all of the decedent's assets	May elect for (i) all assets or (ii) allocate $3 million increase to spouse and $1.3 million increase to others	For all of the decedent's assets	For all of the decedent's assets

**Note that the provisions are scheduled to sunset December 31, 2012*

Take the First Step

Discuss your plans with your accountants and attorneys so they can assist you in evaluating your options. It is recommended that, as part of any business transfer or estate planning endeavor, every will and revocable trust be reviewed for conflicting provisions with current intent and the interaction with the new law. State transfer taxes must be carefully considered as they have significant impact on costs and payments. A tax and estate planning advisor should review transfers to grantor trusts and note sales. It is critical to question the continued use of GRATs vs. outright gifts and the elimination or lessening of guarantees on trust obligations by added additional gifts to the trust using the $5,120,000 exclusion. You'll need sound counsel to make optimal decisions.

Take Action Now

Every business owner's situation is unique, but given the current tax environment, most owners owe it to themselves and their family to consider the current state of their succession and estate plans and evaluate what actions, if any, they should take this year to help them achieve their objectives. Under the sunset provisions, delaying action could cost a owner's estate millions. ■

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