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Robert W. Wood

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How Much Should You Give Away In 2011-2012?

Arguably as much as you can up to $10 million in value. That's the amount (combined with your spouse) you can give tax-free to your kids or grandkids.

But it can be a loaded question if you own a business. Business owners have traditionally had a hard time giving up control. The tax laws may encourage divesting, but their business sense tells them to hang on. Often, business owners go through all manner of gyrations to give something away for tax purposes and yet still retain decision making authority.

No Tax? With the unexpected estate tax rules of 2011 and 2012, what should you do? Several bills have been introduced to permanently repeal the estate tax starting in 2013. See Fair Tax Act of 2011 (H.R. 25); End Tax Uncertainty Act of 2011 (H.R. 86); Fair And Simple Tax Act of 2011 (H.R. 99); Permanently Repeal the Estate Tax Act of 2011 (H.R. 143); Death Tax Repeal Act (H.R. 177); Family Farm Preservation and Conservation Estate Tax Act (H.R. 390); Fair Tax Act of 2011 (S.13).

Big Tax? On the other hand, President Obama's budget proposals call for a return to 2009 rates and exemptions. That would mean you could only transfer 1 million ($2 million per couple) during life. That's a far cry from the $10 million allowed in 2011 and 2012.

We know the estate tax remains controversial, and our revenue needs are great. For that reason, I'd suggest transfers before the end of 2012. Not only can you transfer up to $10 million tax free, but assuming the business or investment assets continue to appreciate, the future appreciation will also escape tax.

The usual issues that need to be addressed include how to transfer value but retain some control. There's no one-size-fits-all solution. However, a recapitalization producing different classes of voting stock in a family company can often work well. Most of the value of the business can be put into the nonvoting stock (often on a tax free basis), with the older generation keeping the reins.

Alternatively, for those who are willing to give up control now, there may be other ways of providing security for the older generation. They might include a salary continuation plan for additional retirement income, even if retirement is years away. See Family Businesses Catch a Big Break.

Family Issues. In any family business there will be other dynamics to consider. For example, if the older generation passes most of the business to certain family members, there are bound to be issues about how to equalize gifts to other beneficiaries. This can be addressed by integrating a current gift program with the overall estate plan on death.

Crap Shoot? No one knows what 2013 will bring in the estate tax field. Even so, 2011 and 2012 represent truly unheard of opportunities. Don't wait until the end of 2012 to start considering this.

For more, see:

New Estate Tax Law Poses Dilemma For The Rich

Election For 2010 Estates: Big Headache

The $5 Million Tax Break

Obama Budget Raises Taxes On Rich And Big Estates, Sends $250 Checks To Seniors

Robert W. Wood practices law with Wood & Porter, in San Francisco. The author of more than 30 books, including Taxation of Damage Awards & Settlement Payments (4th Ed. 2009, Tax Institute), he can be reached at wood@woodporter.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.