

ESTATE PLANNING IN 2008:
WHAT'S HOT & WHAT'S NOT

May 14, 2008

Michael Stiff
Hutchins & Stiff LLC
1675 Broadway, Suite 2750
Denver, CO 80202
(303) 893-6500
stiff@hutchinsandstiff.com

I. Estate & Gift Tax Legislation Update

A. Current Law

Year	Estate Tax Exemption	Top Applicable Tax Rate
2008	\$2,000,000	45%
2009	\$3,500,000	45%
2010	No Estate Tax – Carry-over Basis	
2011+	\$1,000,000 / \$1,000,000	55-60%

* Perfect Storm: 2008-2009 = High Credits and Low Rates
2010 = No Estate Tax and Carry-over Basis
2011 = Low Credits and High rates
+ Legislative uncertainty about possible repeal or reform

B. Future Legislation (crystal ball gazing)

1. Repeal - appears dead for now
2. Reform - appears likely before 2010 (but when?)
 - \$3,000,000 - \$5,000,000 estate tax exemption?
 - 35-45% top tax rate?
 - Use of deceased spouse's unused exemption?
 - Elimination of intra-family valuation discounts?
3. No Action - possible

* Despite all the brilliant minds and scores of commentary, I am unaware of anyone who correctly predicted the current system before EGTTRA's enactment in 2001.

II. Don't Forget the Basics!

A. Non-tax issues should be the number #1 priority in designing an estate plan.

B. Take Advantage of the Freebies

1. Utilize Both Spouses' Exemptions
 - Review and coordinate titling of assets
 - Disclaimer or A/B trust planning (credit shelter trust)
 - Gifts of \$1,000,000 lifetime exemption
2. Annual Exclusion Gifts
 - Very effective and simple
 - Outright, Crummey or 2503(c) Trusts or 529 Plans
 - Compounding and leverage are very powerful concepts

C. Low Hanging Fruit in Taxable Estates

1. Life Insurance (shouldn't be owned by insured in a taxable estate)
 - Transfer to beneficiaries
 - Transfer to Irrevocable life Insurance Trust
2. UGMA/UTMA accounts
 - Parents shouldn't be the custodians to avoid inclusion
 - Consider conversion to 529 Plan

D. Coordinate Beneficiary Designations with Estate Plan

1. Life Insurance
2. IRA and Retirement Plans
3. Payable on Death Designations
4. Beneficiary Deeds

* Based upon the current \$2,000,000 exemption and current law, implementation of the above basics will eliminate any estate tax for 99% of the U.S. population.

III. Heckerling Musings 2008

Special thanks to Steve Akers of Bessemer Trust for allowing me to use and reproduce his “Heckerling Musings 2008” as the outline for this program.

IV. Recent Developments & Miscellaneous

- A. Revenue Ruling 2008-22 – Substitution of Property of Equal Value
- B. Recent FLP Cases
 - * *Estate of Mirowski v. Commissioner*, T.C. Memo 2008-74 (03/26/08)
 - * *Jane Z. Astleford v. Commissioner*, T.C. Memo 2008-128 (5/05/08)
- C. Utilizing a Poorer Spouse’s Unified Credit
 - * *Estate of Lee v. Commissioner*, T.C. Memo 2007-371 (12/20/07)
 - * Traditional and New Approaches