SHERMAN WELLS
SYLVESTER & STAMELMAN LLP

TAX AND TRUSTS & ESTATES UPDATE

December 2015

2016 Inflation Adjustments for Tax Items

With the new year will come new inflation adjustments for several tax-related items. Some of the more significant changes that will take effect on January 1, 2016 (and those items that have remained unchanged) are listed below.

ESTATE AND GIFT ADJUSTMENTS

Estate, Gift and Generation-Skipping Transfer (GST) Tax Exemption. The estates of decedents passing away in 2016, as well as gifts made in 2016 above the annual exclusion, will have an exemption of $5.45 million (up from $5.43 million in 2015).

Annual Gift Tax Exclusion. The annual gift tax exclusion for 2016 remains unchanged from 2015 at $14,000. The annual gift tax exclusion for gifts to a spouse who is not a United States citizen will be $148,000 (up from $147,000).

PERSONAL INCOME TAX ADJUSTMENTS

Application of the Highest Tax Rate. The tax rate of 39.6 percent affects singles whose income exceeds $415,050 (up from $413,200) and $466,950 for married joint filers (up from $464,850).

Standard and Itemized Deductions. The 2016 standard deduction remains $6,300 for singles and $12,600 for married couples filing jointly.

For itemized deductions, the deductions begin to phase out at the rate of 3% of the excess adjusted gross income over $259,400 for single filers (up from $258,250) and $311,300 for married joint filers (up from $309,900), with a cap of 80 percent maximum reduction in total value of deductions.

Personal and Dependent Exemption. The personal exemption for 2016 is $4,050 (up from $4,000). It phases out at the rate of 2% for every $2,500 of adjusted gross income above $259,400 for single filers (up from $258,250) and $311,300 for married joint filers (up from $309,900). The personal exemption phases out completely at $381,900 for single filers (up from $380,750) and $433,800 for married joint filers (up from $432,400).

Alternative Minimum Tax. The Alternative Minimum Tax exemption amount for tax year 2016 is $53,900 for single filers (up from $53,600) and $83,800 for married couples filing jointly (up from $83,400).

RETIREMENT SAVING ADJUSTMENTS

Retirement Plan Contribution Limits. The 2016 contribution limit for 401(k), 403(b) and 457 plans remains at $18,000, with the additional catch-up contribution limit for these plans for taxpayers who are age 50 or older remaining at $6,000. The maximum contribution to IRAs remains at $5,500, with the additional catch-up contribution limit for taxpayers who are age 50 or older remaining at $1,000.

In This Issue

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Deduction for Traditional IRA Contributions. The deduction for a traditional IRA for singles and heads of household will continue to phase out for adjusted gross income between $61,000 and $71,000. For married couples filing jointly, the income phase-out remains between $98,000 and $118,000 when the IRA contributor is covered by a workplace retirement plan, and between $184,000 and $194,000 (up from $183,000 and $193,000) when the IRA contributor is not covered at work but is married to someone who is.

Maximum Roth IRA Contributions. For Roth IRAs, the income phase-out range is between $184,000 and $194,000 for married couples filing jointly (up from $183,000 and $193,000). For singles and heads of household, the income phase-out range is between $117,000 and $132,000 (up from $116,000 and $131,000). For a married individual filing a separate return who is covered by a workplace retirement plan, the income phase-out range remains at $0 to $10,000.

New Guidance on Reporting Tax on Gifts and Bequests from Former U.S. Citizens and Residents

U.S. citizens or residents who receive gifts or bequests from certain individuals who have relinquished their U.S. citizenship or U.S. "green cards" will soon have to comply with a 2008 law imposing a tax on the recipient of such transfers. Treasury Regulations proposed recently by the IRS to provide guidance to taxpayers regarding compliance with the law are expected to be made final in 2016. The proposed Regulations address Section 2801 of the Internal Revenue Code, which was enacted in 2008 as part of the Heroes Earnings Assistance and Relief Tax Act (the "HEART Act").

The tax applies to gifts and bequests in excess of the gift tax annual exclusion amount (currently $14,000 per donee, per year) received, directly or indirectly, by an individual who is a U.S. citizen or resident at the time of the gift or bequest from a "covered expatriate." An expatriate is a U.S. citizen who relinquishes his or her citizenship or a "long-term" U.S. resident (i.e., a non-citizen who is a lawful permanent resident of the United States in at least 8 taxable years during the 15 taxable years prior to the gift or bequest in question) who ceases to be a lawful permanent resident. A "covered" expatriate is an expatriate who (1) expatriated from the United States on or after June 17, 200,8 and (2) on the date of expatriation, (a) had an average annual net income tax liability of more than $124,000 (indexed for inflation) for the five previous taxable years, (b) had a net worth of at least $2 million (not indexed for inflation), or (c) failed to certify under penalty of perjury that he or she had complied with all U.S. tax obligations for the five preceding years.

Although the tax has a broad reach, certain gifts and bequests would be exempt from the tax under the proposed Regulations:

1. Gifts reported by a covered expatriate on a timely filed gift tax return (keeping in mind that the estate tax exemption for a nonresident alien is only $60,000, and there is no exemption available beyond the annual exclusion for lifetime gifts by a nonresident alien);
2. Property included in a covered expatriate's estate and reported on his or her timely filed U.S. estate tax return;
3. An interest in property disclaimed by a covered expatriate; and
4. Gifts and bequests that would qualify for the estate or gift tax charitable or marital deduction.

Congratulations to Andrew Stamelman

Congratulations to our partner, Andrew Stamelman, for his appointment as an adjunct faculty member at Cornell Law School. Andy will teach this Spring as part of the Law School's estate planning clinic. He has been a guest lecturer at Cornell Law School on the generation-skipping tax and multi-generational estate planning, Andy has also been a regular judge at Cornell's Transactional Lawyering Competition.

When the tax applies to a gift or bequest, it will be imposed on the recipient of such transfer at the highest gift or estate tax rate, as the case may be, in effect during the year in which the gift or bequest is made (currently, 40 percent for both taxes).

Although Section 2801 has been in place since 2008, the Treasury Department and the IRS deferred taxpayers' obligation to comply with the law until further guidance could be issued. Pursuant to the proposed Regulations, the tax reporting and payment obligations will take effect when the Regulations are made final, which is expected to happen in the first half of 2016.

Although the treatment of covered gifts and bequests under the law creates hurdles for covered expatriates to give to U.S. citizens and residents, there are still viable planning techniques we can use to avoid or minimize taxes on transfers by such individuals to their U.S. family members. If you are potentially impacted by this law and would like to know more about the planning options available to you, please contact us.

If You Want to Make Gifts to Charities or Others in 2015, Be Sure Those Gifts Are "Completed" This Year for Tax Purposes

As the year end approaches, many of you may want to make charitable gifts that can be deducted this year, or gifts to family or friends to use the 2015 annual gift-giving exclusion ($14,000 per recipient).

If you're a "last minute" gift-giver, how can you ensure that your gift will conclusively be "made" in 2015?

In all events, you must unconditionally deliver the gift to the recipient (or an agent of the recipient) in 2015.

• A charge to a credit or debit card in favor of the recipient in 2015 is a completed gift.

• Delivery of an endorsed stock certificate to the recipient or an agent of the recipient in 2015 is a completed gift. Delivery of an endorsed stock certificate to anyone else (e.g., your stockbroker, or the corporation's transfer agent) is not good enough, unless the transfer is actually recorded on the corporate books in 2015.

• A check mailed to a charity in 2015 is good enough. But if you are making a gift to an individual, the check should be paid, certified or accepted by the bank for payment, or negotiated to a third party for value before the end of 2015. The IRS may (but don't rely on this when you make your 2015 gifts) view the gifts as consummated in 2015 if the check was unconditionally delivered in 2015 (and intended to be a gift), presented at the bank for payment within a reasonable period of time after delivery, and honored while the donor was alive (IRS Revenue Ruling 96-56).

Remember that just dating a check in 2015 will not in and of itself be enough under any circumstances.

And if you are considering gifts with any complications (e.g., through trusts, etc.), you need to get started immediately if you want to consummate those gifts by year end.

IRS Phone Scams on the Rise

Your phone rings. It's the IRS calling! And, for the first time, you hear that: (1) you owe back taxes, and if you don't pay immediately via prepaid credit card or other means, you are subject to possible arrest; or (2) you are owed a substantial refund, and the money will be transferred to you if you just share your personal banking information. In either case, the call is a scam. First contact with the IRS about a possible tax problem is never by telephone (or email or text messages) and never involves payment without giving you the opportunity to question or appeal the amount due. If you receive a scam phone call, report the incident to the Treasury Inspector General for Tax Administration at 1-800-366-4484 or at www.tigta.gov and contact the Federal Trade Commission and use their "FTC Complaint Assistant" at FTC.gov. Bear in mind that scams like these are most successful with the elderly and other vulnerable classes, so even if you are savvy enough to spot a scam, make sure older family members are put on alert also.

For more information, see: https://www.irs.gov/uac/Newsroom/Phone-Scams-Continue-to-be-Serious-Threat-and-Remain-on-IRS-Dirty-Dozen-List-of-Tax-Scams-for-the-2015-Filing-Season.

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WE'VE MOVED OUR NEW YORK OFFICE

Effective December 1st, our New York office has moved to:
54 West 40th Street
New York, New York 10018

We're located on the south side of 40th street, between Fifth and Sixth Avenues (just south of Bryant Park). Reception is located on the ground floor.

Our telephone number in New York remains the same: 212-763-6464

We are looking forward to seeing our clients at our new location in New York.