E-Alert: Estate Planning Matters! Minnesota Tax Law Changes

May 31, 2013

Governor Dayton signed the new Minnesota Omnibus Tax Bill (HF 677) on May 23, 2013. While there has been media coverage regarding the changes to the sales tax, you may be less familiar with the Minnesota income, gift, and estate tax changes. Below is a summary of several of the changes that will impact estate planning for both Minnesota residents and non-residents who own certain property in Minnesota:

I. Income Tax

The top Minnesota income tax rate changes from 7.85% to 9.85% for married persons filing joint returns with a taxable net income over $250,000 (or over $150,000 for unmarried individuals). The Minnesota alternative minimum tax rate also increases from 6.4% to 6.75%. These new rates apply retroactively to taxable years beginning after December 31, 2012.

II. Gift Tax

The new law also imposes a 10% Minnesota gift tax on taxable gifts made after June 30, 2013, making Minnesota the second state in the country to impose a state-level gift tax (the other being Connecticut). Each taxpayer has a new $100,000 lifetime credit against the tax, which means that a taxpayer may exclude $1,000,000 of taxable gifts made after June 30, 2013. The Minnesota definition of "taxable gifts" is very similar to the federal concept of "taxable gifts," allowing a 2013 annual exclusion amount of $14,000 per beneficiary, as well as gift-splitting elections, charitable deductions, and marital deductions. However, until we have further guidance, it's not clear whether gifts to §529 plans (qualified tuition programs for education expenses) will qualify for the annual exclusion from Minnesota's gift tax. As with federal returns, Minnesota gift tax returns will generally be due on April 15 of the calendar year following the gift. The Minnesota gift tax applies to gifts of real or tangible personal property located in Minnesota made by any donor (even a non-resident) and to gifts of intangible property made by a donor who is a Minnesota resident.

III. Estate Tax

Three-Year Lookback

The new law introduces a three-year taxable gift lookback for Minnesota estate taxes. This means that a Minnesota estate tax return is required to be filed if the total amount of the decedent's gross estate, plus all adjusted taxable gifts made by a decedent in the three years before his or her death, exceeds $1,000,000. Under the previous law, no prior taxable gifts were considered in determining the Minnesota estate tax filing requirement. This change to the filing requirement applies retroactively to decedents dying after December 31, 2012. There is, however, some uncertainty as to whether Minnesota estate tax will be imposed on taxable gifts made before July 1, 2013, which is the effective date of the new Minnesota gift tax.

Tax on Property Located in Minnesota

Previously, Minnesota's estate tax applied to Minnesota real estate and tangible personal property owned by non-Minnesota residents directly, but not if that Minnesota real estate and tangible personal property was owned indirectly through a pass-through entity (such as an S corporation, partnership, single member limited liability company, or a trust). The new law changes the "situs of property" rules so that Minnesota will now look through the entity (as if it does not exist) for purposes of applying the Minnesota estate tax. In other words, this means that the owner of the interest in the pass-through entity is deemed, for Minnesota estate tax purposes, to own a proportionate share of the Minnesota real or tangible personal property held by the entity. This change is effective for decedents dying after December 31, 2012.

Qualified Farm and Small Business Property Deductions

The new law also revises the Minnesota-only estate tax deductions for qualified farm property and qualified small business property. These provisions allow up to $4,000,000 in deductions if certain property, ownership, and beneficiary qualifications are met. One change allows family members who receive farm or small business property in a trust (instead of outright) to qualify for the deductions. Another change permits a broader definition of "ownership" by the decedent, including property owned by a revocable living trust or property owned as a retained life estate. However, the new law did not clarify whether property held in a marital deduction trust for the benefit of the decedent meets the "ownership" requirement for these deductions. Another change excludes publicly traded securities and assets not used in the business operations from qualifying for the small business property deduction. These changes apply retroactively to decedents dying after June 30, 2011.

For more information on these Minnesota legislative changes and how they may impact your estate plan, please contact your GPM attorney.

specific legal questions you may have.