WINTER 2010 ESTATE PLANNING NEWSLETTER

BY: A. Kel Long, III, Esq.

3060 Peachtree Road, Suite 1725
Atlanta, GA 30305
404-238-0174
KEL@AKELLONG.COM
WWW.AKELLONG.COM

To: Clients and Friends
From: A. Kel Long, III
Re: News from the Estate Planning World

I. ESTATE TAX UPDATE.

The following is an excerpt from Kiplinger's Tax Letter that I believe accurately describes the estate tax situation as of the date of this newsletter:

"2010 starts with one set of tax rules. It will end with a far different one. Congress played a political game of chicken with the estate tax, allowing it to lapse for 2010. And it let a series of other breaks expire after 2009.

Start with the expired estate tax. Lawmakers will reinstate it this year, and will make its revival retroactive to January 1. The same goes for the generation-skipping tax, which was allowed to expire at the end of 2009, too. Congress also will keep this year's top gift tax rate from falling to 35% and will prevent the replacement of the date-of-death value rule as the basis for inherited assets with a system that starts with the decedent's basis. Under that carryover basis regime, when the inherited assets are sold by heirs, they could exclude up to $1.3 million of gain…$4.3 million for surviving spouses.

But a return to 2009's $3.5 million exemption and 45% rate isn't assured. A group of Senate Republicans and moderate Democrats want a $5 million exemption with a 35% maximum rate, and they may have enough votes to force a compromise."

2 comments I would add to the Kiplinger assessment:

1) It is not a given that congress will be able to reach consensus on a retroactive law.
2) The carry over basis rules involving a surviving spouse are complicated and without knowing what the future estate tax rates will be makes planning for the optimum income vs. estate tax impossible.

<u>If you have highly appreciated assets (other than your personal residence) and are concerned about the effect of one spouse's death this year then we should meet as soon as possible to assess the best possible course to benefit the surviving spouse and any children</u>.

II. ROTH IRA CONVERSIONS AS AN ESTATE PLANNING TECHNIQUE

Beginning in 2010, there are no longer income restrictions on converting a traditional IRA to a Roth IRA. For many (maybe most) people, converting part or all of your traditional IRA to a Roth IRA may make sense.

<u>Some Background</u>:

- What is a Roth IRA? In short, it is an income tax free (forever) vehicle.
- Contributions to a Roth IRA are not tax deductible.
- Converting a traditional IRA to a Roth IRA causes the converted amount to be treated as taxable income in the year of conversion.
- Prior to 2010, high income earners could not establish or convert to a Roth IRA.
- Beginning at age 70 1/2 , required distributions from a traditional IRA must begin, to be paid over the remaining life expectancy. The distributions are taxable as ordinary income.
- The person who establishes a Roth IRA is <u>not</u> required to make distributions during his/her lifetime.
- Under a special rule, if you convert to a Roth in 2010, the resulting tax is not due until 2011 and 2012.
- If you later decide the Roth conversion made in 2010 was not efficient (e.g., due to investment value declines), then you may "unconvert" on or before filing your 2010 1040.

<u>Why Converting May Make Sense As Part of the Estate Plan</u>

If you are near or over age 70 ½, then you must take the traditional IRA into income any way. By converting a portion of the IRA to a Roth today, you are just pre paying the inevitable tax. The upside is that once converted, the distribution requirements end and you may pass the entire Roth IRA to your children. Your children then receive an income tax free vehicle (note your child must take the distributions over his/her lifetime, but they remain non-taxable). In the case where you will not likely need the IRA to live off of, then the Roth grows tax free over your lifetime and also your child's. The potential income tax savings are immeasurable.

If you are in a taxable estate situation, by converting and paying the income tax, then you are reducing your taxable estate by the income tax paid. At historical estate tax rates of 45% - 55%, this can also make the Roth conversion even more tax efficient.

For younger clients, converting to a Roth today could benefit you significantly upon retirement as the distributions at retirement age will be income tax free. For example, if you are 40 today, and eventually retire at 70, then you would have 30 years of permanent tax free growth via the Roth IRA. The higher the returns within the Roth IRA, the greater the eventual tax savings.

To determine whether a Roth IRA conversion is right for you and your heirs, please contact me and we can establish a time to review your particular situation.

<u>UPDATED WEB SITE</u> www.AKELLONG.com

I have recently updated my website, and hope that you find it helpful. This and previous newsletters are posted there along with other information. <u>Please note the website in your rolodex or other permanent records.</u> I expect that I will always retain that domain name and thus you will be able to locate me in the future via the website regardless of office address or phone number changes.

<u>RECENT SPEAKING ENGAGEMENTS</u>:

In January, I am speaking to a group of CPA's on the estate tax law changes and implications. I will also be giving the Estate Planning Update to the Georgia Bar at its continuing education course in Steamboat Springs, CO.