# Winning Business Strategies

WEBINAR SERIES

## ESTATE PLANNING AND GIFTING IN 2012

Presented by Mike Moloney and Jeanie Hargrove

September 18, 2012

Brought to you by:

BRADY WARE & COMPANY

SEBALY SHILLITO + DYER

## ESTATE PLANNING AND GIFTING IN 2012

- Overview of Federal Estate and Gift Tax Laws
  - Where we are now
    - The legislation in 2010 extended the $5MM exclusion and 35% tax rate through 2012
      - » the exemption for 2012 is $5.12MM (it is adjusted for inflation this year)
      - » the gift exclusion for 2012 is once again unified with the estate tax exclusion: $5.12MM, and the top gift tax rate is 35%

## ESTATE PLANNING AND GIFTING IN 2012

- Overview of Federal Estate and Gift Tax Laws
  - Where we are going
    - If no new legislation is passed
      - » 2013 estate/gift exclusion will revert back to $1MM with a top tax rate of 55%
      - » Many estate tax experts believe it will revert back
    - After the election we could see
      - » $3.5MM exclusion and 45% top tax rate or
      - » $5MM exclusion with 35% top tax rate or
      - » Complete repeal of federal estate tax
      - » Any new legislation will probably be retroactive to January 1, 2013, although no guarantee of this

## ESTATE PLANNING AND GIFTING IN 2012

- Overview of Federal Estate and Gift Tax Laws
  - Federal generation skipping tax (GST) exemption
    - A tax is imposed on transfers that skip a generation if they are over a prescribed amount
      - » This amount is $5.12MM for 2012
      - » Tax is imposed at 35% (top tax rate) on skip transfers above this amount
      - » If no new legislation is passed it reverts back to $1.4MM ($1MM plus inflation) in 2013

## ESTATE PLANNING AND GIFTING IN 2012

- Overview of Ohio Estate Tax Laws
    - Current exemption of $338,333 with maximum tax rate of 7%
    - Starting in 2013, Ohio estate tax is repealed

- Overview of Ohio Gift Tax Laws
    - No gift tax return itself
    - Gifts within 3 years of death are added back to estate, although this is rebuttable

## ESTATE PLANNING AND GIFTING IN 2012

- Planning ideas for 2012
  - Use the $5.12MM gift exclusion now
    - It is scheduled to revert back to $1MM in 2013
    - If might need money later can gift it in trust
      - » Make a trust for your spouse
      - » Go to an asset protection jurisdiction
      - » While GST exemption is $5.12MM use this to create a GST-Exempt trust
    - Potential claw-back provision
      - » Possibility that the estate might owe tax if exclusion goes down after gifts are made

## ESTATE PLANNING AND GIFTING IN 2012

- Planning Ideas for 2012
  - Gifts or sales of closely held business interests
    - Perfect time to gift to next generation
      - » Value of business might be down from weak economy the past few years
      - » Discounts for lack of marketability and lack of control are still available – this is an area that IRS would love to eliminate for family transfers
      - » Interest rates are low now if planning to use seller financing in a sale to family members

BRADY WARE & COMPANY

SEBALY SHILLITO + DYER

## ESTATE PLANNING AND GIFTING IN 2012

- Planning Ideas for 2012
- Intentionally Defective Grantor Trust (IDGT)
  - This is a trust that is used to make a gift that will remove assets from your estate
  - This trust is called intentionally defective because for income tax purposes it is treated as still owned by the grantor, so the grantor pays the income tax
    - The income tax payments help preserve the assets in the trust
  - Since it is treated as still being owned by the grantor for income tax purposes, the grantor can “sell” assets to the trust without any tax recognition of the sale

BRADY WARE & COMPANY

SEBALY SHILLITO + DYER

## ESTATE PLANNING AND GIFTING IN 2012

- Planning Ideas for 2012
  - Transfers to intentionally defective grantor trusts (IDGTs)
    - This can be done as a sale or as a gift
      - » With high gift exemption would not need to sell the stock to the trust
      - » Even with a sale, 10% of the value of the sale should be gifted to the IDGT as seed money
      - » Grantor would still be responsible for the income taxes on the income of the trust
    - Nice way to transfer business interests to next generation even if they are not ready to own the business outright
      - » Have trustee vote the stock

BRADY WARE & COMPANY

SEBALY SHILLITO + DYER

## ESTATE PLANNING AND GIFTING IN 2012

- Planning Ideas for 2012
  - Transfers to IDGTs – continued
    - On the radar for tax legislation
      - » Would include assets of trust in estate
      - » Subject any distributions to any non-grantor to gift tax
      - » If grantor ceases to be taxed as the owner of the trust for income tax purposes, assets would be subject to gift tax at that time

## ESTATE PLANNING AND GIFTING IN 2012

- Planning Ideas for 2012
- Grantor Retained Annuity Trusts
  - This is a trust that is used to make a gift that will remove assets from your estate
  - Assets are transferred to the trust and the grantor retains an annuity income stream for the term of the trust
  - The grantor needs to outlive the trust term or it goes back into the estate
  - Some short trust terms are used for planning

## ESTATE PLANNING AND GIFTING IN 2012

- Planning Ideas for 2012
  - Grantor retained annuity trusts (GRATs)
    - Can be used to transfer rapidly appreciating assets to the next generation
    - Trust is for a term of years
    - Pays an annuity back to the grantor
    - Grantor is required to survive trust term or else in estate
    - Zeroed out GRAT – this is done when the annuity is raised up to the point that there is no gift element in the remainder interest
    - Proposed legislation would change these by making minimum period 10 years and disallowing zeroed out GRATs

## ESTATE PLANNING AND GIFTING IN 2012

- Planning Ideas for 2012
  - Family limited partnerships (FLPs) or family limited liability companies
    - Great way to move assets to other family members while centralizing control
    - Often used for real estate and marketable securities
    - Discounts available for lack of control and marketability
    - Limited partnership (LP) units provide a better discount for lack of control than general partnership (GP) units

BRADY WARE & COMPANY

SEBALY SHILLITO + DYER

## ESTATE PLANNING AND GIFTING IN 2012

- Planning Ideas for 2012
  - FLPs – continued
    - Important items to keep in mind
      - » Keep enough money outside partnership for personal living expenses
      - » Need a bona fide business purpose – can't just be tax motivated
      - » Need to fund assets into FLP at least 6 days before transferring FLP units so IRS can't say it was a gift of the underlying assets and disallow the discount
      - » Talk of future legislation that would limit discount by disregarding certain restrictions for inter-family transfers

BRADY WARE & COMPANY

SEBALY SHILLITO + DYER

## ESTATE PLANNING AND GIFTING IN 2012

- Planning Ideas for 2012
  - Hard to value assets
    - Defined value clauses protect against upward adjustment
      - » IRS does not like these clauses
      - » IRS had been losing the court cases where the adjustment goes to charity
      - » new court case – Wandry v. Commissioner, T.C. Memo 2012-88
      - » IRS lost again - significant because adjustment changed gift and reverted back to grantor, not to charity
      - » U.S. Tax Court provided guidance for successful defined value clauses

BRADY WARE & COMPANY

SEBALY SHILLITO + DYER

## ESTATE PLANNING AND GIFTING IN 2012

- Planning Ideas for 2012
  - Use annual exclusion gifts
    - Can gift a maximum amount of $13K to each individual in 2012 without it counting towards your $5.12MM exclusion
      - » If married, can have spouse consent to split gift and can gift total of $26K
      - » Can gift to spouses of children as well to bring total to 52K
      - » Must be gift of present interest, not future interest
  - Unlimited gifting for medical and educational expenses
    - Costs must be paid directly to provider of services

BRADY WARE & COMPANY

SEBALY SHILLITO + DYER

## ESTATE PLANNING AND GIFTING IN 2012

For more information, contact:

Mike Moloney
mmoloney@ssdlaw.com
937.222.2055

Jeanie Hargrove
solutions@bradyware.com
800.893.4283

BRADY WARE & COMPANY

SEBALY SHILLITO + DYER