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Estate Planning Update - November 2011

POTENTIAL REDUCTION IN FEDERAL GIFT, ESTATE AND GENERATION-SKIPPING TRANSFER TAX EXEMPTIONS

Rumors are circulating that the Joint Select Committee on Deficit Reduction (the "Super Committee") -- cut $1.2 trillion from the federal deficit over the coming decade -- will recommend a reduction in the federal gift, estate and generation-skipping transfer ("GST") tax exemptions when it releases its recommendations on November 23, 2011. The rumors suggest that the Super Committee will recommend that the current $5 million estate tax exemption and $5 million GST tax exemption, which are in place through 2012 under current law, be reduced to $3.5 million and, perhaps more significant, that the current $5 million gift tax exemption (also in place through 2012 under current law) be reduced to $1 million. Of immediate concern is the rumor that the Super Committee will recommend reducing the federal gift tax exemption to $1 million as of December 31, 2011, or, less likely, perhaps as early as the November 23 announcement date.

The rumors are unsubstantiated. In fact, reports from several Washington insiders indicate that the Super Committee is not focused on the gift, estate and GST tax exemptions and that any decision on this issue will not happen until 2012 or later. Still, the recent rumors may add urgency to any decision regarding the transfer of assets. From a planning perspective, the potential reduction of the federal gift tax exemption from $5 million to $1 million is a matter of significant concern.

What should you do?

We can only speculate as to what the Super Committee and Congress will do. We will continue to monitor developments. Although there appears to be no evidence to support the recent rumors, we are unable to rule out a reduction in the tax exemptions. For those who intend to use part or all of their $5 million gift tax exemption before the "sunset" of the current legislation at the end of 2012 (when, absent new legislation, the gift tax exemption will return to $1 million), the prudent course may be to make those transfers now. Of course, there is state gift tax in some jurisdictions to consider, as well. There is also the risk that any reduction in the gift tax exemption would be retroactive to a date prior to the rumors, in which case a large gift now could attract an unexpected gift tax. Individual circumstances need to be considered in any analysis of transfer planning, and we are available to discuss your options in view of your prior gifts, your current objectives, and the obscure legislative landscape.