Tax • Business • Medicaid • Estate Planning

SPRING '10

cover YOUR ASSETS

Inside

Converting to a Roth IRA: Should You or Shouldn't You?

Prior to 2010, taxpayers, whether married or single, could not convert a traditional IRA to a Roth IRA if their adjusted gross income exceeded $100,000 in the year of conversion. Well, the $100,000 income limit is now gone and everyone with a traditional IRA or a qualified retirement account is eligible to convert to a Roth IRA. Even though you can convert to a Roth IRA this year, should you do so?

In the words of John D. Bledsoe, author of *The Gospel of Roth*, the answer to this question is very easy: "Every man, woman and child should convert every dollar of every IRA or available retirement account to a Roth IRA on January 4, 2010 or as soon as you read this!" Though every sweeping statement like this is subject to exceptions, when coupled with the diversification strategy which Mr. Bledsoe advocates, the logic behind his bold recommendation is both straightforward and ingenious.

Every Roth conversion has a price tag: the account owner is taxable on the value of the converted portion of the existing IRA (or other retirement account) at the date of the conversion. What many investors fear is that after converting to a Roth, the account value will decline and they will have paid income tax on more money than they now have available to them. However, investors who convert soon will actually have more than 18 months (i.e., until October 17, 2011) to watch the performance of their post-conversion Roth investments and evaluate the wisdom of their conversion. Most importantly, they can unwind all or any part of their conversion, tax-free, on or before October 17, 2011, if their Roth IRA investments move in the wrong direction. This is where Mr. Bledsoe's basic investment strategy comes into play.

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What About Federal Estate Tax in 2010?

We have been asked about the status of the federal estate tax many times this year and will share our perspective on it in this article. As many of our readers are already aware, there is no federal estate tax law in force at the moment; so is 2010 truly going to offer an estate tax-free exit for those wealthy individuals who have the misfortune or, depending on how you look at it, good fortune of dying this year? The other question we have most frequently been asked is whether the estate tax exemption is going to be scaled back to $1 million next year.

First, the US House of Representatives passed a bill last December which would continue the estate tax for 2010 and thereafter, with a permanent exemption of $3.5 million, but the Senate failed to act on similar legislation pending in that chamber. However, we are still in the same session of Congress (2009–2010) and it will not be necessary for the House to pass its bill again if the Senate approves estate tax legislation later this year.

Second, since we don't have a crystal ball which will infallibly disclose what is going to happen in Congress, we can't be absolutely certain that the Senate will actually pass an estate tax bill which, after being reconciled with the House-passed bill, will be presented to the President for signature. Nevertheless, the federal tax reporting services which have been reliable for decades continue to insist that the Senate will indeed approve an estate tax bill this year and that the President will sign the bill which is finally served up to him by both houses of Congress—a bill which will retain the $1 million lifetime gift tax exemption and the unlimited date-of-death basis adjustment (for income tax purposes) which has been part of our federal tax law for more than 70 years.

Third, the bill which the President signs will reimpose the federal estate tax and generation-skipping transfer tax as of January 1, 2010, most likely with a $3.5 million exemption and a 45% tax rate. If so, what about those folks who die in 2010 before the President signs a bill to reinstate the estate tax? Can Congress constitutionally tax the estate of an individual who died on a date when no federal death tax was in effect? *continued on page 3*

You were very personable and thorough. We never felt pressured or rushed. We felt you had our best interest in mind. You were straight-forward and honest.

JK & CK, Tipton, MO

Converting to a Roth IRA *continued from page 1*

What is his investment strategy? Simply divide the converted accounts into multiple Roth accounts focusing on different market sectors and asset allocations for each account, such as bonds or bond funds, mid-cap equities, precious metals funds, energy sector stocks, international equity funds, real estate, money market accounts or CDs, etc. By October 17th of next year, some of the accounts may go down in value and others may go up, perhaps even sharply. Keep the accounts which have gone up substantially in value (and pay income tax on their lower, date-of-conversion value) and switch back to traditional IRAs, tax-free, those accounts which go down in value or experience little or modest growth.

Even if all of your Roth IRAs go down in value, your option to switch them back to traditional IRAs by October 17, 2011 largely eliminates the immediate tax risk historically associated with a Roth conversion. It also avoids the necessity for complicated calculations of projected income tax liability associated with various tax brackets and levels of Roth conversion. Just transfer all convertible retirement funds to multiple Roth accounts, watch your account values, pay income tax next year on the winners and dump the losers back into a traditional IRA bucket.

If John Bledsoe's Roth conversion philosophy intrigues you and your financial advisor has not already discussed it with you, *The Gospel of Roth* can be purchased from Amazon.com or at www.GospelofRoth.com. We are not investment advisors, but we can observe that the income tax aspects of Roth conversions are presented accurately in *The Gospel of Roth*. Moreover, if you would like to leave the balance of an IRA account to your children or grandchildren, then the potential wealth transfer leverage from converting to Roth IRAs, when coupled with positive long-term investment performance and an IRA Pension Trust, could be enormous. If you would like a copy of our mini-white paper on IRA Pension Trusts, just call our office or send an e-mail to info@BartonLawFirm.com and mention IRA Pension Trusts.

Federal Estate Tax in 2010 *continued from page 2*

Though this last question is being hotly debated around the nation right now, we believe that the US Supreme Court will uphold Congress' right to enact death tax legislation with a retroactive effective date. In other words, our highest court will rule that there is nothing in the Constitution to prevent Congress from taxing an event, after the fact, which was not taxable at the time the event occurred. A discussion of the legal precedents on which our belief is based is beyond the scope of this newsletter article.

Fourth, is the estate tax exemption going to be reduced to $1 million next year? No, not if the legislative scenario unfolds as predicted above. The estate tax exemption will be at least $3.5 million in 2011 (and thereafter).

The current uncertainty about the federal estate tax should really be nothing more than a distraction for the overwhelming majority of individuals and couples who have resources and beneficiaries worthy of protection. This particular tax has little or no bearing on whether a new estate plan should be implemented or an out-of-date plan should be updated to best achieve an individual's or family's financial, relationship, business and asset protection goals.

A number of the readers of this newsletter will not be around to ring in 2011. If you are an individual with a high net worth and an estate plan which does not cut your estate tax exposure to the bone,

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Federal Estate Tax in 2010

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unless you can be absolutely certain that (1) you are going to die this year and (2) Congress will not reinstate the estate tax as of January 1st of this year, then a wait-and-see approach could result in a windfall for the federal government and terrible disappointment for your children and grandchildren.

Finally, don't forget that we are legal counselors, not soothsayers; and our assessment of the likely outcome of the federal estate tax drama now playing in Washington, D.C. is based on information provided by legal and commercial reporting services which have generally been accurate in the past.

Outside the Assets

Personal Notes from the Bartons

- March 15th was Christy's birthday. He celebrated his 63rd. Best wishes to the Birthday Boy!

Meeting with The Barton Law Firm put me at ease. Your professionalism and lack of pressure gave me the confidence I needed to pursue my goal of creating a trust. As I called and asked many questions, you treated me as a vital, important client—no question was unimportant. Thanks.

PR, Spirit Lake, IA

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