Planning for the New Tax Laws
What Steps Should You Take Now?

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It's now clear that regardless of the outcome of this year's Presidential contest, taxes on your income and savings will increase substantially over the next few years. The Bush tax cuts of 2001 and 2003 will expire in 2010 and there is no longer any serious political support for extending these breaks. Senator's Clinton and Obama have declared that they will permanently end most of these tax benefits for the "wealthy" to help pay for universal health coverage, expanded Medicare, and other social programs. Senator McCain, who originally denounced and voted against the tax cuts as "irresponsible," may have changed his mind, but he will be hard pressed to gather enough support to extend them unless the Republicans sweep the Congressional elections.

What will happen when these tax cuts expire in 2010? In short, the tax law will revert to the way it was before the bills were passed; the top tax bracket will jump back to 39%, taxes on dividends will go from 15% to 39% and capital gains rates will move from 15% to 20%. The estate tax exemption will drop from $3.5 million to $1 million, with up to a 60% tax on the excess. A couple with a joint estate of $7 million will go from paying nothing to estate taxes of more than $3 million.

What to Do?
Estate tax planning should be a part of your asset protection strategies. Understandably, because a threat of business losses or litigation seems more real and likely than a future tax event, you may consider protection from business risks and lawsuits your immediate and primary concern, at least for now. But incorporating some basic techniques early on in your planning can produce substantial savings with little inconvenience or expense. Here are some key ideas you should consider discussing with your attorneys.

Living Trust
The purpose of a Living Trust is to avoid a court-supervised probate of your estate and to distribute your property to your family members as you choose. Married couples can also save estate taxes by using a living trust to take maximum advantage of the available estate tax credit. For example, if the estate tax exemption is $1 million per person, proper planning can combine both spouses' exemption so that up to $2 million can ultimately go to the children without tax. A simple will won't accomplish that result, so the basic, first level of planning is to make sure that you are taking full advantage of the exemption allowed by law.

Children's Trust
If you have any property or stock in a business that you think will increase in value in the future, it can be beneficial to transfer that property to a trust for your children. Over a period of 20-30 years or more, even modest inflation will cause asset values to rise dramatically. Assuming a 60% estate tax on savings, a Children's Trust saves $600,000 in taxes on a property whose value increases over time to $1 million.

Family Limited Partnership

A Family Limited Partnership is often combined with a Children's Trust to create even greater tax savings. Ownership of business interests and savings can be placed in a FLP with both spouses as general partners with full management powers over the assets. Over a number of years, a gift program can be established to transfer limited partnership interests to the children (or a trust for their benefit). Transferring these limited partnerships allows the parents to retain control over FLP assets while avoiding the 60% tax for each dollar value transferred. Most importantly, this strategy is popular because the IRS allows the value of the transferred interest to be *discounted* for estate tax purposes because the child has no management rights or ability to sell his or her interest. If $1 million in assets are transferred into the FLP, under IRS rules the total gift may be reduced in value to $700,000, producing a potential estate tax savings of $180,000. There are more examples and a detailed discussion of the Family Limited Partnership at http://www.rjmintz.com/family-limited-partnership/overview.

Closing Arguments

These and many other estate planning strategies can produce substantial tax savings in addition to their solid asset protection benefits. Perhaps Congress in the future will reshape the estate tax laws so they cease to be a concern for most people. In the meantime, basic tax savings strategies integrated with your asset protection planning are a common-sense approach to discuss with your financial advisors.