INDIANA REPEALS INHERITANCE TAX

EXECUTIVE SUMMARY

On May 8, 2013, Indiana Governor Mike Pence signed Indiana House Enrolled Act 1001, which repeals the Indiana Inheritance Tax effective January 1, 2013.

BACKGROUND

Only a few states have an inheritance tax. Prior to its repeal, the Indiana Inheritance Tax was imposed on the recipients of a decedent's transfer of certain property, and it was not tied to the federal estate tax. The Indiana Inheritance Tax's rates and exemptions were based on the relationship between the decedent and the recipient of the property.

Unlike an "estate tax," which is imposed on the total combined value of the assets that pass at the death of a person (a "decedent"), an "inheritance tax" is an excise tax imposed on each transfer of assets at death from a decedent to each individual heir, beneficiary or other transferee. The available exemptions and the tax rates usually vary based on how closely each transferee is related, if at all, to the decedent.

A 2012 Indiana law began a slow phase-out of the Indiana Inheritance Tax that applied a credit (increasing year by year) to the total Indiana Inheritance Tax and was repealed for the estates of decedents dying on or after January 1, 2022.

IMPACT

It is effective for decedents whose deaths occur after December 31, 2012.

Also, no Indiana Consent to Transfer forms (Form IH-14) or tax waiver forms are required to transfer belongings to individuals for deaths after December 31, 2012.

REMINDER OF RECENT FEDERAL ESTATE, GIFT AND GENERATION-SKIPPING TRANSFER TAX CHANGES

The American Taxpayer Relief Act of 2012 (the "American Taxpayer Relief Act") contained changes to the federal estate tax and permanently established the estate, gift and generation-skipping transfer ("GST") tax rates and exemptions. The federal estate, gift and GST tax exemptions are unified and were indexed for inflation since 2011. The 2013 exemptions and rate are:

YEAR	ESTATE TAX EXEMPTION	ESTATE/GIFT TOP TAX RATE	GIFT TAX EXEMPTION	GENERATION-SKIPPING TRANSFER TAX EXEMPTION
2013	$5,250,000	40%	$5,250,000	$5,250,000

The federal estate tax exemption is also portable between spouses. Portability of the federal estate tax exemption between married couples means that if the first spouse dies and the value of his or her estate does not require the use of all of his or her federal exemption from estate taxes, then the amount of the exemption that was not used for the deceased spouse's estate may be transferred to the surviving spouse's exemption so that he or she can use the deceased spouse's unused exemption plus his or her own exemption when the surviving spouse dies later.

Future changes to the federal estate, gift and GST taxes may occur. President Obama's recent budget proposal included a proposal to reinstitute the estate tax in 2018 at a per-person exemption of $3.5 million from $5.25 million this year, and raise the top tax rate to 45% from 40%.

PRACTICAL TAKEAWAYS

In the past, the estate plan design for a couple regularly included that each spouse take full advantage of his or her federal estate tax exemption by having the first spouse to die leave his or her assets to a trust for the benefit of the survivor and often their children. These trusts are often called Credit Trusts or Family Trusts. If your current estate plan is designed to direct assets into a trust to use your exemption amount, you may wish to revise or remove that part of your plan if the Indiana Inheritance Tax and federal estate taxes are no longer issues.

With the combination of the repeal of the Indiana Inheritance Tax and changes made to the federal taxes under the American Taxpayer Relief Act, individuals and families may enter into the design of their estate plans without concern about the changes in the laws. These changes will allow individuals and families to focus on the many non-tax reasons to create an estate plan:

- Avoiding the costs and delays of a court supervised probate process of assets transfers after their deaths;
- Avoiding court supervised guardianships in the event they become incapacitated;
- Nominations of guardians by parents to care for their minor children if the parents pass away;
- Leaving assets to children in a manner that protects those assets from creditors and provides divorce protection;
- Designing business succession plans for their businesses;
- Avoiding family conflicts over assets after death; and
- Addressing the costs of long-term care.

Should you have any questions about the information contained in this article, please contact Sean Fahey at 317-977-1472 or sfahey@hallrender.com or your regular Hall Render attorney.

To learn more about Hall Render's estate planning practice, please click here.