



Federal Estate and Gift Tax Changes under the Tax Relief Act of 2010

JANUARY 2011

President Obama signed into law in late December 2010, the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act ("New Act") which among other things drastically changed the Estate and Gift tax laws for 2010 and on a prospective basis for 2011-2012.

Exemption & Tax Rate

The "New Act" reinstates the estate tax for 2010 with a \$5,000,000 exemption, a maximum tax rate of 35% and stepped-up basis of inherited property to the beneficiary. Prior to the change in legislation, decedents dying in 2010 were not subject to any estate tax, however, were required (with certain exceptions) to use carry-over basis of inherited property. The New Act now allows executors for 2010 estates a new \$5,000,000 exemption with a step-up in basis or to elect no estate tax with carry-over basis (with limited step-up).

Deceased Spouse's Unused Exemption is Portable

One of the surprises of the "New Act" was a pro-taxpayer provision for 2011 and 2012 which allows portability between spouses of the use of the unified credit exemptions. Under previous law, it was a

"use it or lose it" exemption. However, under the "New Act", if the first spouse dies in 2011 and has \$1,000,000 of assets subject to estate tax, then it would be possible for the remaining \$4,000,000 (unused by the first spouse) to be added to the second spouse's unified credit exemption, for a total of \$9,000,000 of assets to be exempted from estate tax of the second spouse and total of \$10,000,000 between the two spouses. As a result of this change alone we strongly recommend wills and related documents be reviewed as soon as possible. Due to the interplay with New Jersey inheritance and estate taxes, current wills (which previously may have been drafted in such a way whereas overall taxes could be saved) may now, as currently written, unnecessarily cause New Jersey taxes to be paid sooner rather than later upon the death of the first spouse.

Generation-Skipping Transfer Tax

Generation-skipping transfer tax (GST) is a tax on the transfer of assets by-passing ("skipping") a generation. Without the GST, if grandparent dies and directly transfers assets to a grandchild, estate tax on the middle generation would have effectively been avoided. The GST tax

Wilkin & Guttenplan, P.C.

Certified Public Accountants and Consultants

1200 Tices Lane
East Brunswick, NJ 08816

T 732.846.3000
F 732.846.0618

www.wgcpas.com

(Continued on reverse side)



TAX ALERT

JANUARY 2011

**Wilkin &
Guttenplan, P.C.**Certified Public Accountants
and Consultants1200 Tices Lane
East Brunswick, NJ 08816T 732.846.3000
F 732.846.0618www.wgcpas.com

now applies to asset transfers in excess of \$5,000,000.

Bigger Window for Lifetime Gifting

The "New Act" "re-unifies" the Estate, Generation-Skipping and Gift Tax Systems, which had not been previously unified. All three systems (Estate, GST & Gift) now exempt from tax a total of \$5,000,000 of property transferred during life and/or death. Just prior to the enacted legislation, a taxpayer could only make lifetime gifts (in excess of annual exclusion and other excluded gifts) up to \$1,000,000 and pay no gift tax. For tax years 2011 and 2012, a taxpayer can "Gift" up to \$5,000,000 (in total) and pay no gift tax. Any gifts in excess of the exempted amount would be taxed at a maximum rate of 35%. At death, the value of property previously gifted would be added back to the value of the decedent's taxable estate to arrive at the total estate value subject to the unified credit (currently \$5,000,000). In summary, the unified system allows a \$5,000,000 exemption in total from the taxpayer's assets distributed either during lifetime or at death.

Temporary Fix

The "New Act" is in effect for a limited period of time (tax years 2011 and 2012) unless Congress acts, extends or makes additional changes. If Congress does not act and no new legislation passes, effective January 1, 2013 the Estate, Generation-Skipping and Gift Tax will revert back to the pre-2001 law (\$1,000,000 exemption and a maximum rate of 55%). Now is the time to act - to review your estate plan and your estate documents to make sure that tax costs are minimized and conform to your wishes. The above information is general. The impact of the "New Act" must be reviewed on an individual basis. Please feel free to contact us to discuss how the "New Act" may impact you and potential planning opportunities.

Any U.S. tax advice contained in this communication is not intended or written to be used, and cannot be used, for the purpose of avoiding tax penalties that may be imposed on the taxpayer.