

Tax Client Alert: The New Estate and Gift Tax Law

Washington has, at last, acted to interject some certainty, albeit temporary, to the area of estate and gift tax planning. Under the recently enacted "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010", the federal estate tax, which disappeared for 2010, springs back to life in 2011 and is imposed at the top rate of 35% of the estate's value after the first \$5 million. Following is a brief overview of the new law.

The New Law

The new law brings back the estate tax, and for 2011 and 2012 the top rate will be 35%. For 2011, the exemption amount (the Unified Estate Tax Credit equivalent) will be \$5 million per individual (indexed for inflation after 2011). At those levels, the vast majority of estates (all but an estimated 3,500 nationwide in 2011) will not be subject to any federal estate tax.

The new law also gives estates of decedents who died in 2010 certain choices as to which tax rules to apply. Certain elections and filings must be timely made to claim the benefits of such provisions. If you experienced a death in your family in 2010, you should consult with us as to your course of action.

Under the new law, the estate and gift tax exemptions will be reunified starting in 2011, which means that the \$5 million estate tax exemption will also be available for lifetime gifts at the same level. The law in effect prior to 2010 provided a \$3.5 million lifetime exemption for estates, but the lifetime exemption for gifts was only \$1 million for years prior to 2011. The gift tax rate, starting in 2011, is 35%. The exemption from the generation-skipping tax (GST) – the additional tax on gifts and bequests to grandchildren or lower generations when their parents are still alive – will also rise to \$5 million from the \$1 million it would have been without the new law. The GST rate for transfers made in 2011 and 2012 will be 35%.

From a planning standpoint, a convenient feature of the new law effectuates the transfer of the unused portion of the \$5 million exemption to a surviving spouse, so married couples can shield \$10 million of their assets from estate taxes. In the language of tax professionals, the estate tax exemption will be "portable".

If Washington fails to act before 2013, then the unified credit amount for gift and estate taxes will revert back to \$1 million per individual, the GST exemption will return to \$1.3 million per individual, and the maximum marginal rate of 55% will apply to such transfers.

Estate Plan Tune-Up

Many clients have been delaying the periodic review and tune-up of their estate planning documents pending the new legislation. Regardless of whether you are impacted by provisions of the new Act, now may be the appropriate time to contact us to initiate a comprehensive review of your related documents, such as wills, trusts, medical powers of attorney, living wills, and general or limited powers of attorney.

If you would like more details about the estate or gift tax or any other aspect of the new law, please do not hesitate to call Jeffrey V. Puff, the Firm's estate and gift tax professional.