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TRUSTS & ESTATES LAW UPDATE

January 2011

Estate and Gift Tax Relief in the 2010 Tax Relief Act

On December 17, President Obama signed into law the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the “Act”). The Act extends various estate and gift tax provisions that were set to sunset on December 31, 2010. The estate tax and generation skipping transfer tax have been reinstated with both lower tax rates and larger exemptions than in the past, while the gift tax remains at the same rate. For persons dying in 2010, an election is available to choose a carryover basis or paying the reinstated estate tax. The Gift Tax exemption has, once again, been unified with the Estate Tax exemption which creates significant opportunities for generational wealth transfers. We have summarized the estate, GST and gift tax provisions of the Act below.

1. Estate and GST Taxes.
The Act lowers estate and GST taxes for 2011 and 2012 by increasing the exemption amount from $1 million to $5 million and reducing the top rate from 55% to 35%. The $5 million exemption is per person. There is a combined $10 million exemption for a married couple. The GST exemption for decedents dying or gifts made after Dec. 31, 2009 and before Jan. 1, 2011 is equal to the exemption amount for estate tax purposes. Therefore, up to $5 million in GST tax exemption may be allocated to a trust created or funded during 2010. The GST tax exemption for decedents dying or gifts made after December 31, 2010 is equal to the basic exemption amount.

2. Carryover Basis Rules/2010 Decedents.
The Act generally repeals the carryover basis rules that, would apply only for purposes of determining basis in property acquired from a decedent who dies in 2010. Under the Act, a recipient of property acquired from a decedent who dies after Dec. 31, 2009 generally will receive fair market value (i.e., “stepped up”) basis under the rules applicable to assets acquired from decedents who died in 2009. The Act allows estates of decedents dying in 2010 to choose between (1) estate tax (based on a $5 million exemption and 35% top rate) and a step-up in basis, or (2) no estate tax and modified carryover basis. The executor should make whichever choice would produce the lowest combined estate and income taxes for the estate and its beneficiaries.

3. Gift Tax.
The Act maintains the tax rate at 35% for gifts made in 2010 through 2012. The exemption amount remains at $1 million for 2010, but as of January 1, 2011 is unified with the estate tax exemption providing for an exemption amount of $5 million for gifts made after December 31, 2010.

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About Giordano, Halleran & Ciesla, P.C.:

Located in Red Bank, New Jersey and founded over 50 years ago by John C. Giordano, Jr., Giordano Halleran & Ciesla is a multi-specialty law firm dedicated to providing sophisticated, complex legal services and solutions. Our attorneys maintain personal relationships and gather in-depth knowledge of clients' businesses and industries to construct both sound legal advice and effective strategies to resolve business issues. With a focus on responsiveness and producing results with outstanding value to their clients' bottom line, the firm provides experienced legal representation in a wide variety of practice areas.

Our approach to client service is to build lasting, trusted relationships that produce results with outstanding value for our clients. Strong lines of communication and focus on the bottom-line business objectives remain at the forefront of all our relationships. Clients can be assured that their attorneys are working hard to find solutions and to meet their needs in a resourceful and cost effective manner.

4. Exemption Amount of Surviving Spouse Increased by Unused Exemption Amount of Deceased Spouse.

Under the Act, any exemption amount that remains unused as of the death of a spouse who dies after December 31, 2010 will generally be available for use by the surviving spouse in addition to such surviving spouse's exemption amount. The unused exemption amount will only be available to a surviving spouse if an election is made on a timely filed estate tax return of the predeceased spouse.

5. Extension of Filing Deadlines.

Under the Act, for a decedent dying after Dec. 31, 2009 and before the enactment date, the due date for certain tax actions is not to be earlier than the date that is nine months after the enactment date.

6. New Sunset Date.

Under the Act, the prior rules and the new Act rules will not apply to estates of decedents dying, gifts made, or generation-skipping transfers made after Dec. 31, 2012.

What This Means To You?

Your estate plan will now need to address the present tax laws and should anticipate any future changes and make provisions to take advantage of the tax benefits they offer. The new law will affect virtually every estate plan. Several of you will find that the new law will allow you to plan your estates without great concern for estate taxes. Others will find that your estate plans must now anticipate two or three different sets of rules.

While there may be questions regarding the expiration of the law in 2012 and the impact of estate planning in the future, there are planning opportunities that may only be available for the next two years. There are now also opportunities to make significant wealth transfers that will eliminate or greatly reduce transfer taxes in many estates.

It is critical that all estate planning documents and overall estate plan be reviewed in light of the Act in order to avoid unwanted estate tax and asset transfer consequences and to maximize the benefits available under the new law. This is also an appropriate time to review the ownership of your assets to confirm that the manner in which you own your assets is coordinated with your estate planning documents. In addition, this may also be a good time to confirm who the beneficiaries are of your retirement plans and life insurance policies to ensure that they to are consistent with your estate planning objectives.

Contact Us

If you are uncertain as to whether you need to make changes to your plan given the recent changes, please feel free to call us at 732.219.5489 or via email at tdengler@ghclaw.com or rrinninsland@ghclaw.com.

If you would like to be added to our email distribution list for periodic updates and newsletters, please send us an email to estate_planning@ghclaw.com.

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