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New Tax Law for 2010 Through 2012

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On December 17, 2010, President Obama signed the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (the 2010 Tax Relief Act), which will prevent a significant tax increase in 2011. The 2010 Tax Relief Act will extend through December 31, 2012, and on January 1, 2013, the law is set to revert back to the transfer tax regime as it was in 2000. The new law makes several favorable changes to the gift, estate and generation-skipping transfer taxes in 2011 and 2012.

In 2010, the law is as follows:

- For estates of decedents dying in 2010, executors now have a choice between the previous 2010 tax regime of no estate tax and a modified carryover basis (subject to certain adjustments), or the 2011 tax regime of an estate tax at a 35% top rate and a $5 million exemption with a stepped-up basis
- The federal gift tax lifetime exclusion amount is $1 million with a 35% top rate
- There is no generation-skipping transfer tax

In 2011, the law will be as follows:

- The federal estate tax exemption amount will be $5 million
- The highest estate tax rate remains at 35%
- The basis of assets acquired from a decedent will be the fair market value of the property at the date of the decedent?s death
- The federal gift tax lifetime exclusion amount increases to $5 million from $1 million
- The highest federal gift tax rate remains at 35%
- The generation-skipping transfer tax exemption amount will be $5 million
- The generation-skipping transfer tax rate increases to 35%
- A surviving spouse can elect to take advantage of any unused portion of the estate tax exclusion of his or her predeceased spouse, allowing married couples to effectively shield up to $10 million from estate tax

Given the favorable federal transfer tax system in 2010 through 2012, the current climate provides an excellent opportunity for individuals to take steps to reduce future gift, estate and generation skipping transfer taxes both in the last week of 2010 and going forward in 2011 and 2012.

Planning Opportunities Remaining in 2010

There is a unique and last-minute opportunity remaining in 2010 for individuals who are interested in making transfers to grandchildren and more remote descendants. Normally, these transfers are subject to the imposition of the generation-skipping transfer tax, in addition to gift taxes. Since there is no generation-skipping transfer tax for 2010, clients who are interested in shifting their wealth to younger generations may benefit from making transfers to grandchildren in 2010 when no generation-skipping transfer tax (GST) applies. Some year-end transfer planning strategies include:

- Outright gifts to grandchildren or further descendants
- Gifts to trusts for grandchildren
- Distributions to grandchildren or further descendants from GST non-exempt trusts
- Termination of GST non-exempt trusts with distributions to younger generations

Planning Opportunities in 2011

With the increase in the lifetime gift tax exclusion amount, as well as the GST exemption, the ability to make lifetime transfers of up to $10 million per couple without having to pay gift taxes presents several opportunities that allow taxpayers to transfer significant amounts of wealth outside of an individual's gross estate. Some strategies to consider are:

- Outright gifts
- Gifts to Grantor Trusts—the donor continues to pay income taxes on the trust income and the trust assets can compound free of income taxes
- Sales to Grantor Trusts—a gift to a grantor trust can be magnified by leveraging the gift with a sale to the trust. Historically low interest rates make this

approach even more lucrative

Changes in the tax laws may warrant a review and update of your current estate plan. Reinhart attorneys are available to review and discuss your current estate plan and to revise the plan to create the flexibility necessary to reduce transfer taxes in the future.