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Tuesday, January 25, 2011

As you may have read, last month, President Obama signed into law the Tax Relief, Unemployment Insurance Authorization, and Job Creation Act of 2010 (the "2010 Act"). Under the 2010 Act for 2011 and 2012 the following transfer tax rules apply:

- The "unified" estate and gift tax exemption amount is $5,000,000 and is "portable" between spouses.[1] Thus, to the extent one spouse is unable to fully utilize his or her estate tax exemption at death, the other spouse's unified estate and gift tax exemption will be increased by the unused portion of the deceased spouse's estate tax exemption. The intention of this provision is to prevent any "wasting" of the first spouse to die's estate tax exemption;
- The generation-skipping transfer ("GST") tax exemption is also $5,000,000;
- The transfer tax rate is 35%; and
- The assets of a deceased individual receive a full "step-up" in basis for income tax purposes.

Absent further changes in the law, on January 1, 2013, the transfer tax rules which existed prior to 2011 (including a $1,000,000 unified gift and estate tax exemption and maximum tax rate of 55%) will be reinstated.

The 2010 Act creates new opportunities to transfer wealth to family members, particularly for individuals who have already exhausted their $1,000,000 gift tax exemption.

Further, if your Will or Trust include references to the "marital deduction," the "unified credit," the "estate tax exclusion amount", the "estate tax exemption amount," the "credit equivalent amount," the "credit shelter amount" or the "generation-skipping transfer tax exemption," a prompt review of your current estate planning documents should be undertaken to ensure that your assets will pass as you intended as the higher exemption amounts may substantially impact the disposition of your assets.

If you have questions with respect to the 2010 Act changes discussed in this article and the effect of such changes upon your estate plan or the wealth transfer planning opportunities available, our suggestion is that you call to schedule a meeting.

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1 A "unified" exemption permits an individual to give away transfer tax free assets having an aggregate value of $5,000,000 either during life or at death. Prior to 2011, an individual could only give away $1,000,000 during life transfer tax free, regardless of the size of the estate tax exemption amount. In 2009, the estate tax exemption amount was $3,500,000 (which was reduced by the value of any gifts sheltered by the $1,000,000 gift tax exemption).