

TRUSTS AND ESTATES ALERT

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Important Estate Tax Changes in Tax Relief Act of 2010

The Tax Relief Act of 2010 (the "Act") provides for important changes to the estate, gift and generation-skipping tax laws that will be in effect for 2011 and 2012 (and for estates of decedents who died in 2010). Unfortunately, these changes represent only a temporary measure because they will expire on January 1, 2013, unless Congress acts again before then.

The following is a summary of the key provisions and our planning recommendations:

- For decedents dying in 2011 and 2012, the federal estate tax exemption will be \$5 million (a significant increase from the 2009 exemption of \$3.5 million) and the top estate tax rate will be 35 percent. NOTE: As of now, the Connecticut estate tax exemption remains unchanged at a lower exemption amount of \$3.5 million and a top estate tax rate of 12 percent.
- The Act includes a "portability" provision, which means that any unused federal estate tax exemption of the first spouse to die will be available to the surviving spouse (but only for persons dying in 2011 and 2012, unless extended, and with certain limitations). NOTE: As of now, there is no portability of the Connecticut estate tax exemption.
- For gifts made in 2011 and 2012, the lifetime gift tax exemption will be \$5 million (a significant increase from the \$1 million in effect before 2011). NOTE: As of now, the Connecticut lifetime gift tax exemption remains unchanged at \$3.5 million.
- For generation-skipping transfer (GST) gifts or bequests (those made to grandchildren and great grandchildren) the GST exemption is unified with the estate and gift tax exemption at \$5 million. There is no "portability" of the GST exemption.
- Although the federal estate tax applies to estates of decedents dying in 2010, fiduciaries of those estates may choose to have the "carry over" income tax

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basis rules apply rather than the estate tax rules. In general, if the assets of an estate were less than \$5 million it is likely that the better choice will be to file under the provisions of the new estate tax law and receive a full “step up” in income tax basis. But this determination must be made on a case-by-case basis. Absent an election into the modified basis rules, the estate tax rules will apply.

Planning Opportunities

- Review your estate plans bearing in mind that, in 2011 and 2012, the federal estate tax and Connecticut estate tax exemption amounts will be unequal. This is particularly important if you are married and have assets in excess of \$3.5 million.
- Review whether your assets are allocated appropriately between you and your spouse to take advantage of the increased federal estate tax exemptions in 2011 and 2012.

- In light of the substantially increased gift and GST exemptions, consider lifetime gifts to children and grandchildren over the next two years to move wealth out of your estate. Such transfers may be made by direct gifts or by establishing various types of trusts, including grantor retained annuity trusts, qualified personal residence trusts and charitable trusts. This planning opportunity may be particularly valuable if Congress changes the estate tax laws to provide for lower exemptions in the future. As we have seen over the past few years, the outcome will be part of the ongoing game of “political football.”

With these changes to the tax laws, now is an appropriate time to look at your existing estate plan. Please contact one of our Trusts and Estates attorneys to review how the new tax law affects your plan.

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