

ALERTS

Wealth Transfer Practice Group Alert

Wealth Transfer Team
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Alert - Deadline December 31, 2010

On December 17, President Obama signed into law the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the "2010 Bill"). This much-publicized tax bill compromise includes a two-year extension of the "Bush income tax cuts", a one-year extension of unemployment benefits, and a one-year reduction of FICA payroll tax, among other provisions. Also included in the 2010 Bill were the following two-year provisions affecting the estate, gift and generation skipping transfer taxes:

Estate Tax - The federal estate tax has been revived retroactive to January 1, 2010. For deaths occurring from 2010 through 2012, the estate tax will be imposed at a 35% maximum rate, and each individual will have a \$5 million exemption. To ensure fairness in application, executors of the estate of any person dying in 2010 can elect to not pay the estate tax and instead carry over the income tax basis on the deceased's assets (subject to certain adjustments we have discussed in prior newsletters). Additionally, beginning in 2011, a surviving spouse may use any unused exemption of his or her predeceased spouse.

Gift Tax - The federal gift tax will be imposed on taxable gifts made from 2010 through 2012 at a 35% maximum rate. The lifetime gift tax exemption will remain at \$1 million per person in 2010, and increase to \$5 million per person in 2011 and 2012.

Generation-Skipping Transfer ("GST") Tax - The federal GST tax on transfers that skip a generation (e.g. transfers to a grandchild) will be subject to a 0% maximum rate in 2010, which will increase to 35% for 2011 and 2012. Beginning as of January 1, 2010, each person has a \$5 million GST exemption.

Without further Congressional action, on January 1, 2013, the 2010 Bill will return the federal estate, gift and GST tax rates and exemptions to pre-2001 laws, which include tax rates up to 55% and exemption amounts of \$1 million per person. Obviously, this creates an incredible window of opportunity for estate and tax planning in 2011 and 2012, and gives clarity to the laws in effect for 2010 through 2012.

As we stated in our November newsletter, there are a number of recommended actions that could be taken that were not affected by the 2010 Bill. You can confidently continue to create medical and tuition payment accounts, make loans to family members, refinance existing debt, make annual exclusion gifts, fund 529 plans, consider Roth IRA conversions, transfer life insurance owned outright to an irrevocable life insurance trust, make gifts with discounted assets to leverage amounts of transfers and fund GRATs.

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Additionally, the 2010 Bill revived a planning opportunity which had previously expired at the end of 2009. The 2010 Bill added a retroactive two-year extension (for 2010 and 2011) of the IRA charitable rollover. The IRA charitable rollover allows individuals who are at least 70 to transfer up to \$100,000 per year directly to a qualified public charity (not a donor advised fund or supporting organization) without being subject to income tax, while still counting toward the required minimum distribution. **The extension applies to all prior charitable distributions from an IRA throughout 2010 which coupled with distributions made by January 31, 2011 can be counted toward the \$100,000 limit and the individual's required minimum distribution for 2010.** This essentially gives an extra month to an individual wishing to use the IRA charitable rollover in lieu of taking a minimum required distribution in 2010. However, individuals who have already taken their 2010 required minimum distribution cannot "undo" that distribution and instead make a charitable distribution to satisfy their 2010 required minimum distribution.

We have previously discussed two provisions that had been in previous estate tax reform proposals: (1) the requirement that GRATs have a minimum 10 year term, and (2) the elimination of certain valuation discounts in intra-familial transactions. Neither of these provisions is in the 2010 Bill, so no planning techniques have been affected by the 2010 Bill. However, Congress may still include either or both of these provisions in future legislation as a revenue increase to offset any revenue losses under the PAYGO rules. As a result, it is important to contact one of Moore & Van Allen's Wealth Transfer attorneys to discuss if a planning technique that could be subject to these provisions is appropriate for you now.

Additionally, in our last newsletter, we discussed transfers to GST exempt trusts in 2010 and taxable gifts in 2010. We now have certainty as to the tax treatment of such actions, and you may now contact one of Moore & Van Allen's Wealth Transfer attorneys to give guidance on prior actions or proposed actions before year end.

The combination of tax law changes for 2010 and beyond have created an amazing planning window, the likes of which have not been seen in decades, but which is closing rapidly. Below, we highlight the **two incredible GST planning opportunities available between now and December 31, 2010**. You have 10 days to implement these planning techniques, if you wish to do so.

- 1. Gifts to grandchildren (or even great-grandchildren).** During 2010, an outright gift to or gift in trust for the benefit of grandchildren (or members of a later generation) will result in no GST tax. As stated above, each person has a \$1 million gift tax exemption in 2010 and a gift beyond the exemption will be subject to gift tax at a 35% rate. Thus, a gift made by an individual without gift tax exemption remaining will be subject to a 35% gift tax.
- 2. Distributions from an existing GST non-exempt irrevocable trust to remote beneficiaries (grandchildren, etc.) without GST tax.** Distributions from a GST non-exempt trust are not subject to the gift tax and would not be subject to the GST tax in 2010. All distributions made from such trusts after December 31, 2010 will be subject to the GST tax (currently 35%). This opportunity to make absolutely tax free distributions applies to funded GST non-exempt trusts which would include trusts such as irrevocable life insurance trusts or testamentary trusts created by parents or grandparents for the benefit of their descendants.

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These two planning opportunities are only available until **December 31, 2010**. After such date, as noted, additional tremendous estate and tax planning opportunities will be available for a two year period, and you should revisit your estate and tax planning to best take advantage of these opportunities.

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