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2010 Tax Relief Act Highlights

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On December 18, 2010, President Obama signed the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. The law makes many changes to the estate, gift and generation skipping taxes for transfers made in 2010-2012.

Retroactive reinstatement of estate tax. The act reinstated the estate tax retroactive to January 1, 2010. Decedents dying in 2010 are subject to an estate tax on assets in excess of $5,000,000.00 at a flat rate of 35%. However, the personal representative of a decedents estate can make an election to opt out of the estate tax and use the no estate tax/modified carry-over basis rules that had previously been in effect.

Five Million Dollar Estate Tax Exemption. The exemption amount for 2011 is also $5,000,000.00. In 2012, the $5,000,000.00 is indexed for inflation.

Five Million Dollar Generation Skipping Tax Exemption. The act provides for a $5,000,000.00 exemption for generation skipping transfers made in 2010 and 2011. The exemption is indexed for 2012.

Reunification of gift and estate tax exemptions. The act reunifies the estate and gift tax exemptions. Therefore, the 2011 gift tax exemption is $5,000,000.00 and the 2012 gift tax exemption will be increased for inflation.

Retroactive reinstatement of estate tax basis rules. The stepped-up basis rules are reinstated retroactive to January 1, 2010. However, those estates that opt out of the estate tax will use the modified carryover basis rules rather than the estate tax basis rules (meaning that they will have $1.3 million in basis step-up with an additional $3 million for the surviving spouse, however, basis cannot be stepped-up beyond the current fair market value).

Portability. The personal representative of a decedent who dies in 2011 or 2012 may elect to pass the decedent's unused exemption to the surviving spouse. This only applies to estate tax exemption, it does not apply to GST exemption. The amount of exemption that may be transferred to a surviving spouse is limited to the lesser of $5,000,000.00 or the unused exemption of the last deceased spouse.

Extension of time for filing return. For decedents dying between January 1, 2010 and December 16, 2010, the deadline for filing an estate tax return, paying the tax, and making a disclaimer is nine months after the date of enactment (September 17, 2011).

Return threshold. The estate of a U.S. citizen or resident must file an estate tax return if the gross estate exceeds the basic exclusion amount ($5,000,000.00 as indexed for inflation). Therefore, even if a surviving spouse has sufficient exemption to cover his or her entire estate as a result of the portability rules, the surviving spouse must file a return if the estate exceeds $5,000,000.00. However, in order to take advantage of the portability rules, an estate must file a return.

Reduced estate and trust tax rates extended. Rather than increasing to 28%, 31%, 36%, and 39.6%, the top income tax rates for estates and trusts will remain 25%, 28%, 33%, and 35%.

Sunset. The provisions of this act, as well as the provisions of EGTRRA expire on January 1, 2013. Therefore, without further legislation, the estate, gift and GST exemption amounts will be $1,000,000.00. The top estate and gift tax rate will return to 55% (on transfers over $3,000,000.00). Also, the rules providing for portability will not apply.

Miscellaneous changes to other tax provisions. The act made many other changes to the tax code that do not affect estate, gift and GST taxes. Some of those other changes include:

1. Dividends. For 2011 and 2012, maximum rate for qualified dividends remains 15%.
2. Long-Term Capital Gains. For 2011 and 2012, the maximum rate for long-term capital gains will remain 15% (except for the 28% rate on collectables and unrecaptured Section 1250 gain).
3. Alternative Minimum Tax Patch. In 2010, the AMT exemption is $47,450 for individuals and $72,450 for married filing jointly and in 2011 the exemptions are $48,450 and $74,450, respectively.
4. Business Incentives. The act provides for several including accelerated expensing and depreciation. Bonus first-year depreciation may be as much as 100% for qualified property and placed in service by January 1, 2012.
5. Extension of lower individual income tax rates. The individual income tax rates will remain 10%, 15%, 25%, 28%, 33% and 35% (as opposed to 15%, 28%, 31%, 36% and 39.6%).

This article was written by attorney Michael R. Olsaver for informational purposes. Please contact Mike or any of our Wealth Preservation attorneys if you have any questions or concerns about Wealth Preservation, Estate Planning, or Estate and Gift Taxes.

RCO
ROBISON CURPHEY & O'CONNELL

Toledo
Four SeaGate, Ninth Floor
Toledo, Ohio 43604
419-249-7900/phone
419-249-7911/fax

Findlay
220 W. Sandusky Street
Findlay, Ohio 45840
419-423-4321/phone
419-423-8484/fax

Waterville
204 Farnsworth
Waterville, Ohio 43566
419-878-2931/phone
419-878-4727/fax

Tecumseh
105 Brown Street, Suite 100
Tecumseh, Michigan 49286
517-423-5404/phone
517-423-5647/fax

Monroe
23 East Front Street, Suite 101
Monroe, Michigan 48161
734-457-1092/phone
734-457-1094/fax