

2010 Tax Law Temporarily Opens Window of Opportunity for New Planning

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On December 17, 2010, the President signed into law the Tax Relief, Unemployment Insurance Reauthorization and Jobs Creation Act of 2010 (the "Act"). The Act extends for two (2) years most of the Bush era tax cuts which were set to expire on December 31, 2010. From the perspective of individual income taxes, the Act has a positive impact, including:

Income Tax Provisions

- **Extended Federal Income Tax Rates:** Temporarily extends the 10%, 25%, 28%, 33% and 35% marginal income tax rates until December 31, 2012
- **Extended Unemployment Benefits:** Temporarily extends unemployment benefits for 13 months
- **One Year Payroll Tax Reduction:** Temporarily cuts the employee portion of the Social Security payroll tax from 6.2% to 4.2% - but only until December 31, 2011
- **Extended Capital Gains/Dividends Tax Rates:** Temporarily extends the 15% capital gains and qualifying stock dividend tax rate until December 31, 2012
- **Extended Personal Exemptions and Itemized Deductions:** Temporarily repeals the Personal Exemption Phase-Out and the Itemized Deduction limitation through 2012
- **Extended Charitable Gifting from Individual Retirement Accounts:** Temporarily extends for years 2010 and 2011 the ability of an individual age 70 ½ or older to make income **tax-free** distributions of up to \$100,000 from an IRA to a charity.

The Act also impacts the federal estate, gift and generation skipping transfer tax systems, and for the next two (2) years makes major changes by granting higher exemptions and lower top tax rates.

Transfer Tax Provisions

- **Exemption Amounts:** The Act sets the federal estate, gift and generation skipping transfer tax exemptions at \$5 million per individual (\$10 million per married couple) for 2011 and 2012, with the exemption amount for estate and GST tax purposes indexed for inflation beginning in 2012
- **Transfer Tax Rates:** The Act sets a top estate, gift and generation skipping transfer tax rate of 35% which is applicable for deaths occurring in 2011 and 2012
- **Estate and Gift Tax Reunification:** For two (2) years, the Act reunifies the federal estate and gift tax laws so that individuals can now gift up to \$5,000,000 during their lifetime without paying gift tax. Note: that any portion of the federal gift tax exemption used during life will reduce the federal estate tax

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exemption available at death

- **Exemption Portability:** The Act provides that the \$5 million exemption at death is portable between spouses in 2011 and 2012. Thus, a surviving spouse may use any unused portion of the deceased spouse's exemption.

Window of Opportunity Opens in 2011

There are many estate, gift and financial planning opportunities to take advantage of in the new tax law – something for just about everybody. The next two (2) years will certainly provide both individuals and business owners with a window of opportunity to take steps toward many of their Financial and Estate Planning goals.

Here are some basic planning opportunities to consider:

1. **ROTH conversion ¹**
2. **Use of your 2% payroll tax reduction to increase your 401(k) contribution this year or fund other tax-advantaged savings vehicles**
3. **Harvesting long term capital gains while the capital gains tax rate is generally 15%**
4. **Making gifts while the lifetime gift tax exemption is \$5,000,000**
5. **For those over 70 ½, fulfilling your charitable gift commitments in 2010 and 2011 from your IRA**
6. **Exercising stock options that require an AMT adjustment while the AMT is patched**
7. **Forgiving family loans while the lifetime gift tax exemption is high**
8. **Inquiring whether your business can benefit from the accelerated depreciation provisions**
9. **Buying life insurance to protect your estate for the long term because your accumulated wealth is too precious to subject it to the whims of Congress.**

The federal estate tax has been a political chess game between both political parties since the enactment of EGTRRA in 2001. There are doubts as to whether there will ever be "permanent" estate tax reform in the future. For affluent individuals and business owners, the Act does not provide long term estate tax comfort. Remember - It's the estate tax law in effect when you die that counts. The political environment is as uncertain as ever. This "political risk", as well as projected future budget deficits should be taken into account when discussing your income tax planning and estate planning needs with your qualified tax and legal advisors. Some experts project the ten year cost of the estate tax provisions to be nearly \$300 billion (assuming they are extended beyond two years). This may impede future efforts to make the increased transfer tax exemption and lower rate permanent.²

Unless Congress enacts new legislation, the estate, gift and GST tax exemptions and rates that go into effect on January 1, 2011 will revert back to their original pre-EGTRRA limits of \$1,000,000 and 55% beginning on January 1, 2013. If your goal is to protect and pass on your wealth to your family, then

¹ The conversion opportunity may not be right for everyone. The cost of having to pay taxes now may outweigh the benefit of tax-free qualified distributions in the future. Other factors are also important to consider prior to converting. Be sure to confer with your independent tax and/or legal advisor about whether a Roth conversion makes sense for you.

² Charlie Douglas, JD, CFP®, AEP, as written in 12/22 "Insights on the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010", Steve Leimberg's Estate Planning Email Newsletter - Archive Message #1743

instead of waiting for Congress to create permanent estate tax legislation, consider taking back control of your estate planning, transcending the politics, and taking positive action that protects your family and your overall wealth - for the long term. This begins by discussing your estate planning goals with your financial services professional as well as your legal and tax advisors..

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