

A Summary of the New Tax Law

December 20, 2010

Today President Obama signed into law the new federal tax act known as the *Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010*. It will have a significant impact on individual, estate, gift, and generation-skipping transfer taxes. This is a brief summary of the key changes.

Estate Tax

- The exempt amount that can be inherited free of federal estate taxes is increased to \$5 million (\$10 million for married couples), as compared to the 2009 exemption of \$3.5 million (\$7 million for married couples). The estate tax rate is set at a flat 35% for assets over the exempt amount, as compared to the 2009 rate of 45%. These changes apply to decedents dying on or after January 1, 2010.
- Additionally, for 2010 estates, the former step-up in basis rules will again apply unless the executor elects to use the complicated carryover basis rules that have been in effect for most of 2010. The step-up rules will apply to estates in 2011 and 2012 without the option of using carryover basis. A step-up in basis means that the property received from a 2010 decedent will have a tax basis equal to its fair market value. This helps recipients of the property avoid capital gains realizations upon the disposal of the asset received from the decedent's estate.
- The most interesting change is the so-called "portability" of the exemption beginning in 2011. Now, if a decedent's estate does not use all of his or her \$5 million exemption, the surviving spouse will be able to apply to his or her estate the predeceased spouse's unused exemption. This is an entirely new concept in estate taxation and offers some great estate planning opportunities.

Gift Tax

- For gifts made after 2010, the gift tax exemption is increased from the current \$1 million to \$5 million. Gifts over that amount are subject to a 35% gift tax. The annual so-called "present interest exclusion" for gifts remains at \$13,000 per donor for gifts to individuals other than a spouse.

Generation-Skipping Transfer Tax

- For both lifetime and after-death so-called "generation-skipping gifts" (such as gifts to grandchildren) made after 2010, the Generation-Skipping Tax (aka "GST") exemption is increased to \$5 million. GST gifts over that amount are subject to a 35% GST tax.

Income Tax

- The new law retains the current 15% individual income tax rates for long-term capital gains and qualified dividends.
- Through the end of 2011, the new law provides relief from the alternative minimum tax, or “AMT.”
- Individuals who are at least age 70½ are eligible to do an “IRA charitable rollover” of up to \$100,000 per year. This means that an individual can make a gift directly from his or her IRA to a public charity. The transfer to the charity will count toward the individual’s required minimum distribution for the year but will not be treated as a taxable distribution to the individual. The IRA charitable rollover option expires at the end of 2011.

Many of the new changes in tax laws will automatically expire on December 31, 2012 unless Congress again acts to change the law.

For additional information regarding these changes in tax law, please contact your attorney at Bernstein Shur or call the Tax, Trust and Estates Practice Group of Bernstein Shur at 207-774-1200.

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