

## »Business Alert

## March 2011—Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010

On December 17, 2010, President Obama signed the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 ("2010 Tax Relief Act"). This act provides a two year extension of current income tax benefits, but also makes changes to the estate and gift tax laws for the years 2010, 2011 and 2012. Because of the changes to the gift and estate tax rules, there are some unique opportunities available.

Prior to this act, the estate tax, which had been repealed for the year 2010, was set to return in 2011 with a \$1,000,000 exemption and a 55% tax rate. The 2010 Tax Relief Act made effective a \$5,000,000 exemption and a 35% tax rate for the years 2011 and 2012. The 2010 Tax Relief Act and all of its provisions will expire in 2013 unless additional action is taken.

The 2010 Tax Relief Act also made retroactive the estate tax for the year 2010 using a \$5,000,000 exemption and a 35% rate, but estates of decedents dying in the year 2010 can elect to have the no estate tax rules apply using the modified basis step-up. Although it may appear that everyone would want to elect out of the estate tax for the year 2010, the modified basis step-up rules actually make it so that most estates of decedents dying in the year 2010 will want to have the estate tax apply. For large estates, they will need to determine what law to apply. In determining whether to elect to have no estate tax, consideration needs to be given as to the value of the estate and to the rights of the different beneficiaries.

The 2010 Tax Relief Act also modified the gift tax exemption. Prior to the enactment of the 2010 Tax Relief Act, the gift tax exemption had remained at a \$1,000,000 exemption since the year 2001. The new law increases this exemption amount to \$5,000,000 for the years 2011 and 2012. This increased gift tax exemption provides many opportunities for those wishing to make large gifts and is also available to those who already have used their gift tax exemption in the past. As the law is unclear as to what will happen after 2012, the years 2011 and 2012 may provide for unique opportunities not otherwise available.

The 2010 Tax Relief Act also increased the generation skipping transfer tax exemption to \$5,000,000 for the years 2010, 2011 and 2012. For those wanting to make

gifts to grandchildren, this is a valuable opportunity because of the increased exemption amount.

These are some of the things to consider in the 2010 Tax Relief Act:

- Taxpayers who are over the age of 70½ can distribute \$100,000 from a tax deferred retirement account directly to a charity without paying income tax.
- Long-term capital gains rates will generally remain at a maximum rate of 15% for federal income tax purposes (collectables and unrealized section 1250 depreciation are excluded).
- There is a patch to try to reduce the effects of the Alternate Minimum Tax.
- The security payroll tax is reduced for the year 2011 for both wage earners and self-employed.
- Rules regarding bonus depreciation for businesses that place machinery and equipment into service before January 1, 2012.
- The maximum rate for qualified dividends will remain at 15% for 2011 and 2012.

The 2010 Tax Relief Act only provides for a two year extension of the income tax cuts and changes the estate and gift tax rules for 2010, 2011 and 2012. It is unclear what will happen to the estate and gift tax rules in the year 2013 and beyond. For the years 2011 and 2012, the amount collected by the federal government in estate and gift taxes will be the lowest it has been since these taxes were implemented. This may result in an increase to these taxes after 2012 or it could result in a permanent appeal because the taxes generate such a small percentage of the revenue to the federal government. Just prior to the 2010 Tax Relief Act, the future of the estate and gift tax rules remains unclear. Nevertheless, the 2010 Tax Relief Act provides some unique opportunities for gifting in the years 2011 and 2012.

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