



CELEBRATING
55 YEARS

nerej

Two-year certainty for estate and gift tax laws

January 27, 2011 - Front Section

There is temporary certainty in the estate and gift tax laws under the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (2010 Tax Relief Act), which was signed into law on December 17th, 2010. Prior to the new law, there was no estate tax imposed on estates of individuals dying in 2010, but some beneficiaries of those estates could have faced higher taxes because there were less favorable income tax basis rules.

Important estate and gift tax changes under the 2010 Tax Relief Act include:

*Reduced Estate Tax: For 2011 and 2012, the act reduces the top estate tax rate to 35%. It also increases the exemption to \$5 million for 2011 with a further increase for inflation in 2012.

*Estate Tax Optional for 2010: The act allows estates of decedents who died in 2010 to choose between (1) estate tax (based on a \$5 million exemption and 35% top rate) and a step-up in basis of all estate assets, or (2) no estate tax and modified carryover basis. The correct choice will depend in part on the decedent's basis in the assets immediately before death and how soon the heirs may sell the assets.

*Gift Tax Changes: The act reunifies the gift and estate tax exemption. Thus, for 2011 and 2012, an overall \$5 million exemption applies, and the top gift tax rate is 35%.

*Generation-Skipping Transfer (GST) Tax Changes: The GST tax is an additional tax on generation-skipping transfers, including gifts and bequests to grandchildren when their parents are still alive and certain trust distributions. The act lowers GST taxes for 2011 and 2012 by increasing the exemption amount from \$1 million to \$5 million (as indexed after 2011) and reducing the rate from 55% to 35%. The Act also sets the GST rate for 2010 at zero.

*Unused Exemption Now Transferable: Under the act, beginning in 2011, any unused estate or gift tax exemption is generally available for use by the surviving spouse in addition to his or her own \$5 million exemption for taxable transfers made during life or at death. Under prior law, the exemption of the first spouse to die would be lost if not used. Specific rules apply to the new transferability, particularly in the case of remarriage of a surviving spouse.

The transfer tax relief in the new law is substantial, but temporary. All of the tax changes in the 2010 Tax Relief Act will expire on or before January 1st, 2013. Without further action taken by Congress, the estate, gift and GST rates and exemption amounts applicable on January 1st, 2001 will return on January 1st, 2013 - resulting in significantly higher tax rates and lower exemption amounts. Thus, estate planning to reduce taxes remains an important consideration.

Contact your tax or estate planning advisor if you have questions about how the new 2010 or 2011 estate and gift tax rules will affect you and your clients or customers.

Kelly Guarino is an associate at Lourie & Cutler, P.C., Boston, Mass.

New England Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540