

May 10, 2011

CLIENT TAX ALERT

Re: **2010 Tax Relief Act – Estate & Gift Tax \$5,000,000 Lifetime Exclusion (2011-2012)**

Dear Client:

This letter is to alert you of the important estate tax and related changes that Congress made under the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (2010 Tax Relief Act). The new law extends many taxpayer-friendly changes to the federal estate & gift tax but only for 2011 & 2012. Accordingly, there is a window of opportunity to make use of the increased lifetime gift exclusions prior to 12/31/12.

The federal estate tax and related provisions are among the most complex in the Tax Code. This letter presents a high-level overview of the provisions in the new law and does not contain specific individual advice. For more details, please contact our office.

Estate Tax Rates - The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) repealed the federal estate tax for decedents dying in calendar year 2010. After 2010, pre-EGTRRA estate tax provisions were scheduled to return. The 2010 Tax Relief Act revives the estate tax.

Under the new law, the federal estate tax will again apply to the estates of decedents dying after December 31, 2009 and before January 1, 2013. The new law sets a maximum estate tax rate of 35 percent with a \$5 million exclusion (\$10 million for married couples). Additionally, executors of estates of individuals who died in 2010 can elect out of the estate tax (and apply modified carryover basis rules) or can elect to have the estate tax apply.

Portability - The 2010 Tax Relief Act provides for portability between spouses of the \$5 million estate tax exclusion after December 31, 2010. Portability allows a surviving spouse to elect to use any of the unused portion of the estate tax exclusion of the predeceased spouse, allowing married couples to effectively shield up to \$10 million from estate tax.

Credits for state taxes - EGTRRA changed the tax credit for state death taxes to a deduction for estates of individuals dying after December 31, 2004. The 2010 Tax Relief Act extends the deduction through 2012.

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Gift tax rates - For gifts made in 2010, the 2010 Tax Relief Act provides that gift tax is computed using a rate schedule having a top tax rate of 35 percent and an applicable exclusion amount of \$1 million. *Most importantly for planning purposes, for gifts made after 2010 and before January 1, 2013, the gift tax is reunified with the estate tax with a top gift tax rate of 35 percent and an applicable exclusion amount of \$5 million.* This represents a real opportunity for additional estate planning.

Generation Skipping Transfer (GST) Tax - For 2010, the new law provides a GST tax exemption of \$5 million, with a zero percent tax rate. For transfers made after 2010, the GST rate would be equal to the highest estate tax rate in effect for the year (35 percent for 2011 and 2012).

Remember that if you have already gifted the previous limit of \$1 million you are limited to another \$4 million in exclusion. Additionally, the above law expires as of 12/31/12. Although no one is certain what revised estate and gift lifetime exclusion legislation Congress will pass for 2013 and beyond, *many tax practitioners expect that it may be lower than the current \$5 million exclusion.* Perhaps going back to the \$1 million dollar level! A \$1 million exclusion would expose many to the estate tax by virtue of real estate holdings alone. If you are (or you have a parent that is) at the age where proper estate planning is essential, I urge you to take the time to review your estate plan in light of this new law. A timely made gift or well established trust while the \$5 million exclusion is available, may significantly reduce one's estate tax burden. Please contact our office if you have any questions about these provisions at (305) 361-1014.

Sincerely,

LANCASTER & REED, LLC


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