

LEGAL BRIEFS

Huff, Poole & Mahoney, P.C. ● Business, Tax & Estates Group ● 2011

Congress has spoken and we have an answer on the estate ("death") tax. On December 17, 2010, President Obama signed into law the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (TRUIRJA).

Unfortunately, TRUIRJA is a mere "patch" for the next two years. Instead of the sunset of the Bush tax cuts in 2011, TRUIRJA extends them for all taxpayers for two years. Here are highlights from the new law:

ESTATE, GIFT AND GENERATION-SKIPPING TRANSFER (GST) TAX EXEMPTIONS AND RATES

For the next two years (2011 and 2012), the gift, estate and GST tax exemptions are unified again, with the exemption set at **\$5 million and the tax rate at 35%**. It's important to remember that these changes are effective only for the next two years. On January 1, 2013, if Congress does not act again, the gift, estate and GST exemptions will revert to \$1 million (adjusted for inflation) and the top tax rate will be 55%.

OPTIONAL RETROACTIVE PLANNING FOR 2010 DECEDENTS

Under TRUIRJA, executors for estates of those who died in 2010 have two options: use the old law, or use the new law. Indeed, these executors can choose between: (1) no estate tax with a modified carryover basis (limited step-up basis of up to \$1.3 million in assets, plus \$3 million for assets passing to a spouse); or (2) reinstated estate tax with a \$5 million exemption, 35% tax rate and full step-up in basis to date of death value.

Executors have a limited time to make this election, so if you or a loved one is the executor of an estate of someone who died in 2010, you should make an appointment with our office as soon as possible to determine which option is best for the estate.

PLANNING OPPORTUNITY YOU DON'T WANT TO MISS!

If you are age 70½ or older, you have another opportunity to receive a deduction for a **direct** charitable donation from your IRA. So long as the donation is made **before January 31, 2011**, the deduction can be attributed your 2010 income taxes.

PORTABILITY OF ESTATE TAX EXEMPTIONS BETWEEN SPOUSES

If you've engaged in thorough estate planning in the past, you may be aware of the unique ability of spouses to combine their transfer tax exclusions to increase what is passed to their heirs, free of tax. Thoughtful planning captures both spouse's exclusions, to the extent possible.

For the death of a spouse that occurs in 2011 or 2012, there is an added unique opportunity. The unused exclusion amount of the spouse that dies in those two years will generally be available for carryover by the surviving spouse, for use during lifetime or at death. This carryover is in addition to the surviving spouse's own \$5 million exclusion from taxable transfers.

Important Points:

(1) Estate Tax Return Required: The executor of the estate of the first spouse to die must file a timely estate tax return (including extensions) to compute the excess exclusion and to qualify for the carryover.

(2) Impact on Remarriage: If the surviving spouse remarries, only the unused exclusion of the most recent spouse will be available for carryover.

OTHER ITEMS OF INTEREST FROM TRUIRJCA

■ Individual income tax rates will remain at 2010 levels (10%, 15%, 28%, 33% and 35%) for two more years, instead of increasing.

■ Tax on long-term capital gains and qualified dividends remains at 15% for two more years, instead of increasing.

■ Taxpayers will not see their itemized deductions or personal exemptions limited due to income levels in 2011 or 2012.

■ The AMT (alternative minimum tax) exemption for a married couple was increased from \$45,000 to \$72,450.

CONCLUSION

If you have an estate of \$5 million or more, TRUIRJCA presents a tremendous opportunity to transfer significant wealth over the next two years. You should consider using your \$5 million gift and GST tax exemptions in 2011 and 2012, either through outright gifting or through the use of leveraging strategies.

If you have less than a \$5 million estate, and perhaps have waited on the new tax law before engaging in estate planning, TRUIRJCA is a great reminder of why you shouldn't let "the tax tail wag the estate planning dog." Now is the time to update or implement your estate plan. Why? We now know with certainty that the federal estate tax is not going away. It is wise to establish a plan that avoids or minimizes this tax which could certainly impact estates of \$1 million in 2013. But even more importantly, non-tax factors such as disability planning, long-term care planning, asset protection, probate avoidance, etc., are truly the fundamentals that should be addressed in your estate plan without delay.

When it comes to estate planning, folks often fall into one of three broad categories: (1) those who have not planned; (2) those who have planned (although not adequately); and (3) those who have properly planned, but should have their estate plan reviewed and possibly updated.

Studies indicate that nearly 70% of all Americans have no estate plan. Of the roughly 30% who have an

estate plan, many have designed a plan that inadequately represents their wishes, or will cause confusion, delays, and unmet expectations.

Beware of the "one size fits none" estate planning forms, found online or in office supply stores. Sure, you get a "will," "trust" and/or other documents, but will you get a plan that truly represents your goals? Will they comply with state law, as well as ever changing federal legislation? You may have only one chance to get your estate planning right. Don't miss that chance and leave your family members or friends with the burdens that stem from a poor plan.

The last category includes those who have plans, but due to changes in the law, the size of their estates, or their objectives, the planning is no longer appropriate for their situation. Many clients fall into this category, so if your estate plan is over **10 years old** or if you or your family members or friends have experienced significant life changes such as marriage, divorce, birth of a child or grandchild, you should have it reviewed right away.

No one wants to embrace their mortality, but prudence dictates that we prepare ourselves and our families for the inevitable. Whether you're of substantial or modest means, you want to leave a lasting legacy of family harmony, good memories, and protection of those you love. We are here to help, so call us to assist with your estate planning needs.

CIRCULAR 230 NOTICE: IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses.

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