

ESTATE TAX UPDATE

Finally, Congress passed the “Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010” (Relief Act) on December 17, 2010. Here is a summary some of the important estate and gift tax provisions of the recently enacted legislation.

The law in 2001 phased-out the estate and generation-skipping transfer taxes so that they were fully repealed in 2010, lowered the gift tax rate to 35% and increased the gift tax exemption to \$1 million for 2010. The 2010 Tax Relief Act reinstates the estate tax and sets the exemption at \$5 million per person and \$10 million per couple.

The tax rate is set at 35% for estate, gift and generation-skipping transfer taxes through 2012. The changes are effective January 1, 2010. However, a personal representative is allowed to make an election to choose no estate tax together with the modified carryover basis for estates of individuals who died on or after January 1, 2010, and before January 1, 2011. Each estate of an individual who died in 2010 must be evaluated to determine whether to allow the estate tax to be imposed on amounts in excess of \$5 million or whether to elect out of the new law and be subject to no tax combined with a limited basis adjustment. Also, a \$5 million generation-skipping transfer tax exemption and zero percent rate will apply for the 2010 year. For gifts made after December 31, 2010, estate and gift taxes will be reunified.

Effective for estates of decedents dying after December 31, 2010, the 2010 Relief Act will allow the personal representative of a deceased spouse’s estate to transfer any unused exemption to the surviving spouse. This is referred to as “portability.”

The forms upon which to make the tax or no tax elections, basis adjustments, portability confirmation or the other required filings are not yet published. Much is yet to be interpreted and explained.

Please note that this legislation expires at the end of 2012, so there is certainty ONLY for 2010, 2011 and 2012. We must wait and see what, if any, action Congress takes to extend or to repeal the recently enacted legislation. If past performance is any indication, we may not know what taxes will apply in 2013 until well into that year.

Estate plans should be systematically reviewed to be certain the new legislation has not had an adverse impact.

(Article by Jim Marvel, Law Office of James K. Marvel, PLLC)

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