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## **ESTATE & GIFT TAX UPDATE AS OF JANUARY 2011**

On December 17, 2010, a revised Federal tax law, the “Tax Relief, Unemployment Insurance Reauthorization & Job Creation Act of 2010” went into effect, which will operate for 2 years, through December 31, 2012. This law maintains many of the previous income tax relief and extends unemployment insurance. However, it also focuses on other tax issues, which include:

- Reinstatement of the estate tax
- The impact on capital gains tax
- The affect on 2010 estates

### **ESTATE TAX**

For the next two years (until December 31, 2012) the Gift, Estate, and Generation Skipping Transfer tax exemption will again be unified, and the exemption will now be \$5 million per person and \$10 million per couple, with a tax rate of 35%. This law will only operate for two (2) years and could revert back to the \$1 million exemption amount with a tax rate of 55% if Congress fails to extend or amend this law. Thus, planning must be done cautiously.

For individuals with an estate of more than \$5 million, they may take advantage of the increase in the gift tax exemption to pass larger gifts of up to \$5 million to their children and family members during lifetime while the law is in effect for the next two years.

### **PORTABILITY OF ESTATE TAX EXEMPTION BETWEEN SPOUSES:**

During the continuation of this law, the personal representative, Executor and/or Trustee of the decedent’s estate of a married person who dies in 2011 and 2012 can choose to transfer any unused federal tax exemption amount to a surviving spouse. This transfer is made by electing an option on the decedent spouse’s estate tax return. Thus, it may be advantageous to file an estate tax return (Form 706) even if the estate would not be subject to estate tax, in order to take advantage of this portability issue. It is to be noted the “transfer/portability of estate tax exemption” does not apply to the New York estate tax regime. New York’s exemption remains at \$1 million, with up to a 16% tax rate. As such, estate planning and credit shelter trust techniques may still be necessary. Re-marriage will also cancel out this portability option.

**CAUTION**

If you choose to make gifts with tax deferred or highly appreciated assets, there may be income tax and/or capital gains tax implications. Consultation with our firm, your accountant and your financial advisor is strongly advised.

In summary, the change in the estate tax exemption amount provides tremendous planning opportunities and offers large amounts of tax savings to the next generation with proper legal guidance. We can create a plan that would best suit your needs which would involve the following:

- Analyzing Gift Transfers of up to \$5 million
- Utilizing Generation Skipping gifts
- Weighing and combining the benefits between estate tax and Medicaid planning

Call us today at: (718)238-6960 for a review of your estate plan or estate (if you are an Executor/Trustee of an estate), and we will be able to guide you through the new tax law.



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