

Important Changes in the Recent 2010 Tax Law

On Friday, December 17, 2010, President Obama signed legislation extending the Bush-era tax cuts into law. The new law makes significant changes to what would have been the estate and gift tax laws in 2011 had nothing been done and is effective until December 31, 2012.

2010 GST gifts: Under the new tax law, the generation skipping transfer tax rate is 0%. You have from now through December 31, 2010 to make gifts to direct skip persons without incurring any generation skipping transfer taxes or gift taxes.

The new law raises the estate tax exemption amount to \$5,000,000, lowers the estate tax rate to 35%, and makes the estate tax retroactive to January 1, 2010. 2010 decedents have an option between (1) applying the estate tax law (with the \$5,000,000 exemption amount and step up in basis); and (2) no estate tax law with the modified carry over basis rules of § 1022 of the Internal Revenue Code. The application of the estate tax law is the *default* and the modified carry over basis rules must be *affirmatively elected*.

A significant change from prior law makes the unused portion of a decedent's estate tax exemption amount portable to the surviving spouse. The decedent's personal representative can choose whether to use the decedent's estate tax exemption amount or to transfer such exemption amount to the surviving spouse. When there are multiple spouses, only the exemption amount from the most recently deceased spouse can be used and the amount is *not* indexed for inflation. A portability election must be made on the decedent's timely-filed estate tax return.

The estate and gift taxes are unified under the new law. A gift tax exemption of \$5,000,000 and a gift tax rate of 35% apply to all gifts made *after* December 31, 2010. For gifts made in 2010, the \$1,000,000 gift tax exemption still applies.

For 2010, the generation-skipping transfer ("GST") tax exemption amount is \$5,000,000 and the GST tax rate is 0%. This law applies regardless of whether the estate tax or modified carry over basis rules are chosen for a 2010 decedent. In 2011 and 2012, the GST tax exemption amount is also \$5,000,000, but the GST tax rate is 35%. A surviving spouse *cannot* use the unused portion of the decedent's GST tax exemption amount.

Certain filing deadlines are extended under the new law. For decedents dying in 2010 and before December 17, 2010, the due date is not earlier than nine (9) months after December 17, 2010 for: (1) estate tax returns; (2) payment of estate tax; and (3) disclaimers.

ADVICE: CONSIDER MAKING GST GIFTS (GIFTS TO GRANDCHILDREN OR LOWER GENERATIONS) PRIOR TO DECEMBER 31, 2010 AS THE GST TAX RATE IS 0%. CONSIDER DISCUSSING WITH YOUR ATTORNEY YOUR EXISTING ESTATE PLANS TO TAKE INTO CONSIDERATION THE NEW EXEMPTION AMOUNTS AND PORTABILITY OF THE PREDECEASING SPOUSE'S EXEMPTION.