

ALERT

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PRIVATE CLIENT SERVICES

News Concerning Recent
Trust and Estates Issues



ACT NOW ON FAVORABLE GIFT AND ESTATE TAX PLANNING RULES

As we have reported before, at the end of 2010 Congress enacted significant changes to the federal estate, gift, and generation-skipping transfer (GST) tax laws in effect for 2011 and 2012. Estate, gift, and GST exemptions were increased to \$5,000,000 for 2011 and are scheduled to increase to \$5,120,000 in 2012 due to an inflation adjustment. Also, the transfer tax rate was reduced to 35 percent. However, the 2010 Act contains a "sunset provision" which will reset the exemptions to \$1,000,000 and the tax rate to 55 percent effective January 1, 2013 unless Congress takes further action.

The increased gift exemption creates significant opportunities for estate planning and wealth transfer. This is particularly true because IRS interest rates, which often play a big part in structuring gifts or family sales, are at historic lows (as low as 0.16 percent). These low rates are very favorable for certain types of planning, such as Grantor Retained Annuity Trusts (GRATs) and making (or refinancing) intra-family loans or loans to trusts.

Although the 2010 Act does not sunset until 2013, there are good reasons to act now in order to take advantage of the favorable conditions. The very low interest rates presently in effect may increase, and current asset values may be low. Furthermore, the compromise bill which ended the debt ceiling impasse this summer created a "Super Committee" tasked with producing deficit reduction legislation by November 23, 2011. The Committee's recommendations may include year-end tax changes to increase revenue. Changes that have frequently been discussed in the past include imposing a minimum term on GRATs and reducing or eliminating transfer discounts for partnerships and other closely held business entities. The Committee may also recommend raising the transfer tax rate or decreasing the exemptions before 2013 in order to increase revenue. For these reasons, anyone interested in taking advantage of these favorable tax conditions should consider acting now.

Annual Gifts

Other types of planning may also benefit from action before year's end. Individuals may currently give \$13,000 to each recipient (e.g., children or grandchildren, or trusts for their benefit) in each year without incurring gift tax or using lifetime exemption. Married couples may "split" gifts, raising this annual exclusion to \$26,000 per year. Because this annual exclusion may be used year after year and is available separately for each recipient, the total amount transferred can be quite substantial over time, and future income and appreciation on the gifted assets also escapes transfer tax. However, if this opportunity is not used for a given year, it cannot be carried over to a future year. To maximize the benefit of the annual exclusion, action must be taken to make gifts in each year.

IRA Planning

IRA owners over the age of 70 1/2 have an opportunity available until the end of 2011. An IRA owner may directly "roll over" up to \$100,000 per year from his or her IRA to eligible charities, tax-free. These "charitable rollovers" count against the annual required minimum distribution. For taxpayers who are unable to take full advantage of the normal charitable deduction, a charitable rollover may reduce taxes compared with a distribution from an IRA followed by a charitable contribution. However, the ability to make a charitable rollover is currently set to lapse after December 31, 2011.

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