



reminder: new tax act includes gift tax opportunities

MSK Client Alert

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By Allan B. Cutrow

There currently exists an opportunity for giving assets to future generations at significantly reduced tax costs. The new tax law (the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 – the "2010 Act") opened a two-year window of low gift tax rates and high exemption amounts that allows you to make significant gifts during your lifetime that you could not make previously. We emailed Trusts and Estates Alert on December 21, 2010, describing the 2010 Act, but the holidays are a busy time, and we want to make sure you have a chance to focus on this opportunity.

We encourage you to call us to discuss the possibilities that may be particularly applicable to your situation, as there is a likelihood that, after two years, rates will go back up and exemptions will drop.

Without going into technical detail, the 2010 Act increased the lifetime gift tax exemption from \$1 million to \$5 million per person. This means that, even if you had previously used your entire \$1 million exemption, you can now make up to \$4 million of additional gifts without paying gift tax. This is an opportunity we want you to be aware of because, for several reasons, lifetime giving is more efficient than passing assets at death, whether you make taxable gifts and pay gift tax or whether you simply use your gift tax exemption. This opportunity, however, is currently set to expire at the end of 2012 unless Congress acts to prolong it.

Furthermore, the new tax regime includes a new concept: "Portability" of the estate tax exemption for those dying in 2011 and 2012. This essentially means that, if the first spouse to die did not use his or her entire estate tax exemption, the surviving spouse can use it. In some situations, this can give the surviving spouse increased flexibility for gifting and for use of the couple's funds.

attorneys

Allan B. Cutrow

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In addition, many experts expected Congress to eliminate several popular and efficient gifting vehicles, such as short-term Grantor Retained Annuity Trusts (GRATs) and Family Limited Partnerships. While action may still be taken on these items in the future, they are still available and are excellent ways to leverage your increased gift tax exemption.

Even if additional gifting is not in your current plans, the substantial increase in the estate tax exemption could unintentionally affect the dispositive provisions of your estate plan (i.e., who gets what), because often gifts are keyed to the amount of the estate tax exemption. As this amount grows, certain individuals could end up inheriting more than was intended. In order to make sure this doesn't happen, and in light of the new availability of portability and other changes to the estate tax rules, we very strongly urge you meet with us to review your estate plan and make any necessary adjustments.