



## ***NEW FEDERAL ESTATE AND GIFT TAX LAW***

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As you likely have read, on December 17, 2010, President Obama signed the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (the "Act") into law, which clarified the law with regard to estate and gift transfers. The most notable change to the federal tax law being raising the estate tax exemption to the \$5 million level. Below is a quick reference guide to the new law.

**Please remember that because this is a summary, and everyone has different circumstances, it is now especially important to take a hard look at your estate plan.**

Most people know that an estate plan helps to determine who will receive our assets when we die. Further, without a valid will, the laws of New York State will determine who receives our assets when we die. Nonetheless, because the estate tax threshold temporarily is raised to \$5 million dollars, for many of us, estate tax planning may not feel so urgent in the short term. However, it is important to review our estate plans and exercise control over who gets what from our estates.

### **THE ACT AND ITS FEDERAL IMPACT:**

- An individual who dies in 2011 or 2012 may leave bequests totaling up to \$5 million with no federal estate tax obligation. This is known as the "estate tax exemption." However, consistent with prior law, a transferor's use of his lifetime federal gift tax exemption will correspondingly reduce the amount that he may pass at death free of estate tax. Federal Estate and Gift tax rates will be 35% in 2011 and 2012. In 2013 the estate tax exemption will drop to \$1 million unless Congress makes further changes.
- The amount of the annual federal gift tax exclusion has remained unchanged. An individual may make annual tax free gifts of up to \$13,000. to as many people as he wants. Accordingly, a couple may give each person up to \$26,000. per year. Such gifts do not reduce the lifetime gift cap. Similarly, payment of another's education or medical expenses made directly to the provider will not reduce an individual's lifetime exemption. By making annual gifts, the "giver" reduces his taxable estate by the size of the gift, and any taxable income earned on the gift is borne by the recipient, who may be taxed at a lower rate than the giver.
- The executor of a deceased spouse's estate may transfer any unused federal estate and gift tax exemptions to the surviving spouse. However, unless Congress changes the law, the surviving spouse will lose the use of the decedent spouse's exemption if the surviving spouse doesn't use it before 2013.
- Assets transferred from a decedent's estate will receive a full step-up in basis to their date-of-death value.
- Absent new legislation, the provisions of the Act expire on December 31, 2012.

### **IMPACT ON NEW YORK STATE ESTATE TAX:**

- New York State's estate tax exemption remains at \$1 million, with a tax rate of 16 percent. Any estate tax paid to New York State is a deduction on the Federal estate tax return. There is no gift tax in New York State.

**THINGS TO CONSIDER:**

- As always, **do you have a will or trust** and does your will or your trust reflect your current wishes and your current economic status?
- **Does your will contain a credit shelter trust?** Generally, a credit shelter trust is used to reduce the size of the estate of the second spouse to die. Often, the wording of such a trust provides something to the effect that the credit shelter trust shall be funded with assets valued at an amount up to the threshold at which estate tax is imposed. At one time the federal estate tax amount was \$1 million, then \$3.5 million and now is \$5 million. The effect of the increasing Federal estate tax exemption may be different than your desire, and transfer an amount larger than you had planned to the credit shelter beneficiary, leaving no assets for other beneficiaries.
- **Do you have a health care proxy**, and does it express your current wishes as to who should make your health care decisions if you are unable?
- **Have you executed a power of attorney** in the event that you are unable to act for yourself in non-health matters? If so, are you content with the individual, and substitutes, you have named to be your agent?

Our advice to our clients always has been to consider their estate plan annually. In light of these various developments and changes, we recommend that you contact us now to discuss your current estate planning documents and possible planning opportunities. We would like to help.

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