



# Life and Estate Planning Update

## Federal Tax Changes Signed into Law

On December 17, President Obama signed into law the **Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010** (“the Act”). The Act:

- **Extends** for 2 years the 2001-2003 tax cuts.
- **Retains** for 2 years favorable tax rates for long-term capital gains and qualified dividends.
- **Reinststitutes** tax on estates greater than \$5 million.
- **Includes** a payroll/self-employment tax cut of 2 percentage points for 2011.
- **Continues** the sales tax deduction.

Here are highlights of the new law relating to **estate tax planning**:

### ***Increased Estate Exemption and Reduced Top Tax Rate***

The Act lowers estate and Generation Skipping Taxes (“GST”) for 2011 and 2012 by increasing the exemption amount to \$5 million per person (\$10 million for a married couple), as indexed after 2011. The top estate tax rate is reduced from 55% to 35%.

### ***Special Choice for 2010 Decedents***

Estates of persons dying in 2010 may choose between applying (1) estate tax (based on a \$5 million exemption and 35% top rate) and a stepped-up income tax basis, or (2) no estate tax and modified carryover basis.

### ***2010 Modified Carryover Basis Rules Generally Repealed***

The general rule is that assets inherited from a person dying in

2010 will have an income tax basis equal to the fair market value of the assets at the date of death. However, if an estate executor chooses to exempt the estate from federal estate tax, there would be a limited “step-up” in basis on estate assets. For deaths after 2010, all assets will automatically be “stepped-up” to fair market value at the date of death.

### ***Gift Tax Changes***

The 2010 gift tax exemption is \$1 million and the gift tax rate is 35%. For gifts made after December 31, 2010, the gift tax is reunified with the estate tax, with an exemption amount of \$5 million and a top estate and gift tax rate of 35%.

### ***Generation-Skipping Transfer Tax Changes***

The GST tax exemption for persons dying or gifts made during 2010 is equal to the new \$5 million basic exclusion amount, as indexed. The GST tax exemption for decedents dying or gifts made after

December 31, 2010 is \$5 million, as indexed. The GST tax rate for transfers made in 2011 and 2012 is 35%.

### ***Portability of Unused Tax Exemption Between Spouses***

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For deaths after December 31, 2010, a spouse's unused estate tax exemption will generally be available for use by a surviving spouse, as an addition to his/her exemption. The surviving spouse may use the predeceased spousal carryover

amount *in addition* to his or her own \$5 million exclusion for taxable transfers during life or at death. If a surviving spouse is predeceased by more than one spouse, the survivor can use the lesser of \$5 million or the unused exclusion of the last deceased spouse.

### ***Extension of Filing Deadlines***

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For decedents dying after December 31, 2009 and before December 17, 2010, the due date

for certain tax actions is not to be earlier than September 17, 2011 (9 months after the Act's December 17, 2010 enactment date). This extension applies for:

- Filing an estate tax return required under Code Sec. 6018;
- Paying estate tax;
- Making a qualified disclaimer of an interest in property; and
- Filing returns required for a GST made after December 31, 2009 and before December 17, 2010.

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