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CLIENT ALERT ESTATE PLANNING

Gift Tax Planning for 2010

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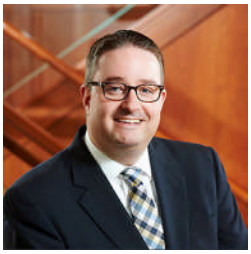
September, 2010



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The Economic Growth and Tax Relief Reconciliation Act of 2001 made significant changes in several areas of the Internal Revenue Code (the "Code"), many of which are set to expire at the end of 2010 unless Congress acts to extend them. However, as the end of 2010 approaches we believe that it is unlikely that Congress will act before the end of the year and even if it does, making any changes retroactively would face legitimate constitutional challenges. The current economic outlook, historically low interest rates and tax rates set to automatically rise in the near future are all factors which present taxpayers with a golden opportunity to plan gifting strategies that take advantage of the federal tax laws as they stand today.

The generation-skipping transfer ("GST") tax, which is a tax on transfers from taxpayers to their grandchildren or descendants in any later generation, was repealed along with the Federal estate tax on January 1, 2010. In addition, the Federal gift tax rate in 2010 is a historically low 35% on gifts made after a taxpayer has made use of his or her $1 million lifetime gift tax exemption. In 2011, the top gift tax rate will rise to 55%, with an additional 5% surtax on transfers from $10 million to $17,184,000. With a potential 71% increase in the top transfer tax rate (i.e., from 35% for gifts in 2010 to 60% in 2011) set to automatically take effect in four months and with the additional benefits of no GST tax in 2010, there is a significant opportunity for taxpayers and their heirs if substantial gifts are structured and made before the end of the year.

Another gifting strategy that taxpayers may use to remove assets from their estate during their lifetime and also avoid gift tax is the gift tax annual exclusion. The gift tax annual exclusion is one of the most effective, but also one of the most under-utilized, parts of the Federal transfer tax system. In 2010, the Code permits each taxpayer to make gifts of $13,000 to as many different donees (i.e., children and grandchildren) as the taxpayer desires. In addition, spouses may "split" their gifts and increase each gift in 2010 to $26,000 per donee. In 2010 (and years after), if a couple had three children and five grandchildren they could remove $208,000 from their estates each year to benefit their heirs by taking advantage of the annual exclusion and gift-splitting rules. The Code also permits taxpayers to make a $65,000 ($13,000 x 5) contribution this year to an educational 529 Plan for the benefit of an heir and thus avoid gift tax by "spreading" the gift over 5 years using the taxpayer's annual exclusion ($130,000 for couples splitting their gifts).

All financial indicators suggest that tax rates will be raised in the coming years, which means that now is the time to take advantage of tax rates that may not be this low again for many years. It is therefore both prudent and advantageous that you contact your estate planning counsel at our Firm to discuss the gifting strategies referred to in this Alert and many others.

About the Author: Mr. Fernandez focuses his practice on structuring and implementing estate and tax planning strategies for individuals and closely held businesses. His work includes assisting clients with all of the legal and tax aspects of the administration of decedent's estates. If you have any questions, please contact Mr. Fernandez (afernandez@wispearl.com) or one of the other attorneys in Wisler Pearlstine's Estate Planning Practice Group. We look forward to hearing from you.

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