

Changes in Federal Estate and Gift Tax Law

Tennessee Residents are Impacted from an Estate Planning Perspective

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On December 17, 2010, President Obama signed into law the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (the "Act") which significantly changes the federal estate tax and gift tax. The estate and gift tax provisions of the Act are generally favorable to taxpayers, but the Act is only temporary and will expire December 31, 2012 if Congress fails to act. Below is a summary of the Act's key changes and how the Act impacts Tennessee residents from an estate planning perspective.

\$5 Million Federal Exclusion Amount; 35% Tax Rate. The Act reinstates the federal estate tax and sets the exemption at \$5 million and the tax rate at 35% for decedents dying in 2011 and 2012. However, if Congress allows the Act to expire on December 31, 2012, the prior estate tax regime, with a 55% maximum estate tax rate and a \$1 million applicable exclusion amount, will be reinstated at that time. The State of Tennessee still maintains a separate inheritance tax regime with an exemption for the first \$1 million of assets. To help minimize Tennessee inheritance tax exposure, we are continuing to advise our clients about the advantages of credit shelter trusts.

Portability. The Act also provides for "portability" between spouses, meaning any exemption amount not used by a predeceased spouse may be added to the exemption amount for the surviving spouse. If Congress fails to extend the Act, both spouses must die in 2011-2012 to take advantage of portability. Additionally, if a surviving spouse remarries, portability of the predeceased spouse's unused exemption is lost. Given these limitations and the fact that Tennessee does not recognize portability for Tennessee inheritance tax purposes, we are continuing to advise many clients to use estate plans that incorporate credit shelter trusts.

Gift Taxes. Under the Act the estate and gift tax regimes are re-unified allowing individuals to be able to use the full \$5 million exemption to make lifetime gifts without any federal gift taxes. For lifetime gifts exceeding \$5 million made in 2011 and 2012, the federal gift tax rate is 35%. Tennessee still has a gift tax and Tennessee does not have a lifetime exemption. Therefore, Tennessee gift tax consideration must be well thought out before gifting property in excess of the annual exclusion amounts. For 2011, the annual gift exclusion amount under both federal and state law remains at \$13,000 per Class A donee (married couples may continue to "split" their gift and may make combined gifts of \$26,000 to each Class A donee). "Class A donees" are a donor's spouse, lineal descendant, lineal ancestor, sibling, son-in-law, daughter-in-law, step-child, and niece and nephew if the donor has no lineal descendants. "Class B donees" are all other persons.

Generation Skipping Transfer ("GST") Tax. The Act provides a \$5 million GST tax exemption and GST tax rate of 35% for 2011 and 2012. The Act also extends certain technical provisions under prior law affecting the GST tax.



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2011 and Beyond ESTATE, INHERITANCE AND GIFT TAX TABLE

	Federal			Tennessee
	2011	2012	2013 ⁴	2011+
Estate/Inheritance Tax Exemption	\$ 5,000,000	\$ 5,000,000 ¹	\$ 1,000,000	\$ 1,000,000
Maximum Estate Tax Rate	35%	35%	55% ²	9.5%
Gift Tax Annual Exclusion Per Donee	\$ 13,000	\$ 13,000 ¹	\$ 13,000 ¹	\$ 13,000 (Class A) \$ 3,000 (Class B)
Lifetime Gift Tax Exemption	\$ 5,000,000	\$ 5,000,000 ¹	\$ 1,000,000	None
Maximum Gift Tax Rate	35%	35%	55% ²	9.5% ³
Exemption from Generation Skipping Tax	\$ 5,000,000	\$ 5,000,000 ¹	\$ 1,000,000 ¹	TN GST equals Federal state GST tax credit
Generation Skipping Tax Rate	35%	35%	55%	TN GST equals Federal state GST tax credit

¹ Subject to an inflation adjustment

² 60% for estates > \$10M

³ Class A Rate

⁴ If Congress fails to reenact current law

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