

Estate Tax Law Update 2011

Lance N. McKenzie, Esq.

Avansino, Melarkey, Knobel, Mulligan & McKenzie

4795 Caughlin Pkwy, Suite 100

Reno, Nevada 89519

(775) 333-0300

lancem@amkmlaw.com

Subject to Disclaimer and 230 Compliance Statement

(Last Slide)

Estate and Gift Taxes

- Estate and Gift Taxes are a Transfer Tax
- Estate Taxes are imposed on transfers at death
- Gift Taxes imposed on transfers during life
- Estate Tax is applied against the Fair Market Value of Assets “owned” by the decedent at death or transferred by gift

Estate Tax Law-Current Status

- Estate Tax still in a state of flux – Tax Relief Act only applies to 2011 and 2012.
- Further Act by Congress in 2012?
- Prior Law Applies in 1/1/2013 such that the Individual Exemption Amount is reduced to \$1,000,000 and the estate tax increased to 55%

Individual Exemption Amount/Tax Rate

<u>Year</u>	<u>Exemption</u>	<u>Tax Rate</u>
● 2011	\$5, 000,000	35%
● 2012	\$5,000,000*	35%
● 2013	\$1,000,000	55% (60% over \$10m)

*Adjusted for Inflation in 2012

Unification of Estate And Gift Tax Exemptions

- 2011 and 2012* Gift Tax Exemption also \$5,000,000
- Unique Opportunity for high net worth clients to gift up to \$5,000,000 (\$10m for couples) through 2012 without paying any gift tax
- Gift Tax Rate 35% after use of Exemption
- Without further action from Congress this opportunity expires in 1/1/2013 as Gift Tax Exemption returns to \$1,000,000 with a 55% tax rate thereafter

*Adjusted for Inflation for 2012

Generation Skipping Transfer Tax

- GST Exemption is \$5,000,000 for 2010, 2011 and 2012
- GST tax rate of 35% thereafter
- Returns to old law 1/1/2013 (approx \$1.4m exemption and 55% tax rate)
- For 2010 GST transfers can elect out so that GST transfers in 2010 are GST tax free (would still be subject to Gift tax)
- Complex Rules govern transfers to GST Trust in 2010.
Bottom line - 2010 transfer to GST Trust likely exempt

Portability

- Allows Surviving Spouse (“SS”) to utilize “Deceased Spousal Unused Exclusion Amount” (“DSUEA”) in 2011 and 2012
- Credit Shelter Trust not required to utilize DSUEA as long as portability is in place
- Portability scheduled to go away 1/1/2013
- Therefore, must still use CSTs until Portability permanent
- Portability applies to Gift Tax but does not apply to GST

Reasons to Keep Credit Shelter Trusts even with Portability

- Creditor Protection – Spendthrift Trust for Spouse? At least arguable.
- Second Marriage – Surviving Spouse can not dispose of Assets in CST to his or her beneficiaries.
- Discounts on Funding CST – Can utilize minority/marketability discounts when funding CST
- Estate Tax Free Appreciation - Any appreciation and in certain cases income on assets held in CST after funding would pass estate tax free. (Opposite is true on depreciation).

Implication for 2010

- For Decedent's dying in 2010 - can either elect:
 - (i) no estate tax but carry over in tax basis or
 - (ii) \$5,000,000 estate tax exemption amount, 35% tax rate, but "step up" in basis to fmv
- No Portability for 2010
- Gift Tax Exemption remains \$1,000,000 in 2010 with 35% tax rate for gift above exemption
- See 2010 GST explanation above

Disclaimer – Circular 230 Compliance

- **DISCLAIMER** - The foregoing discussion may contain errors and should not be relied upon. Changes in the law may also make this material incorrect or obsolete. Each attorney or potential client should conduct their own independent investigation as to the current status of the law and the correctness or applicability of the foregoing. In addition, different factual circumstances may change the application of the discussion and the law contained herein.
- **Circular 230 Compliance Statement** - Government Regulations contained in Circular 230 regulate written communications from us concerning Federal tax matters. In compliance with those Regulations, we must inform you that:
 - (1) Nothing contained in these materials or **any** attachment or exhibit hereto was intended or written by the writer thereof to be used, and nothing in these materials or any attachment or exhibit hereto may be used or relied upon by any taxpayer, for the purpose of avoiding penalties that may be imposed on such taxpayer under the Internal Revenue Code of 1986, as amended;
 - (2) No written statement in these materials or any attachment or exhibit hereto may be used by any person or persons to support the promotion or marketing of any Federal tax transaction(s) or matter(s) contained therein; and
 - (3) Any taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor with respect to any Federal tax transaction or matter contained in these materials or any attachment or exhibit hereto.