

# ESTATE PLANNING QUARTERLY

SPECIAL EDITION

## THE TAX LAW CHANGES – HOW IT AFFECTS OUR CLIENTS

In December 2010, Congress revised the Estate Tax Law, in effect repealing the sunset provision established by EGTRRA in 2001. The changes were dramatic in that the Federal Tax Exemption was due to drop to \$1 Million. The Gift Tax Exemption and the GST Exemption were at \$1 Million, so the change there was extraordinary.

The new exemptions for the estate tax, the gift tax and the GST are now all \$5 Million, per person. The Estate Tax actually extends to \$10 Million per couple, which provides more planning opportunities than ever.

With the changes come opportunities for attorneys, CPA's and Financial Advisors to provide better more extensive planning and tax savings. The problem we face is the two year window to act. While Congress has never gone backward in the estate tax exemption, there are many who theorize that the gift and GST exemptions may only be temporary. We must use this window to our advantage.

**THE GIFT TAX** With the gift tax now being \$5 Million, our clients who have sizeable and taxable estates may now act to reduce or eliminate tax. If you have married clients with an estate of \$5 million, that, even under standard credit shelter planning, would lead to a New York Estate Tax of \$500,000.00. Utilizing a lifetime gift of \$3 million to a Gifting Trust (IDGT), we can eliminate all the Estate Tax. The risk is opening their beneficiaries to substantial capital gains tax, so the gift must be completed with high basis assets, assets with unrealized losses or cash. I would also suggest using camps which are likely to stay in the family for years to come.

Assuming you can find \$3 million of appropriate assets or create the appropriate assets, the gift will be tax free as New York has no gift tax. Since we do not know what Congress will do with the gift tax, acting now is important.

**THE GST** In addition to making gifts, one would want to exercise the GST exemption for that gift. That simply means electing the GST for the gift at the time the gift tax return is filed. This is critical and all too often over-looked. The result of this election is to further eliminate taxes at the death of the beneficiaries. If properly allocated and then properly placed in a lifetime trust, the beneficiaries will not have to pay tax on the inherited funds at their death. This result is two generations of tax free gifts. Furthermore, the spreading of the wealth at generational levels allows for further reduction in estate tax liability.

**ESTATE TAX** The new estate tax provision has the potential to protect substantial estates from liability and can allow for protection of these estates that were either poorly planned, or poorly funded. For example, if husband and wife have \$9 million and husband dies with only \$1.5 million in his name, the wife at her death, will be allowed to exempt up to \$8.5 million because they can jointly protect \$10 million. I do not recommend this as a way to plan, but it can protect the ill-prepared.

In all, the new law provides for many opportunities for us as planning professionals to assist in protecting our clients' assets. I have yet to meet a client who would say no to saving on taxes. The problem is the opportunities may be temporary; we need to act when we know they exist.

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