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Dear Friends:

As 2010 draws to a close, many clients have contacted us regarding the status of the Federal estate tax in 2011 and, unfortunately, we still have no answers to those questions. **For the vast majority of our clients, it is a time to wait and see what happens to the tax law.** However, for those wealthy enough to make substantial gifts and pay gift tax next April, you should be aware of significant transfer tax planning opportunities available through the end of 2010.

## ESTATE TAX

In 2010, there is no Federal estate tax. The Federal estate tax is scheduled to return in 2011 with an exemption of \$1 million per person and a marginal tax rate of 55%. Congress may change this, but we cannot predict how. Retroactive application of the Federal estate tax to 2010 deaths now seems very unlikely.

## OUTRIGHT GIFTS

As you recall, every person may make a gift up to \$13,000 per year to as many recipients as he or she desires. The gift tax is still in effect in 2010 for gifts made in excess of the \$1 million lifetime gift tax exemption. Unless Congress acts to change it, in 2010, the gift tax rate for taxable gifts in excess of the lifetime exemption is 35%. In 2011, the highest gift tax rate will be 55%. Thus, if you have used all of your lifetime exemption and would like to make taxable gifts, you should consider making those gifts this year.

Example:

Client who has previously gifted \$1 million + makes a taxable gift of \$100,000 to an adult child in 2010. Gift tax due:  $(\$100,000 \times 35\%) = \$35,000$

Same Client makes same gift of \$100,000 in 2011. Gift tax due:  $(\$100,000 \times 55\%) = \$55,000$

**Client saves \$20,000 by making the gift in 2010 instead of 2011.**

## OUTRIGHT GENERATION-SKIPPING GIFTS

Generation-skipping occurs if outright gifts are made more than one generation below the donor (i.e., gifts from grandparents to grandchildren). Generation-skipping can also unwittingly occur if a trust beneficiary dies before the end of the trust term, so that the trust assets go to a younger generation (e.g., a child's share might pass to grandchildren if a child dies before having received outright distribution of all of the assets of his or her share).

Generation-skipping can result in imposition of a flat rate tax called a generation-skipping transfer tax in addition to gift tax. There is no generation-skipping transfer tax in 2010, but the generation-skipping transfer tax will be restored at a 55% rate in 2011. Thus, 2010 provides a wonderful planning opportunity for grandparents wishing to benefit their adult grandchildren and any other donor seeking to benefit a much younger generation. **This opportunity is available for outright gifts only, and not gifts in trust.**

In addition, if you have established a trust from which distributions could be subject to generation-skipping transfer tax, you should consider making distributions before the end of the year to avoid this tax.

Example:

Grandparent makes an outright gift to adult grandchild of \$100,000 in 2010. Gift tax = \$35,000. GST tax = 0. TOTAL TAX: = \$35,000

Grandparent makes an outright gift to adult grandchild of \$100,000 in 2011. Gift tax = \$85,250. GST tax = \$55,000. TOTAL TAX: = \$137,500

**Grandparent saves over \$100,000 in transfer taxes by making this gift in 2010 instead of 2011.**

## FAVORABLE PROPERTY VALUES AND INTEREST RATES

Low values for many types of assets, especially real estate, may present excellent gifting opportunities.

In addition, historically low interest rates make this an appropriate time for making loans or leveraged gifts, such as those made through installment sales and Grantor Retained Annuity Trusts (GRATs).

**MORAL OF THE STORY:** The waning days of 2010 provide excellent planning opportunities to transfer wealth at reduced tax or no tax. Please contact us right away if you need our assistance in making gifts or selling assets to family members on extremely favorable terms before the end of 2010.

**We hope the New Year brings prosperity, health and hope for all of us.**