Estate Tax Alert: Congress Changes Your Estate Plan—Again!

December 27, 2010

On December 17, 2010, President Obama signed into law the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. This new law brings several changes to transfer taxes for years 2010 through 2012. These changes may have a significant impact on your estate plan, and you may need to revise your estate planning documents to avoid unintended results. The changes may also affect the estate of a person who died in 2010, possibly requiring an estate tax election to obtain the maximum tax benefits.

What has changed?

Prior to the new law, Congress allowed the federal estate tax to expire for 2010. In 2011, that tax was scheduled to return with a maximum 55 percent tax rate and a $1 million lifetime estate tax exclusion amount. The new legislation provides for increased federal estate, gift, and generation skipping exclusion amounts of $5 million through 2012 (the increased gift tax exclusion does not take effect until 2011) and a maximum tax rate of 35 percent for all three types of tax. For 2010 decedents, the estate may elect either to pay no federal estate tax and receive a modified carryover income tax basis on estate assets or to pay the federal estate tax with an exclusion of $5 million and receive a new income tax basis on all estate assets. To opt out of the federal estate tax for a death in 2010, the estate must file an election with the IRS. Minnesota's estate tax has not changed—the exclusion remains at $1 million. Direct gifts to grandchildren on or before December 31, 2010, do not produce generation skipping transfer tax, but you must contact us quickly to act on this opportunity. The new law also extends the ability to donate up to $100,000 per year income tax free to charity from your IRA in 2010 (retroactively through January) and 2011.

We carefully tailor wills and trusts to adapt to changes in the tax law. Many estate plans involve tax planning considerations and use formula language that divides assets to take advantage of estate tax exclusion amounts, even if those amounts vary from year to year. Some of those formulas fund a trust for the benefit of the next generation up to the estate tax exclusion amount, which is now $5 million for years 2010 through 2012. This may be more than you previously anticipated passing to or for the benefit of the next generation at your death.

What should you do now?

These estate tax changes do not affect every estate plan. You should contact your Gray Plant Mooty attorney to determine whether or not your plan needs an update. At your request, we will review your plan and let you know if and how the new law affects you. Watch our Web site for future updates and more details about the new tax law.