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Key Provisions of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010

Legal Alert

December 21, 2010

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 estate, gift and generation skipping transfer (GST) taxes, and also modifies the income and payroll tax laws. The following is a summary of some of the key provisions of the Act:

Estate, Gift and GST Tax Impact

1. The estate tax is made retroactive to January 1, 2010, but the estate tax exemption amount (the amount you can transfer at death to others) has been set at $5 million. The estate of a decedent who died in 2010 will have an option, however, to elect not to have the estate tax apply, but in such case the step-up in basis in assets for income tax purposes is limited. Furthermore, the $5 million exemption is extended to 2011 and 2012, but effective in 2013, unless Congress again changes the law, the exemption amount is reduced to $1 million.
2. The maximum estate tax rate is 35%, down from 45% in 2009 and what would have been 55% in 2011. This same rate applies to transfers by gift as well.
3. While the gift tax exemption amount for 2010 remains at $1 million, it will increase to $5 million for 2011 and 2012.
4. The unused estate and gift tax exemption amount can be transferred from the estate of a decedent to his or her spouse when the executor of the decedent's estate timely files an estate tax return and makes an election to transfer the remaining estate tax exemption to the spouse. However, the rules become more complicated when a person whose spouse died subsequently remarries, and it also appears that this so-called "portability" rule applies only during 2011 and 2012.
5. The GST exemption amount is $5 million for 2011 and 2012. The GST tax rate for 2010 is 0. That means that for each GST transfer that is classified as a direct skip (assets being transferred to someone more than one generation below the transferor), or a transfer called a taxable distribution (generally, assets being distributed from a trust to a person more than one generation below the grantor), will have no tax. Starting in 2011, the GST tax rate will be 35%.

6. For decedents dying in 2010, an adjustment in basis to the fair market value of estate assets will apply, unless the estate files an election to be exempt from the estate tax, and instead applies the modified carry-over basis rules to estate property or other property received from a decedent dying during 2010. Under the modified carry-over basis rules, the basis of most property of decedents dying in 2010 has basis equal to the decedent's basis in such property with an allocation of $1.3 million to step-up the basis of the decedent's property, as well as an additional $3 million to step-up the basis of property passing to a spouse or a qualified trust. Under the prior rule, which will now apply for decedents' estates that do not make this election, and will apply in all events in 2011 and 2012, the basis in property passed from a decedent is adjusted to fair market value of the property at the time of a decedent's death.
7. For estates of decedents dying in 2010, the deadline to file the federal estate tax return, pay the federal estate tax due, or for making a disclaimer of an interest in property passing by reason of the decedent's death, has been extended to nine months after the enactment of the Act.

Income Tax Impact

1. The reduced rates in effect for 2010 for individual income tax brackets are extended through 2012. This means that the 10% income tax bracket remains and the top four brackets will remain reduced at 25%, 28%, 33% and 35%. The standard deduction amounts have also been extended for two years, and the itemized deduction and personal exemption phase outs based on income limitations have been repealed through 2012.
2. The reduced long-term capital gain rates for non-corporate taxpayers to a maximum of 15% are extended through 2012.
3. Qualified dividend income is taxed at the same rates that apply to long-term capital gains through 2012.
4. Gains on qualified small business stock that is acquired after September 27, 2010 and before January 1, 2012 will be eligible for 100% exclusion. To qualify for the exclusion, the qualified small business stock must be held for a minimum of 5 years and is subject to a per taxpayer limit.
5. The Alternative Minimum Tax exemption amounts are increased for 2010 and 2011. In addition, several personal nonrefundable credits (such as the dependent care credit, the child credit, the Hope Scholarship and Lifetime Learning credits, etc.) are allowed to the extent of the full amount of the individual's regular tax and alternative minimum tax.
6. Bonus first-year depreciation rules have been expanded to provide a 100% deduction for qualified property placed in service after September 8, 2010 and before January 1, 2012 (or before January 2013 for certain longer-lived and transportation property). In addition, 50% of the cost of qualified property can be deducted in the first year for property placed in service after December 31, 2011 and before January 1, 2013 (or after December 31, 2012 and before January 1, 2014 for certain longer-lived and transportation property).
7. The placed-in-service deadline for the higher depreciation cap limits for automobiles, light trucks and vans has been extended to December 31, 2013.
8. The higher limit for deductible tangible business property under Section 179 of the Code has been extended through 2011. For tax years starting in 2010 and 2011, the dollar limitation on the expense deduction is $500,000 and the deduction starts to phase out when expenses for property placed in service exceed $2,000,000.

9. The Federal Insurance Contributions Act (FICA) tax rate for employees during 2011 has been reduced by 2%. The new rate for 2011 will be 4.2% instead of 6.2%. This will result in a maximum savings of up to $2,136 per taxpayer. A similar reduction applies for self-employed individuals.

Many of the changes made by the Act expire either before or at the end of 2012, so timing continues to be an important factor. There are many tax planning opportunities and tax administration issues that can impact your income and your estate. To learn more about how the Act provides you with opportunities, contact one of the Flaster Greenberg tax, corporate, or estate planning attorneys.

If you would like more information about the extensions discussed in this alert, please contact a member of the Taxation Practice Group or the Trusts and Estates Practice Group at Flaster Greenberg PC.

ATTORNEYS MENTIONED

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