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## Gift and Estate Tax Planning: The Shrinking Opportunity

*Legal Alert*

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August 23, 2011

Effective earlier this year, Congress passed, and President Obama signed, a new law that creates a 24-month window of opportunity for transferring assets out of one's estate in an amount up to \$5 million per person (\$10 million for a married couple) without incurring any federal estate or gift tax. This is the result of an increase in the applicable exemption amount (a/k/a the unified credit amount) to \$5 million per person, for a death in, or for gifts made in, 2011 or 2012. Effective January 1, 2013, the exemption amount reverts back to only \$1 million (unless Congress again changes the law). Thus, assuming an approximate 50% combined federal and state estate/inheritance tax rate, this creates a planning opportunity for a married couple to save \$4 million or more in estate taxes, and a single person to save \$2 million or more in estate taxes. The \$5 million exemption amount can be leveraged even further by taking advantage of legitimate court-approved discounting techniques to enable an individual to make a gift of more than \$5 million during this window of opportunity (in some cases as much as, or even more than, \$7 million per person and \$14 million for a married couple).

This planning can be accomplished by means as simple as making gifts of assets to children or others; creating a limited liability company (LLC), transferring assets into the LLC and then giving interests in the LLC to the children (so that the children do not yet have control or access to the assets); or undertaking much more sophisticated and potentially even more beneficial techniques of utilizing so-called grantor-retained annuity trusts (GRATs), sales to intentionally defective grantor trusts (IDGTs), and qualified personal residence trusts (QPRTs).

If you have questions about the information contained in this alert, contact a member of the Taxation or Trusts and Estates Practice Groups at Flaster Greenberg PC.

### **ATTORNEYS MENTIONED**

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