

Act Before December 31 to Save Future Generation-Skipping Transfer Taxes

On December 17, 2010, President Obama signed "The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010" (the Act) into law. Although the Act significantly affects gift, estate and generation-skipping transfer taxes for 2010 and beyond, this Client Alert focuses on opportunities that require your attention before year end.

1. Through December 31, you can make unlimited gifts to or in trust for grandchildren without incurring any generation-skipping transfer tax. After December 31, this amount will be limited to a \$5,000,000 exemption for transfers in 2011 and 2012; and, in 2013, the exemption drops again, to a mere \$1,000,000, indexed for inflation.
 - Note, however, that since the gift tax exemption is limited to \$1,000,000 for the remainder of 2010 (or \$2,000,000 for a married person whose spouse consents to allowing the use of his or her gift tax exemption through a process called "gift splitting"), transfers in excess thereof will be subject to gift tax (even though such transfers will be generation-skipping transfer tax-free). As we have noted in prior Client Alerts, however, the gift tax rate is currently imposed at the historically low rate of 35% and is also effectively cheaper than the estate tax due to the fact that the gift tax is imposed on a tax exclusive basis.
 - If such gifts are not made before the end of this year, future transfers to or in trust for grandchildren will generate not only a gift or estate tax but also a generation-skipping transfer tax to the extent that the aggregate of such transfers exceeds the then applicable exemption amount.
 - For example, in order for a grandchild to net \$10,000,000 from a testamentary bequest made after December 31, almost \$14,000,000 in combined estate and generation-skipping transfer taxes will have to be paid compared with only \$3,500,000 if the transfer is made by gift on or before December 31.
2. Through December 31, trustees of existing trusts that are not exempt from generation-skipping transfer tax (for example, GRATs, QPRTs and many life insurance trusts), can make distributions totally free of any gift or generation-skipping transfer tax. Such distributions can be made either outright or in further trust where the terms of the existing trust and/or state law so permit. If distributions are not made before the end of the year, future distributions to "skip persons" (i.e., grandchildren of the transferor) will generate either an estate or generation-skipping transfer tax.

In light of the limited time horizon, we strongly encourage you to reach out to us immediately if you want to take advantage of these once in a lifetime opportunities.

We wish you a Happy and Healthy New Year.

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