

Memorandum

To: Clients

From: Mulhern & Scott, PLLC

Date: February, 2011

Re: New 2010 Tax Act and Important Notice Regarding Future Updates

As many of you may be aware, Congress recently enacted new estate and gift tax legislation. The law, known as the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (the "Act"), became effective on January 1, 2011, and has important estate planning implications.

A. Summary of the Tax Changes

1. *Temporary Fix.* **The Act expires on December 31, 2012.** It's impossible to predict whether its terms will be extended by Congress, or whether the Act will lapse and the estate, gift, and generation skipping exclusions will revert to what they would have been under prior law: a \$1M exclusions per person (\$2M per couple), with a 55% tax rate. Accordingly, in many respects the Act merely extends and postpones the uncertainty about estate and gift tax that has existed in recent years.
2. *Federal Estate Tax Exclusion.* For 2011 and 2012, the Act raises the federal estate tax exclusion to **\$5M per person (\$10M per couple)**, and reduces the maximum federal estate tax rate to 35%. In addition, one of the most important provisions of the Act provides that, **if one spouse doesn't use all of his/her \$5M exclusion when he/she dies, then the unused amount can be used by the surviving spouse.**
3. *Federal Gift Tax Exclusion.* For 2011 and 2012, the Act raises the federal gift tax exclusion to **\$5M per person (\$10M per couple)**, and reduces the federal gift tax rate to 35%. The Act kept the annual gift tax exclusion at \$13K per recipient per year.
4. *Generation Skipping Tax ("GST") Exclusion.* For 2011 and 2012, the Act raises the GST exclusion (i.e., the amount that can pass, tax free, either during lifetime or at death, to a beneficiary(ies) two or more generations younger – typically to grandchildren or more remote descendants) to **\$5M per person (\$10M per couple)**, and reduces the GST rate to 35%.

B. What These Changes Mean For Clients

1. *Federal Estate Planning In Existing Documents For Married Couples.* Most of our clients who are married have set up Revocable Trusts with "Marital" and "Family" Trust planning in order to reduce estate tax that might otherwise be due at the time of the second death. Because of the change in the federal estate tax and GST exemption amounts under the Act, we strongly recommend that such married couples schedule an appointment to meet with us to review their estate planning. **This is particularly important for those couples in second marriages, where the increased exclusions may cause unintended results under the terms of your existing estate plan.**

2. *Planning Opportunities.* In addition, these changes in the tax law provide potentially unprecedented estate planning opportunities for our clients for the next two years.

Under the new law, at any point over the next two years, a husband and wife can gift up to \$10M tax free, including to a trust for their children, grandchildren, and more remote descendants so that all future generations can avoid estate tax and GST.

Likewise, over the next two years, a single individual can gift up to \$5M, tax free.

Moreover, once assets have been gifted out of a client's name, **all future appreciation** attributable to those assets will take place in the recipients' name, and the appreciation **will not be subject to estate tax or GST upon the client's death.**

C. Cautionary Note

The \$5M estate, gift, and GST exclusions are, at present, only valid until 2013. If the exclusions revert to a lower amount in 2013 (e.g., as currently scheduled, the exclusions will drop to \$1M in 2013), and if a client makes a gift in 2011 or 2012 in excess of the 2013 amount, there is a risk that, in 2013 or beyond, the federal government may attempt to impose a tax on that excess amount. This potential recapture for tax purposes has substantial planning implications, and anyone contemplating making such a gift should discuss it with us first.

D. Conclusion

We recommend that clients review their estate plans with us periodically and whenever a significant life event occurs (i.e., marriage, divorce, change of jobs; purchase of real estate, change in financial condition).

If you haven't been in to see us recently, if you've had a change in your personal or financial situation, if you are a married couple with Marital and Family Trust planning in your Revocable Trusts (particularly in a second marriage), or if you would like to discuss the 2010 Act and its implications on your personal estate planning, please call Hayley at 603-436-1211 to set up an appointment.

This Memorandum presents general legal principles and does not purport to provide legal or tax advice applicable to any client's specific situation.

Important Notice Regarding Future Updates

In the future, our office will not be sending letters to clients summarizing changes in the law.

Instead, we invite clients to visit our website (www.mulhernlaw.com), and click on "Updates." This new approach will allow us to highlight issues of interest to clients on a more ongoing basis. Thank you.