

Bush-era Tax Cuts Extended For Another Two Years

On December 17, 2010, President Obama signed the highly debated Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Tax Relief Act of 2010) which generally extends the Bush-era tax cuts for another two years.

As many of you have already discussed with us, the Bush-era tax cuts drastically altered federal transfer taxes, including the estate tax, the gift tax and the generation-skipping transfer (GST) tax. Such changes included a reduction in the maximum tax rates and phased in increases in the applicable exclusion amount. The changes culminated in a repeal of the estate and GST taxes for all of 2010 which many planners thought would never occur. This anomaly has been highlighted by the press with the 2010 deaths of New York Yankees principal owner George Steinbrenner and energy tycoon Dan Duncan.

As part of the Tax Relief Act of 2010, federal estate tax and GST will again apply to the estates of decedents dying and generation skipping transfers made after December 31, 2009 and before January 1, 2013. This reinstatement accompanies a higher estate tax applicable exclusion amount of \$5 million and a maximum tax rate of 35%. For decedents dying during 2010, the executor of the estate can make an election to have the estate taxed as if the Tax Relief Act of 2010 had not occurred. This would mean that the estate would not be taxed, however the assets of the estate would receive a carryover basis instead of a stepped up basis. This election does not apply to the GST tax because the GST tax rate for 2010 is zero percent. The exemption amount for GST tax is also \$5 million with a 35% tax rate.

The Tax Relief Act of 2010 also reunifies the gift and estate taxes for gifts made after December 31, 2010. For 2010 gifts, the top tax rate was 35% and an applicable gift tax exclusion amount of \$1 million. For gifts made in 2011 and 2012, the gift tax rate and applicable exclusion amount are the same as the estate tax with a top tax rate of 35% and a \$5 million applicable exclusion amount.

Another provision of the Tax Relief Act of 2010 now permits the estate of a surviving spouse to utilize the unused portion of the estate tax applicable exclusion amount of a predeceased spouse. This "portability election"

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applies to deaths occurring in 2011 and 2012. The portability election is not available for GST.

While the estate tax provision was the most hotly debated issue, the Tax Relief Act of 2010 also extended the Bush-era tax cuts for individuals through December 31, 2012. Highlights of the extensions include extending the lower individual income tax rates of 10, 15, 25, 28, 33 and 35 percent as opposed to the higher 15, 28, 31, 36 and 39.6 percent rates in effect prior to the Bush-era tax cuts and continuing the maximum rate of 15% for qualified capital gains and dividends, and 0% for the 10 and 15 percent income tax brackets. The Tax Relief Act of 2010 also reduced the employee share of Social Security Taxes by 2% for 2011 wages up to \$106,800. Self-employed individuals will pay 10.4% on self-employment income up to the threshold.

The extension of many provisions by the Tax relief Act of 2010 gives taxpayers some certainty in tax planning for the next two years, especially concerning the individual income tax rates, capital gains and dividend tax rates, and the estate tax. However, the provisions are temporary and the new law pushes the ultimate fate of numerous tax cuts and incentives to 2012, a presidential election year.

If you wish to discuss how the Tax Relief Act of 2010 affects you, please contact your Rothman Gordon attorney or a member of our Estates, Trusts & Taxation Department below.

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