

How the Tax Cuts Compromise Package Will Impact Estate Planning

Posted by Janet Brewer on Fri, Dec 31, 2010

In the past week or so, I've been contacted by a number of my high net-worth clients in Palo Alto, Atherton, Los Altos, Portola Valley, and Woodside who wanted to revisit their estate plans in light of the provisions of the tax cut compromise which affect the estate, gift, and generation skipping transfer (GST) tax. I applaud these clients for taking the initiative and having the foresight to know that now is a great time to review their existing estate plans to ensure that estate and gift tax savings are maximized.

Under the new law, the exemption amount for estate, gift, and GST is \$5 million (\$10 million for couples). This exemption amount is effective for 2010, 2011, and 2012. The estate, gift, and GST tax rate for 2010, 2011, and 2012 is 35%. Additionally the exemption amount will be indexed for inflation beginning in 2011.

Pursuant to the new law, estates of decedents who died in 2010 can choose between applying the new estate tax rules and the former modified carryover basis rules. In a nutshell, this ability to choose allows the executor of an estate to choose between paying estate taxes or capital gains taxes if and when the assets of the estate are sold. The larger the estate tax exemption amount, the more likely it is that the executor of an estate will choose to apply the estate tax rules.

At first glance, these reduced taxes rates and increased exemption amounts may appear to reduce the need for planning. However, that could not be further from the truth. The new laws could potentially impact the use of various estate planning tools including:

- Grantor Retained Annuity Trusts;
- Qualified Personal Residence Trusts;
- Bypass Trusts;
- Dynasty Trusts;
- Qualified Domestic Trusts; and
- Spousal Access Trusts.

The new law may also impact charitable transfers. If your estate plan calls for the distribution of the applicable exemption amount to your heirs with the remainder going to charity, it's quite possible that your wishes may not be carried out when the exemption amount changes (assuming that the exemption amount equals or exceeds

the value of your estate). Therefore, it's always advisable to revisit such self-adjusting clauses to ensure that any changes required to achieve your wishes are made.

An important note of caution for non-resident aliens who own assets in the United States – the new law does *not* change your maximum estate and gift tax exemption of \$60,000 per person (\$120,000 per married couple). There are a number of steps you can take to lessen the impact of the estate and gift tax laws; those are unchanged by the new law.

Remember that this \$60,000 limit can also impact green card holders who decide to move back to their “home” country and still own assets (such as a house) in the United States.

In previous posts, I've mentioned the importance of periodically doing an “estate plan check-up” in order to ensure that your estate plan is up-to-date in light of changes in the law and changes to your family structure and your wishes. Because the new estate tax laws will undoubtedly have a significant impact on estate planning, now is the time for that check-up. To schedule an appointment for an estate plan check-up, contact the Law Offices of Janet Brewer. I specialize in drafting unique estate plans that meet the specific needs of my clients throughout the San Francisco Bay Area, Santa Clara County, San Mateo County, and the surrounding areas.