JW | Wealth Planning e-Alert

An important wealth planning law update from the law firm of Jackson Walker.

December 02, 2010

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Why Now is the Time to Give: 2010 Presents Unique Gifting Opportunities

By **Karina C. Cantu** and **Michael L. Kaufman**

Because the current federal gift tax rate is historically low, and because there is no generation-skipping transfer ("GST") tax applicable to generation-skipping transfers made this year, 2010 presents unique gifting opportunities for individuals wishing to make taxable gifts to children, grandchildren or other loved ones. However,

Time is of the essence.

In order to take advantage of these opportunities, transfers must be completed by the end of the year. On January 1, 2011, current law provides that the estate, gift, and GST tax laws that existed on January 1, 2001, will be reinstated.

What is going on?

As a result of a 2001 tax law, the federal gift tax rate in 2010 is the lowest it has been since the Great Depression, but this law expires 12/31/2010. The current gift tax rate is 35%; in 2011 and later years the rate may be 45% or even 55%.

In addition, as noted above, the same expiring 2001 tax law provided that there is no GST tax applicable to 2010 GST transfers. Generally, GST transfers are transfers to persons more than one generation below the person making the gift (*i.e.*, grandchildren).

As 2010 draws to a close, it appears unlikely that Congress will change the law as it currently applies to 2010 gifts or GST transfers.[1]

This presents significant opportunities for individuals who are willing to make current gifts in excess of their $1,000,000 lifetime exemption from federal gift taxes. For those individuals, taking advantage of the unprecedently low current gift tax rate and the 2010 repeal of the GST tax can generate significant tax savings.

Consider the following:

In 2010, the top gift tax rate fell to 35 percent from 45 percent in 2009. Absent action by Congress, the top gift tax rate in 2011 will be 55% -- **57%** higher than the current 2010 top gift tax rate.

EXAMPLE 1: Jane wants to make a $1,000,000 taxable gift and has already utilized her lifetime gift tax exemption:

	2010	2011	Tax Savings
Gift Tax on $1,000,000 Gift	$350,000	$550,000	$200,000

As noted above, there is no GST tax in 2010. Individuals considering making gifts to grandchildren or other "skip persons" could have no GST tax applied to 2010 gifts, while 2011 gifts to skip persons will be subject to GST tax at a flat rate of 55%.

The 2010 tax savings for a gift to a skip person are even more dramatic due to the law's requirement that any GST tax be added to the amount of the gift for purposes of calculating the gift tax (In other words, you pay gift tax on the GST tax you pay to the government!).

EXAMPLE 2: Jane wants to make a $1,000,000 taxable gift to her grandchild and has already utilized her lifetime gift and GST tax exemptions:

	2010	2011	Tax Savings
Gift Tax on $1,000,000 gift	$350,000	$550,000	
GST Tax on $1,000,000 gift	0	$550,000	
Gift Tax on GST Tax	0	$302,500	
Total Tax Due	$350,000	$1,402,500	$1,052.500

As noted above, individuals desiring to capitalize on this opportunity must act now as the gift and GST tax rates are scheduled to return in 2011 at the unfavorable rates that applied 10 years earlier.

For more information regarding this matter, please contact **Karina C. Cantu** at 210.978.7713 or **kcantu@jw.com**, **Michael L. Kaufman** at 214.953.5734 or **mkaufman@jw.com**, or any member of the **Jackson Walker wealth planning section**.

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[1] Please note, while it appears unlikely that Congress will take any action with regard to estate, gift or GST taxes arising in 2010, there still exists a possibility that Congress will take action that eliminates or modifies the opportunities discussed in this e-Alert. It is important to consult with your legal and financial professionals when considering gifting opportunities in 2010.

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