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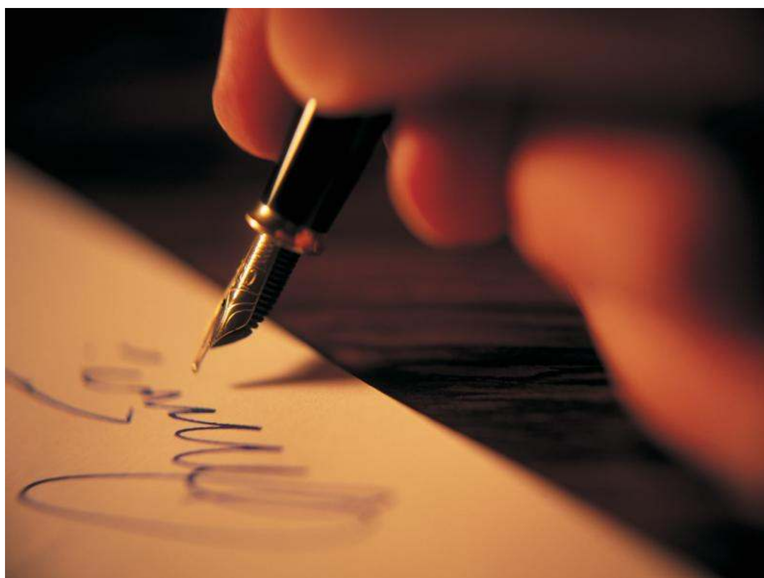

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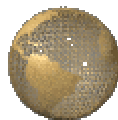

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I. Overview

The Tax Relief Act of 2010 reinstates the federal estate tax after a one year hiatus with some significant changes. These changes bring into question the course of estate planning and estate administration in 2011 and beyond. The purpose of this program is to examine those changes and address the question *"Estate Planning After the Tax Relief of 2010 - What to Do?"*

II. Highlights of the Tax Relief Act

A. The Estate Tax Returns

After a one year repeal, the Tax Relief Act of 2010 reinstated the federal estate tax for at least for 2011 and 2012, and if elected, for 2010. During those years, the highest marginal estate tax rate will be 35%, and the exemption amount (termed the "Basic Exclusion Amount") is increased to $5 million per individual for 2011, and will be indexed for inflation thereafter.

B. The Gift Tax Returns

Starting in 2011, the gift tax exemption will now unify with the estate tax exemption. This means that a $5 million Basic Exclusion Amount will also be available for gifts. Prior to 2010, an individual was entitled to a $3.5 million exemption for their estate, but only $1 million for gifts. Starting in 2011, the highest marginal gift tax rate will be the same as the highest estate tax, i.e. - 35%.

C. Generation Skipping Tax

The Tax Relief Act also impacted the generation-skipping transfer tax or "GST". The GST exemption will also rise to $5 million rather than the $1 million it would have been without the amendments made by the Tax Relief Act. The GST

tax rate for transfers made in 2011 and 2012 will, like the estate and gift tax, also be 35%.

D. Portability

An interesting change made by the Tax Relief Act which will no doubt have an impact on federal estate tax planning is the concept of "portability". This means that the Basic Exclusion Amount which is unused by the estate of the first of a married couple to die may now be carried over and used, with an interesting twist, by the surviving spouse's estate. The increased level of the Basic Exclusion Amount coupled with the addition of portability to the planning equation, brings into question what specific impact the Tax Relief Act changes will have on federal estate tax planning - specifically, whether traditional estate planning already in place should be amended in favor of simpler plans and also what form estate planning should take going forward. These questions will be the subject of the first section of this program.

E. State Death Tax Deduction

The state death tax deduction but not the state death tax credit, is also restored by the Tax Relief Act.

F. Estate Administration

Finally the Tax Relief Act presents an interesting choice for the estates of decedents who died in 2010. Under the Tax Relief Act those estates may choose either to take advantage of estate tax repeal or be subject to the federal estate tax as amended by the Tax Relief Act. Which choice is most advantageous? By choosing to take advantage of estate tax repeal, the estate pays no estate tax but is only allowed a limited "step up" in basis for assets which pass under the estate.[1] On the other hand, if the estate chooses to be taxed under the federal estate tax as amended by the Tax Relief Act, the estate is subject to estate tax with the higher estate tax exemption and will also be permitted to a full "step up" in basis for the estate assets. The factors involved in making this decision are discussed in the second section of this program.

III. Estate Planning After the Tax Relief Act

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[1] *$1,300,000 is allowed as a basis to all estates; and an additional $3,000,000, for qualifying transfers to spouses.*

A. Pre- Act Planning

Prior to the estate tax repeal of 2010 and the Tax Relief Act, the Credit Shelter Trust was an essential part of the estate plan of a married couple with an aggregate estate valued in excess of the Basic Exclusion Amount. Under such planning, the Credit Shelter Trust was often structured to reduce or avoid the federal estate tax by taking advantage of the estate tax marital deduction and the Basic Exclusion Amount in the most efficient way possible[2]. The planning objective was simply to insure that the estate assets were allocated in such a way so that the Basic Exclusion Amount of the first of a married couple to die was fully utilized. The excess value passed pursuant to a gift qualifying for the estate tax marital deduction. If this plan was implemented assets with a value up the level of the Basic Exclusion Amount could pass without estate tax to the Credit Shelter Trust upon the death of the first spouse, and if the Trust was properly structured, without estate tax again on the death of the survivor as well[3].

The primary estate tax advantage realized by implementing a Credit Shelter Trust lay in the fact that it allowed the aggregate estate of the married couple to take advantage both spouse's Basic Exclusion Amount when transferring assets to their heirs. As a result, a married couple could theoretically transfer assets with a value up to twice the Basic Exclusion Amount to their heirs without federal estate

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[2] *Qualifying testamentary transfers to a surviving spouse are not taxed by reason of the estate tax "marital deduction". The amount of the marital deduction is only limited by the value of the assets funding the qualifying transfers. Taking advantage of the marital deduction is not necessarily an entirely good thing from an estate tax point of view, however. Under IRC Sec. 2056, and the so-called "terminable interest rule" in order to qualify for the federal estate tax marital deduction assets must pass to a surviving spouse in way which essentially makes them includable in the surviving spouse's estate. This can be accomplished by assets passing outright to the surviving spouse or to certain qualifying trusts such as a "QTIP" trust. Because of this aspect of the estate tax marital deduction - it is sometimes said that the marital deduction is not a true deduction at all - it only defers taxability until the death of the survivor. Therefore from an estate planning point of view it is considered good practice only to take advantage of gifts that qualify for the marital deduction to the extent they reduce the taxable estate to the level at which no estate tax is incurred, i.e., the Basic Exclusion Amount. The balance of the estate should be transferred in a way which while benefiting the surviving spouse for their lifetime will not cause inclusion in the surviving spouse's estate for federal estate tax purposes – that way was, in the past, through the Credit Shelter Trust. Because of the" terminable interest rule" assets passing to a Credit Shelter Trust do not qualify for the marital deduction even if the surviving spouse is the only trust beneficiary and are as a result subject to the federal estate tax. However if the value passing to the Credit Shelter Trust do not exceed the Basic Exclusion Amount no tax would actually be incurred.*

[3] *Basically, as long as the surviving spouse's rights to principal in the Credit Shelter Trust are limited by an ascertainable standard such as "health, support, maintenance, and support", and the surviving spouse does not hold a general power of appointment over the trust at death - the survivor can still benefit from the trust during their lifetime and not risk inclusion of the assets held by the trust in their taxable estate.*

tax.[4] Prior to the Tax Relief Act, this was generally only possible through the use of a Credit Shelter Trust. The following two examples illustrate the estate tax benefit realized by adopting a Credit Shelter Trust as part of the estate plan:

Example One:

Assume that the Basic Exclusion Amount is $3,500,000 as it stood in 2009, and the top marginal tax rate was 45%, as it stood in 2009. Also assume a married couple, Bill and Ruth, have two children, and an estate valued at $7,000,000 - $4,500,000, is owned by Bill outright in his name alone and $2,500,000, is owned by Ruth outright in her name alone. Let's assume further that upon the death of the first of them to die, Bill and Ruth want everything to pass to the survivor and upon the death of the survivor to their children in equal shares. If Bill and Ruth implement a plan including a Credit Shelter Trust, and Bill dies first, assets with a value equal to $3,500,000 (an amount equal to the Basic Exclusion Amount), will pass to the Credit Shelter Trust to be held for Ruth's benefit. The balance of Bill's assets (i.e., $1,000,000) will pass to Ruth outside of the Credit Shelter Trust in a manner qualifying for the federal estate tax marital deduction. Bill's taxable estate is $3,500,000 ($4,500,000 less property passing pursuant to the marital deduction gift of $1,000,000). As a result, no estate tax is incurred by Bill's estate- his Basic Exclusion Amount eliminates the tax. In funding the Credit Shelter Trust, Bill's estate has taken full advantage of the opportunity to use his Basic Exclusion Amount in order to pass assets with a value equal to that amount to his surviving spouse and ultimately his children free of estate tax.

It is upon Ruth's death, that the tax advantage of the Credit Shelter Trust is finally realized. Under the Credit Shelter Trust planning, only the $3,500,000 that she owns outside of the trust (the $1,000,000 she received from Bill plus the $2,500,000, she owned in her own name) will be subject to federal estate tax. Because the taxable amount is equal to the assumed Basic Exclusion Amount no estate tax would be incurred on Ruth's death either.

Example Two:

Assume the same facts as Example One but instead of a Credit Shelter Trust the estate plan provides that on Bill's death his assets pass outright to Ruth. Since Bill's entire estate passes outright to Ruth the availability of the federal estate tax marital deduction will reduce the

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[4] *This was the result because the assets in the Credit Shelter Trust avoided taxation in the estate of the first of the married couple to die by reason of the Basic Exclusion Amount available to that spouse's estate. On the death of the surviving spouse assets held by the Credit Shelter Trust again passed free of estate tax to heirs because of the manner in which the Credit Shelter Trust was structured . By reason of the Credit Shelter Trust an amount equal to the Basic Exclusion Amount together with appreciation could pass through both spouses' estates to named beneficiaries free of estate tax – one Basic Exclusion Amount. In addition the assets which were taxable in the survivors estate were sheltered by that Spouse' Basic Exclusion Amount – a second Basic Exclusion Amount. This is compared to an outright transfer of assets from the estate of the first spouse to the survivor. In that case the marital deduction would eliminate the estate tax in the first spouse's estate but would insure their taxability in the estate of the surviving spouse without the benefit of the shelter which could have provided by a Credit Shelter Trust. As a result the entire estate would be taxable in the surviving spouse's estate sheltered only by the Basic Exclusion Amount available to the surviving spouse's estate. See Examples One and Two.*

taxable estate to zero. However, even though the estate tax incurred by Bill's estate is still zero the chance to take advantage of his $3,500,000 Basic Exclusion Amount has been lost.

Assume that upon Ruth's death the Basic Exclusion Amount had remained at $3,500,000, and the top marginal tax rate was 45% as it stood in 2009. Under these assumptions Ruth's entire estate of $7,000,000, i.e., $4,500,000 received from Bill, and the $2,500,000, Ruth owned in her own name would be subject to federal estate tax to the extent it exceeds the $3,500,000 Basic Exclusion Amount available to Ruth's estate. As a result a federal estate tax of $1,575,000 would be incurred by Ruth's estate.

These examples illustrate the utility of the Credit Shelter Trust. The Basic Exclusion Amount available to both estates has been taken advantage of in order to pass assets to the couple's heirs on an estate tax free basis. After the enactment of the Tax Relief Act, the question of whether the Credit Shelter Trust is still a necessary part of a married couple's estate plan comes into question because of two important changes made to the federal estate tax: (1) the addition of "portability", and (2) the increased level of the Basic Exclusion Amount. The question to be addressed next is *"What is the Appropriate Estate Plan after the Tax Relief Act?*

B. <u>What is the Appropriate Estate Plan After the Tax Relief Act?</u>

In examining the question let us begin with the assumption that the dispositional plan for a hypothetical married couple is that upon the death of the first to die the estate should pass in total to the survivor, and on the death of the survivor to the surviving children.

1. *Estates with an Aggregate Value of $5,000,000, or Less.*

If the combined estates of a married couple have an aggregate projected value of less than or equal to the Basic Exclusion Amount of $5,000,000, the couple will not require a Credit Shelter Trust to reduce or avoid the federal estate tax. The survivor's Basic Exclusion Amount will be sufficient in itself to eliminate any federal estate tax exposure.

Example Three

Assume a married couple, Tom and Alice, have estates with a projected value of $4,000,000 - $2,500,000, is owned by Tom outright in his name alone and $1,500,000 is owned by Alice outright in her name alone. Lets assume further that upon the death of the first of them to die, Tom and Alice want every thing to pass to the survivor and then upon the death of the survivor

to the children, in equal shares. Assume as in Example Two – the estate plan provides that on the first of the couple to die assets pass out right to the surviving spouse. Tom dies first. Since Tom's entire estate passes outright to Alice the availability of the federal estate tax marital deduction will again reduce the taxable estate to zero. Upon Alice's the entire estate valued at $4,000,000 will be sheltered from the federal estate tax by the Basic Exclusion Amount available to Alice's estate. As a result no federal estate tax would be incurred by Alice's estate even without the benefit of a Credit Shelter Trust. Depending on the composition of the estate and particular concerns of the individuals involved a Trust may be recommended for other reasons. Some of theses reasons will be discussed below.

2. Estates With a Projected Value of $5,000,000, or More

For estates with a projected value of $5,000,000, or more, the estate planning objective, after the Tax Relief Act, is still to insure that the Basic Exclusion Amount available to each spouse's estate will be fully utilized. Prior to the Tax Relief Act, this was only possible in the case of a married couple if a Credit Shelter Trust was adopted. After the adoption of the Credit Shelter Trust the concept of "portability" offers a second option.

a. *"Portability"*

What exactly is "portability"? Under the Tax Relief Act the Basic Exclusion Amount that is not utilized when the first of a married couple passes away may now available or "portable" to reduce the federal estate tax of the surviving spouse. Specifically, the Tax Relief Act provides that, in the case of the estate of the surviving spouse, the Basic Exclusion Amount is equal to what is termed the "Applicable Exclusion Amount". That amount is equal to the sum of (1) the "Basic Exclusion Amount" (i.e., $5,000,000 indexed for inflation) and (2) the "Deceased Spouse's Unused Exclusion Amount".

The "Deceased Spouse's Unused Exclusion Amount" is defined as the "Unused Exclusion Amount" of the "last deceased spouse" - in other words the Basic Exclusion Amount still available to the estate of the individual who was the last husband or wife of the surviving spouse before they died. This definition makes it irrelevant how much property the surviving spouse actually inherited from their husband or wife, or whether the surviving spouse inherited any property from that spouse at all. The only question is how much of the Basic Exclusion Amount was utilized by the deceased spouse's estate when they died.

Example Four

Assume the same facts as Example 2, above. Assume further that Bill dies first in 2011 and leaves his entire estate to Ruth outright. As in our prior example, Ruth would inherit Bill's assets without federal estate tax by reason of the marital deduction. The property in his estate is not taxed. As a result Bill's Basic Exclusion Amount is not used and the Deceased Spouse's Unused Exclusion Amount is $5,000,000. Provided Ruth does not remarry, upon Ruth's death the Applicable Exclusion Amount available to her estate is $10,000,000 (i.e., the sum of the Deceased Spouses' Unused Exclusion Amount of $5,000,000, and the Basic Exclusion Amount of $5,000,000 available to her estate).

b. Credit Shelter Trust vs. Portability

(1) Overview

One of the primary objectives of both the Credit Shelter Trust and portability is to ensure that both spouses can take advantage of their Basic Exclusion Amounts of $5,000,000. The Credit Shelter Trust achieves this objective by funding the trust from the estate of the first spouse to die. As illustrated above portability allows the estates of married couples to utilize the Basic Exclusion Amount available to each spouse's estate without the need of implementing a Credit Shelter Trust or other sophisticated planning as part of their estate plan. *Does this make Credit Shelter Trust Planning obsolete?* Let's compare the two.

(2) Dependability

(*a*) *The Credit Shelter Trust*

In order for a Credit Shelter Trust to accomplish the objective of allowing both spouses' estates to each take full advantage of the Basic Exclusion Amount, several things must be done properly. First, the proper documents implementing the Credit Shelter Trust must be in place prior to the death of the first of the married couple to die, and second, the first spouse to die must have sufficient assets in their name alone to fund the trust in an amount up to the Basic Exclusion Amount. Obviously, if a Credit Shelter Trust is not adopted by the first spouse to die it cannot achieve the intended result. However, even when a Credit Shelter Trust has been adopted, if the first spouse to pass away does not own

sufficient assets to fund the trust to the level of the Basic Exclusion Amount, the full advantage to be realized by adoption of the Credit Shelter Trust will be lost[5].

(*b)* *Portability*

As alluded to above one problem with portability is that amount of the Unused Exclusion Amount available to the surviving spouse's estate is dependent upon the Unused Exclusion Amount of the "last deceased spouse". The planning issues with this requirement are obvious.

Consider this example:

Example Five

Assume the same facts as Example Four above.

Assume that Ruth remarries after Bill's death to Harry. Harry has his own children to whom he wishes to leave his entire estate. Harry predeceases Ruth and in his will leaves his entire estate of $5,000,000, to his surviving children. His executor claims Harry's entire Basic Exclusion Amount of $5,000,000. In this case Ruth's Applicable Exclusion Amount is only $5,000,000, her own Basic Exclusion Amount of $5,000,000, limited to her own Basic Exclusion Amount. Because of the fact that Harry utilized his entire Basic Exclusion Amount upon his death the "Deceased Spouse's Unused Exclusion Amount" is zero (-0-). She gets no benefit from Bill's Unused Exclusion Amount of $5,000,000.

A second issue with portability is that in order to claim the Unused Exclusion Amount, the executor of the estate of the deceased spouse must have filed an estate tax return which computes the Unused Exclusion Amount and make an election that such amount shall be taken into account. The amount of the exclusion considered "unused" will be dependent upon the values stated on that return. The statute requires that this return be timely filed and the statute of limitations to audit the return is suspended. This raises the question of whether all estates no matter what their size should file a federal estate tax return or risk not having the Unused Exclusion Amount of the first spouse to die being available to the surviving spouse's estate. Suppose for example at the time of Bill's death the combined estate was only $4,000,000, and no estate tax return was filed

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[5] *Assume the same facts as Example One above, except that assume that Ruth held all $7,000,000 of the estate assets. In this case, again assuming Bill dies first, then upon Bill's death no assets would pass into the Credit Shelter Trust, and no benefit would be achieved by its adoption.*

when Bill died. By the time Ruth dies the estate is now worth $6,000,000. Can her estate still claim Bill's Unused Exclusion Amount to shelter estate tax? The answer seems to be no – since as stated by the statute a timely filed estate tax return is required.

(*3)* *Shelters Appreciation from Estate Tax*

(a) *The Credit Shelter Trust*

The Credit Shelter Trust can only be funded on the death of the first spouse with an amount equal to the Basic Exclusion Amount without incurring the federal estate tax. However on the death of the survivor it is not only that value but also the appreciation realized on that value that will pass estate tax free.

(*b)* *Portability*

The Basic Exclusion Amount of the survivor is indexed for inflation. However the value of the Deceased Spouse's Unused Exclusion Amount is not indexed. As a result that amount will be fixed at the time of his or her death. As a result the appreciation on that causes assets inherited from the first spouse to exceed the Deceased Spouse's Unused Exclusion Amount will not be sheltered from estate tax.

(4) *Asset Management*

(*a)* *The Credit Shelter Trust*

Since the assets passing to the Credit Shelter Trust are held by a trust, they will be administered by the Trustee. Depending on the identity and expertise of the Trustee this may allow the surviving spouse to take advantage of that management expertise.

(*b)* *Portability*

Since assets held by the surviving spouse will be held by that spouse outright no management of the assets will be available.

(5) *Asset Disposition*

(a) *Credit Shelter Trust*

Assets passing to the Credit Shelter Trust will be disposed of according to the terms of the trust as determined by the settlor spouse.

(*b)* *Portability*

If assets pass to the surviving spouse that spouse will control their ultimate disposition.

(*6)* *Asset Protection*

(a) *Credit Shelter Trust*

The assets held by the Credit Shelter Trust cannot be attached by the creditors of the trust beneficiary if the trust contains a valid spendthrift clause.

(*b)* *Portability*

Assets passing to a surviving spouse outright will be subject to the debts and liabilities of the survivor. Therefore no asset protection will be available.

(*7)* *Availability of Step Up in Basis.*

(a) *Credit Shelter Trust*

Assets passing into a Credit Shelter Trust will qualify for a step up in basis equal to fair market value on the first spouse's death but not upon the death of the surviving spouse.

(b) *Portability*

If the entire aggregate estate of the married couple is held outright by the surviving spouse at the time of his or her death, then the entire aggregate estate will qualify for a step up in basis upon the surviving spouse's death.

3. *Conclusion*

Both the Credit Shelter Trust and portability allow the estates of both the husband and wife the opportunity to take full advantage of the Basic Exclusion Amount in each of their estates. One advantage of portability over the Credit Shelter Trust planning lies in the fact that it also allows the entire aggregate estate to receive a basis step up at the survivor's death. However, as currently stated in the law, portability only applies to the estates of decedents who die in the 2011 and 2012, and as discussed above, the Credit Shelter Trust affords other distinct planning advantages over portability which may make it a better planning alternative.

Therefore, in most cases, the adoption of a Credit Shelter Trust as part of the estate plan is still recommended. Essentially portability should only be relied upon to correct problems which result from under funding the Credit Shelter

Trust upon the death of the first spouse – either because no Credit Shelter Trust was never implemented or because the estate of the first spouse to die did not have sufficient assets in their name alone at death to fund the Credit Shelter Trust. The Credit Shelter Trust should remain the favored estate plan for married couples with estates in excess of the +Basic Exclusion Amount.

C. Must Pre 2011 Documents be Amended in Light of Estate Tax Repeal?

Must pre 2011 documents be amended in light of the Tax Relief Act? As discussed previously, prior to 2010, if Credit Shelter Trust was part of the estate plan of a married couple it was often structured to reduce or avoid the federal estate tax by taking advantage of the estate tax marital deduction and the Basic Exclusion Amount in the most efficient way possible. The proper allocation between the Credit Shelter Trust and the marital deduction share was normally created by formula, generally either a formula that defined the marital deduction gift and the amount allocated to the Credit Shelter Trust in terms of the marital deduction gift (a "minimum marital deduction formula"), or a formula that defined the marital deduction gift and the Credit Shelter Trust in terms of the Basic Exclusion Amount (a "credit shelter formula"). In either case the result was much the same, an amount up to the Basic Exclusion Amount passed to the Credit Shelter Trust and the excess passed pursuant to the marital deduction gift. If the surviving spouse is, as is the case in many estate plans, the sole beneficiary of both shares then the increase in the Basic Exclusion Amount to $5,000,000 should not present any concerns. However if the Credit Shelter Trust benefits individuals in addition to or other than the surviving spouse, the estate plan should be reviewed to insure that the reallocation between the two shares created by the new higher level Basic Exclusion Amount remains consistent with the planning objectives of the testator.

IV. Gift Tax and GST Planning

For at least the next two years the gift tax exemption is now back in step with the estate tax exemption. Before the Tax Relief Act an individual was only entitled to a $1,000,000 gift tax exemption. Because gifts in excess of that amount required payment of gift tax out of pocket, many potential donors were hesitant to make those gifts. Now, an additional $4,000,000 can be transferred gift tax free. In addition, it should be pointed out that like the estate tax, the gift

tax exemption is also portable. Therefore, if an individual dies after December 31, 2010, the surviving spouse of that individual will potentially have a Basic Exclusion Amount of $10,000,000, which can be utilized to offset the gift tax. Finally, there is the very real question of whether this higher exclusion amount will remain after the two year period elapses. Therefore, married couples with estates in excess of $10,000,000, and unmarried individuals with estates in excess of $5,000,000, should consider making gifts within the next two years.

Under the Tax Relief Act the exemption from Generation Skipping Tax has also been raised to $5,000,000. Unlike the Basic Exclusion Amount, which applies to gift and estate transfers, the GST Exemption is not portable. This increase is also available only for transfers made in 2010, and 2011. Therefore, consideration should also be given to making generation skipping transfers in order to take advantage of this increased exemption.

V. Estate of Decedents Dying in 2010

A. Choice of Tax Regime

The Tax Relief Act also gives the executors of decedents dying in 2010 a choice of which estate-tax rules to apply, those estates may choose either to take advantage of estate tax repeal or be subject to the federal estate tax as amended by the Tax Relief Act.

If the estate elects to be taxed under estate tax repeal, the estate will not subject to federal estate tax, but will only be entitled to a limited step up in basis in regard to the assets held by the estate. A basis step up of $1,300,000 is available for assets no matter who they pass to, and an additional basis step up is available for assets passing to spouses pursuant to qualifying transfers. If on the other hand, the estate elects to be taxed under the provisions of the Tax Relief Act, then the $5,000,000 Basic Exclusion Amount, and the 45% top marginal tax rate will apply, but all of the assets held by the estate will be eligible for a step up in basis.

For estates that with a value under $5 million dollars the choice is obvious - *Choose to have the estate be subject to tax.* The Basic Exclusion Amount will eliminate the estate tax and the step up will still be available to the heirs. For estates in excess of that level, the choice should be based on the determination of

the actual benefit of receiving the step up compared to the cost of the estate tax incurred. This will depend on the individual case. Here are some examples

Assume an estate of $7,300,000 consisting of assets having a zero basis. If the estate elects to be taxed the estate will save $900,000 in capital gains tax at a cost of $805,000 in estate tax because of the step up. On the other hand, if the basis of the estate assets was $633,334 or more, the basis step up would not be worth the cost of being subject to the estate tax. Simplistically, the benefit of the basis step up can be evaluated by taking the difference between fair market value of the assets and the basis of the assets comprising the taxable estate increased by the limited basis step up of $1,300,000, or $4,300,000, as the case may be, and multiplying that difference by the capital gain rate of 15% - then comparing the resulting amount to the 35% of the value of the taxable estate in excess of $5,000,000.

B. <u>Estate Returns</u>

If an Estate is choosing to have estate tax repeal apply, a Form 8939, Allocation Increase in Basis for a Property Acquired from a Decedent, must be filed. The due date appears to be no earlier than April 15, 2011. If the estate chooses to be subject to the estate tax, then Form 706 – federal estate return is due no later than September 19, 2011.

C. <u>Disclaimers</u>

Generally a “qualified disclaimer” must be filed no later than nine months after the date of the transfer in order to avoid having the transfer being classified as a taxable gift. The date for the filing of a qualified disclaimer for transfer made in 2010 has been extended by the Tax Relief Act until September 19, 2011.

VI. <u>Summary</u>

The impact of the Tax Relief Act on estate planning and estate administration is significant. Among the issues to address are the following:

1. Estate plans should be examined to determine the continued benefit of Credit Shelter planning;

2. Estate plans should be reviewed to determine the effect of the higher Basic Exclusion Amount on formula marital deduction clauses and the

allocation of asset between the marital deduction gift and the Credit Shelter Trust.

3. Estates of individuals dying in 2010, must consider the benefits of the choice between choosing to be taxed under estate tax repeal, or the estate tax as reformed by the Tax Relief Act.

4. Gifts, including generation skipping transfers, should be considered in order to take advantage of the $5,000,000 Basic Exclusion Amount – available in 2010, and 2011.

5. Estates choosing to be taxed under estate tax repeal must file Form 8939, Allocation Increase in Basis for a Property Acquired from a Decedent by April 15, 2011.

6. Estates choosing to be taxed under the Tax Relief Act must file Form 709 - Federal Estate Tax Return by September 19, 2011.