



UPDATE ON TRANSFER TAXES

Federal Transfer Taxes

On December 17, 2010 President Obama signed the [Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010](#). The Act approved the continuation of most of the “Bush Tax Cuts” from 2001 but made a couple of significant changes to the estate, gift and generation skipping tax laws, for the next 2 years.

First, the exemption for Federal Estate/Gift/Generation Skipping Tax for 2011 and 2012 has now been increased to \$5,000,000 for each US taxpayer. In 2010, there was no federal estate tax, and the exemption had been \$3,500,000 for 2009. The larger exemption provides a great deal of relief from the estate tax for the vast majority of taxpayers, especially when combined with the fact that Congress added a new concept referred to as “portability” for married couples. This new portability feature allows a surviving spouse to utilize the unused exemption of the first spouse, so the surviving spouse can add to his or her \$5,000,000 exemption the unused portion of the other spouse. The 2010 Tax Act also established the maximum estate tax rate at 35% (under the 2001 tax Act it was scheduled to return to 55% this year). The Tax Act also increased the amount that a taxpayer could gift during his/her lifetime from \$1,000,000 to \$5,000,000! This is a major breakthrough and for the first time since 2002 unifies the estate and gift tax in this country. Finally, note that the Tax Act increased the “Generation Skipping Tax Exemption” to \$5,000,000 as well. Although, there is no portability between spouses as to the Generation Skipping Tax Exemption.

Remember that the Tax Act changes only apply through December 31, 2012. If you have not reviewed your current estate plan in light of the recent tax legislation, contact us to determine whether any changes to your plan are necessary.

Ohio/Michigan Estate Taxes

On January 26, 2011, The Toledo Blade published an Editorial under the heading “Keep the estate tax” in which it took issue with Governor Kasich’s intent to eliminate the Ohio Estate Tax. ([Note to our Michigan readers, Michigan has no state estate or inheritance tax](#)). The editorial states that only about 8,000 out of 110,000 deaths in the 12 months that ended in June 2009 were affected by the tax which becomes applicable for estates over \$338,333 at a tax rate of 6% on estates valued between \$338,333 and \$500,000 and at the rate of 7% on all amounts over \$500,000. What the Editorial does not state however is that the amount of the Ohio exemption (the \$338,333 amount) is the lowest exemption for state estate taxes of any of the fifty states! Furthermore 30 states have no estate tax whatsoever!

Whether you are a proponent or an opponent of estate taxes, you should recognize that these taxes can reach a large portion of Ohioans. Although it may be true that only 8,000 returns out of 110,000 for the 12

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month period ending June of 2009 were subject to this tax, a very large number of the taxpayers who died in that period did not owe any estate tax because they left most, if not all of their property, to a surviving spouse or held some or all of their assets in a trust. Unfortunately, under Ohio law, if the surviving spouse remains a resident of Ohio until his or her death, the survivor's estate will be taxable on remaining assets that the couple accumulated during their lifetimes.

If you are an Ohio resident and the Ohio estate tax law is not repealed, there is still a need to maintain 2 trusts for Ohio purposes, because the Ohio estate tax exemption unfortunately is not "portable" like the federal exemption amount. If you presently do not have trusts and your net worth exceeds \$500,000, you need to consider establishing trusts to take full advantage of the credits available.

In the event that you believe that the Ohio estate tax law should be repealed, there may be some good news on the horizon. Representatives Cheryl Grossman and Jay Hottinger introduced a bill on Tuesday January 11, 2011 to repeal these taxes. Both House Speaker Bill Batchelder and Governor Kasich support such repeal. However, stiff resistance to the repeal is expected from the local governments, because 80% of the estate tax funds are returned to the local governments.

We trust you will find this information useful and if you have any questions about the content of this newsletter or any other legal matter please give us a call.