

Ater Wynne

Wealth Preservation ALERT

Important estate tax provisions included in 2010 Tax Relief, Unemployment Insurance & Job Creation Act

*By Kay Abramowitz
Chair, Wealth Preservation Group*

On December 17, 2010, President Obama signed into law the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 which extends provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) and the Jobs and Growth Tax Relief Reconciliation Act of 2003 (JGTRRA). The extension is for two years through 2012. The Act has important estate tax provisions which are summarized below.

The estate tax exemption is \$5 million per person (\$10 million per couple). The top rate for taxable estates is 35%.



*Kay Abramowitz,
Chair, Wealth
Preservation*

For the past 10 years, a person was limited to \$1 million of lifetime gifting. However, the Act reunifies gift and estate taxes, so the \$5 million per person estate tax exemption applies to lifetime gifts and bequests (gifts at death) and applies to gifts to grandchildren (generation-skipping transfer tax). This Act restores the unification of the gift and estate tax. But this increased lifetime exemption only applies to gifts made after December 31, 2010.

This Act clarifies that the appropriate allocation of generation-skipping transfer in 2010 is \$5 million.

New in this Act is the portability of any unused exemption. Never before has a couple been able to apply the unused portion of the estate tax exemption from the first spouse. It has been use it or lose it. Under this Act, if a deceased spouse's estate does not use the full \$5 million exemption, the surviving spouse's estate at the second death can apply the unused portion, if it is needed. In other words, if the exemption is not used, it is not lost.

Estates of decedents dying in 2010 can choose between applying the estate tax rules of the Act or the modified carryover basis rules contained in EGTRRA. The Act revives the stepped-up basis for all assets included in the gross estate for decedent's dying on or after January 1, 2011.

Not included in this Act is any provision requiring a 10-year minimum

term for grantor retained annuity trusts (GRATs) or an elimination of discounts for lack of marketability and lack of control often used to minimize the gift and estate tax liability of business assets.

There is a need to review plans and consider amending existing plans due to this Act even though it has a life of two-years. For smaller estates (those under \$5 million for single and \$10 million for married couples), existing plans may need amending to limit the amount going to the credit-shelter trust (also called the by-pass or the family trust). This credit-shelter trust is the one that will eventually go out to children in the typical case. In smaller estates, this may be more than is desired especially if there is also a charitable intent.

There remains the need to plan for disability, asset protection, and distribution to family and charities. In addition to these reasons, in the states of Oregon and Washington, tax planning continues to be important to estates in excess of \$1 million (Oregon) and \$2 million (Washington).

For more information about how the new Act affects your estate plan, please call your attorney at Ater Wynne. With this tax change, it is a good time for you to review your estate plan.

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Ater Wynne LLP | The Lovejoy Building | Suite 900 | 1331 NW Lovejoy Street | Portland | OR | 97209