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Client Alert

MACDONALD, ILLIG, JONES AND BRITTON LLP DECEMBER 2010

2010 Tax Relief Act

Santa Claus came early to the American taxpayers bearing presents in the form of income tax, gift tax, and estate tax relief! On December 17, 2010, “The Tax Relief Unemployment Insurance Reauthorization, and Job Creation Act of 2010” (“the 2010 Act”) was signed into law providing two (2) years of tax savings for many taxpayers.

The highlights of the gift and estate tax savings under the 2010 Act are as follows:

GIFT TAX RELIEF

- Old Law. In general, under the old law, in addition to annual exclusion gifts (presently $13,000 per donee), individuals were limited to giving up to $1 million during his or her lifetime before being subject to federal gift tax. In 2010, gifts in excess of the lifetime exclusion amount were subject to tax at a maximum federal gift tax rate of 35%; however, this rate was scheduled to increase to a maximum federal gift tax rate of 55% for years 2011 and beyond.

- 2010 Act. Under the new law, in addition to annual exclusion gifts (unchanged at $13,000 per donee under the 2010 Act), the limit for lifetime gifts in 2011 and 2012 is now $5 million – a $4 million increase from the amount allowed under old law. The lifetime exclusion for gifts in 2010 remains at $1 million under the 2010 Act (the same lifetime gift tax exclusion amount that existed under old law). The maximum federal gift tax rate on gifts in excess of the lifetime exclusion amount ($1 million for 2010 and $5 million for 2011 and 2012) will be 35% for 2010, 2011, and 2012 under the 2010 Act.

Gift Tax Law Comparison Charts

Gifts in 2010	**Old Law**	**2010 Tax Act**

Annual Gift Exclusion	$13,000 per donee	$13,000 per donee
Lifetime Gift Tax Exclusion	$1,000,000	$1,000,000
Maximum Gift Tax Rate	35% maximum rate	35% maximum rate

Gifts in 2011 and 2012	**Old Law**	**2010 Tax Act**
Annual Gift Exclusion	$13,000 per donee - subject to an inflation adj. for 2012	$13,000 per donee - subject to an inflation adj. for 2012
Lifetime Gift Tax Exclusion	$1,000,000	$5,000,000
Maximum Gift Tax Rate	55% maximum rate	35% maximum rate

Gifts in 2013 and Beyond	**Old Law**	**2010 Tax Act**
Annual Gift Exclusion	$13,000 per donee - subject to an inflation adjustment	$13,000 per donee - subject to an inflation adjustment
Lifetime Gift Tax Exclusion	$1,000,000	2010 Act did not address
Maximum Gift Tax Rate	55% maximum rate	2010 Act did not address

ESTATE TAX RELIEF

- Old Law – For Persons Dying in 2010. Under the old law, the estate of a decedent dying in 2010 was not subject to federal estate tax; however, there were limitations on the amount of income tax basis step-up allowed as a result of death. Generally, an estate could only step-up $1.3 million in appreciated property (and an extra $3 million for certain spousal bequests).

- 2010 Act – For Persons Dying in 2010. Under the 2010 Act, an estate for a decedent dying in 2010 may select between using the old federal estate tax law, or, if more advantageous, an estate may instead select to be taxed under the new provisions under the 2010 Act. Under the 2010 Act, an estate may elect to exclude up to $5 million in value free of federal estate tax, and receive an unlimited step-up in income tax basis of inherited assets.

- Old Law – For Persons Dying in 2011 and Beyond. Under the old law, the estate for a decedent dying in 2011 and beyond would be subject to federal estate tax if the taxable estate exceeded $1 million. The federal estate tax rate under the old law could be as high as 55%.

- 2010 Act – For Persons Dying in 2011 and Beyond. Under the 2010 Act, an estate for a decedent dying in 2011 and 2012 may exclude up to $5 million in value before being subject to federal estate tax. In addition, a surviving spouse in certain circumstances may use his or her deceased spouse's $5 million exclusion and, in effect, exclude $10 million in value before being subject to federal estate tax. The maximum federal estate tax rate under the 2010 Act is 35% (a 20% decrease from the estate tax rate under the old law). For decedents dying in 2013 and beyond, the 2010 Act does not provide any relief. Unless new legislation is passed, decedents dying in 2013 and beyond will presumably only be able to exclude $1 million in value before being subject to federal estate tax at a rate as high as 55%.

Estate Tax Law Comparison Charts

Decedent's Dying in 2010	**Old Law**	**2010 Tax Act**
Estate Tax Exclusion Amount	Unlimited	(1) Unlimited amount passes free of federal estate tax with a limitation on the amount of free step-up in tax basis; or (2) $5,000,000 exclusion and unlimited step-up
Estate Tax Rate	0% federal estate tax rate	(1) 0% federal estate tax rate (with a limitation on the amount of free step-up in tax basis); or (2) 35% maximum rate (with an unlimited free step-up in tax basis)

Decedent's Dying in 2011 and 2012	**Old Law**	**2010 Tax Act**
Estate Tax Exclusion Amount	$1,000,000	$5,000,000 exclusion and unlimited step-up. Ability of surviving spouse to use deceased spouse's $5,000,000 exclusion under certain circumstances.
Estate Tax Rate	55% maximum federal estate tax rate	35% maximum federal estate tax rate

Decedent's Dying in 2013 and beyond	**Old Law**	**2010 Tax Act**
Estate Tax Exclusion Amount	$1,000,000	2010 Act did not address

Estate Tax Rate	55% maximum federal estate tax rate	2010 Act did not address

Stay tuned for future alerts on the 2010 Act. In the meantime, if you have any questions on how the 2010 Act may impact your personal situation, please feel free to contact any of the following member of MacDonald Illig's Trusts & Estates Practice Group:

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