

# HOT TOPICS IN ESTATE PLANNING LAW

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# Transfer Taxes

- Estate Tax
- Gift Tax
- Generation Skipping Transfer Tax
- Higher exemptions and lower rates through 2012
- This presentation will not address changes in income tax law

# Transfer Tax Highlights

## 2010 Tax Relief Act

- 2010
    - \$5.0 million exemption for estate tax purposes with 35% tax rate\*+
    - \$5.0 million exemption for GST purposes with 0% tax rate
    - \$1.0 million exemption for gift tax purposes with 35% tax rate
- \*Executor can opt out of estate tax by electing carryover basis for income tax purposes
- +Does not include North Carolina Estate Tax

# Estate, Gift and Generation Skipping Transfer Tax Highlights

- 2011 and 2012
    - \$5.0 million exemption for estate tax purposes with 35% tax rate\*+
    - \$5.0 million exemption for GST purposes with 35% tax rate\*
    - \$5.0 million exemption for gift tax purposes with 35% tax rate\*
- \*All exemptions adjusted for inflation beginning in 2012 (from 2010)
- +Does not include North Carolina Estate Tax

# Estate, Gift and Generation Skipping Transfer Tax Highlights

- 2013 (if new legislation is not passed)
    - \$1.0 million exemption for estate tax purposes with highest tax rate of 55%+
    - \$1.0 million exemption for GST purposes with highest tax rate of 55%\*
    - \$1.0 million exemption for gift tax purposes with highest tax rate of 55%
- \*GST exemption adjusted for inflation from 1997
- +Does not include North Carolina Estate Tax

# Tax Election for 2010 Estates

- Default is estate tax regime with \$5.0 million exemption
- Executor can opt out of estate tax for carryover basis by filing Form 8939 due on or before January 17, 2012
- \$1.3 million basis increase in discretion of Executor
- Additional \$3.0 million basis step up for assets passing to spouse or to a QTIP Trust for spouse's benefit

# PORTABILITY

- Executor can elect to use unused estate tax exemption of last deceased spouse without need for a Credit Shelter Trust by filing a Federal Estate Tax Return and checking the portability box
- 2011 and 2012 only
- Does not apply to unused gift or GST exemption

# Portability

- Will portability eliminate the need to use Credit Shelter Trusts to make use of deceased spouse's estate tax exemption?
- What if the surviving spouse remarries?
- What if surviving spouse passes away when the law no longer allows for portability?



# DRAFTING CONSIDERATIONS

- Credit Shelter Trusts vs. Portability for those with taxable estates?
- Use of flexible planning techniques such as disclaimer trusts due to uncertainty as to whether estate will be taxable
- Review formula provisions in existing documents

# USE OF LIFETIME GIFT TAX EXEMPTION

- Increased federal gift tax exemption of \$5.0 million for 2011 & 2012
- Annual Exclusion still \$13,000
- No North Carolina gift tax
- Possible reduction of estate, gift and GST tax exemptions in 2013

# USE OF LIFETIME GIFT TAX EXEMPTION

- Potential Clawback of gifts in excess of applicable estate tax exemption at death?
- Carryover basis vs. stepped up basis
- Reduced Asset Values
- Low Interest Rates

# ATTRACTIVE GIFT TECHNIQUES

The following advanced techniques may be effective because of the current low interest rate environment:

- Grantor Retained Annuity Trust (GRAT)
- Charitable Lead Annuity Trust (CLAT)
- Qualified Personal Residence Trust (QPRT)
- Low Interest Family Loans

# ASSET PROTECTION

- Tenants by the Entirety Real Estate
- Life Insurance
- Retirement Plans (Qualified Plans and IRAs)
- LLCs/FLPs
- Spendthrift Trusts for children/beneficiaries
- Self Settled Asset Protection Trusts in some states and off shore

# Charitable Planning

- Lifetime vs. testamentary transfers
  - 5 year carry forward for unused income tax deduction
  - Unlimited charitable deduction for estate and gift tax purposes
- Private foundations vs. community foundations & other public charities
- Charitable Remainder Trusts
- Charitable Lead Trust
- Charitable Gift Annuities
- IRA Charitable Rollover

# Durable Powers of Attorney and Health Care Directives

- Review existing Durable Powers of Attorney and Health Care Powers of Attorney
- New statutory Health Care Powers of Attorney and Living Wills since 2007

# Conclusion

- Review your existing plans in light of these recent changes in laws that may have an impact on your estate plan.
- Seek counsel from a qualified estate planning attorney