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Client Alert
February 2011

New Tax Laws Create Unique Opportunity to Transfer Assets Out of Taxable Estates

As the 2010 legislative session came to a close, Congress quietly passed new tax legislation which granted individuals a golden opportunity to transfer wealth and assets to their families without the usual, and substantial, taxes imposed by the government. Specifically, the new law increased the annual gift tax exemption for 2011-2012 from $1,000,000 to $5,000,000 for individuals and $2,000,000 to $10,000,000 for couples. This represents an increase in the current exemption amounts of 500%. Congress also decreased the gift tax rate for amounts in excess of the forgoing limits from 55% to 35%. Additionally, after a record year in 2010 where the estate tax was lifted in its entirely, for 2011-2012 Congress has raised the estate tax exemption to $5,000,000 and set the tax at a rate of 35%. After 2012, both the estate tax and gift tax exemptions and rates are set to return to their previous levels.

Taken in conjunction, the foregoing changes have created the most favorable estate and gift tax climate in nearly a century. Traditionally, exemptions for gifts were kept low in order to prevent wealthy individuals from dispersing their assets before death, and thus, depriving the government of valuable estate tax revenue. It should be noted that the gift tax exemption is separate and apart from the annual gift exclusion, currently set at $13,000, which allows an individual to gift no more than that amount to any single individual each year, without creating any tax liability.

The new tax regime presents ample opportunities for families to pass wealth along to younger generations by setting up and funding various trusts or by directly making large gifts. Moreover, individuals have the chance to remove assets which are quickly appreciating out of their estates and thus avoid the increasing taxes on same. Lastly, individuals can take sentimental items, such as family jewelry, homes, and art out of their estates and remove any potential of losing same once they pass away.

However, there is a concern that transactions taking place in 2011, specifically to take advantage of the generous tax structure, may be subject to future adjustments made by Congress. For instance, future legislation could have the effect of "clawing-back" or "grandfathering" in certain 2011 tax transactions if not appropriately structured. Accordingly, it is vital to confer with your tax advisors, accountants and attorney before ripping up an old estate plan and attempting to take advantage of these new developments.

We are closely involved in monitoring these events and will continue to provide you with pertinent updates as more information becomes available. If you have any questions about the matters covered in this Client Alert, or wish to schedule a private consultation, please call Terrence A. Oved, Esq. of Oved & Oved LLP by telephone at 212.226.2376 or contact by email at terry@ovedlaw.com.

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