
Limited Opportunity for Making Large Lifetime Gifts

2011-11-04

One feature of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 ([the "Tax Relief Act," discussed in our December 23, 2010 alert](#)) has provided taxpayers a unique, and limited, opportunity to make large, tax-free gifts now for the benefit of their descendants. Prior to 2011, each taxpayer could use only \$1 million of his or her respective combined gift and estate tax exemption amount during lifetime. Since January 1, 2011, however, taxpayers may use their entire \$5 million gift and estate tax exemption amounts (under current law, this \$5 million exemption will increase slightly in 2012, and will then drop to \$1 million thereafter) during lifetime.

By making large gifts now, rather than waiting until death, a taxpayer can ensure that future appreciation on gifted amounts will not be subject to estate tax upon his or her death. Many have chosen to take advantage of this opportunity in 2011, and many more are considering doing so before the end of 2012, when (under current law) this opportunity will disappear.

However, this window of opportunity may be shorter than many think. As Congress negotiates for deep spending cuts, and seeks revenue offsets acceptable to both parties, some practitioners are speculating that the ability to use a taxpayer's entire \$5 million exemption amount during lifetime may – possibly in the very near future – be sacrificed. In this vein, some are speculating that the United States Congress Joint Select Committee on Deficit Reduction (the "Supercommittee") may include such a change as part of a compromise intended to avoid the default budgetary cuts set forth in the Budget Control Act of 2011. Whether or not the Supercommittee in fact includes any such change in its proposal (which must be issued by November 23, 2011, and voted on by December 23), the possibility exists that the window to make large lifetime gifts without payment of gift tax may close sooner than current law provides.

If you are considering making lifetime gifts before the end of 2012 to take advantage of the opportunity described above, you may wish to do so sooner rather than later. Please contact WilmerHale to further discuss your options in this regard.