

## Tax Uncertainty May Present Opportunities

The current federal tax laws provide that there is no estate tax for those who die in 2010. The law goes on to provide that only the first \$1 million will pass free of federal estate tax for those who die in 2011 and thereafter, with estate tax rates as high as 60% on the excess.

Will the law play out as written? Will a lame duck Congress change the tax laws? Will the change be retroactive to the first of this year? Who knows. If the so-called "Bush tax cuts" are extended by Congress, it is possible that there will be no federal estate tax for those who die in 2011. This tax uncertainty may present some planning strategies for you.

In addition to lifetime gifts of \$13,000 per year per recipient, you can give away an additional \$1 million without paying any gift tax. If you make gifts in excess of these limits, gift tax is currently payable at only a 35% rate. The gift tax is likely to be less than any subsequent federal estate tax which will be payable if you did not make the gift, but there are certain instances where a lifetime gift can result in more overall tax. Our estate planners can advise you when gifts save tax and when they may not.

Significant gifts not only may save later estate tax dollars, they also provide you with an opportunity to shift post-gift appreciation to your family. That is, if the asset which you give away appreciates in value in the hands of the recipients, that growth will not later be subject to federal estate tax when you die simply because you no longer own that asset. If the gift had not been made, on the other hand, the asset at its later fair market value, including appreciation which occurs, may be subject to tax.

Another technique which may be eliminated or severely reduced by Congressional action is the Grantor Retained Annuity Trust ("GRAT"). This may allow the transfer of assets to family members without gift or estate taxation on most of the appreciation which occurs after the gift to the GRAT.

Consider year end planning to take advantage of the tax uncertainty. Consult with us for strategies and techniques which apply to your particular situation.

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### Estate Planning Counsel<sup>sm</sup>

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