

# ***The “Daily Plan-It™”***

*Davis Schilken, PC*

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## **It’s Déjà Vu All Over Again!!!!**

Okay, after multiple issues discussing how to prepare your clients for the return of the \$1 million estate tax exemption, Congress acted and we now have an extension of the 2001 tax cuts plus some major changes in the estate tax law.

## **Two Years and We Do It All Again in 2012**

Before we hit some of the highlights, remember that this law is for a short time frame. It expires in 2012, which is an election year (of course). So, when you talk to clients, please be cognizant of the fact that we are only working with a 24-month law.

The Tax Relief Act reinstates the estate tax at a maximum rate of 35% with a \$5 million exemption for decedents dying after December 31, 2009, and before January 1, 2013. With proper estate planning, it will eliminate estate taxes for any estates that are under \$10 million. Further, if your clients forget to do planning and are married, the new law allows “portability” between spouses of the estate tax applicable exclusion amount.

## **Pick and Choose Your Poison**

Another interesting aspect of the new law is the option to elect how to be taxed. Estates of decedents dying after December 31, 2009, and before January 1, 2011, will have the option to elect to apply either: (1) the estate tax based on the new \$5 million exemption and 35% tax, with stepped up basis; or (2) no estate tax and the modified carry-over basis rules under EGTRRA. Naturally, which election makes the most sense for your clients depends on their exact situation. But, this does create some interesting options.

## **Gift Tax and GST**

While we continue to digest the new law, the really interesting opportunities are in the gift tax and the GST tax. Under the new law, the exemption of \$5 million is reunified with the gift tax. Under the old law your ability to gift was \$1 million with a 35% tax; now it jumps to \$5 million with a 35% tax. This creates the ability to gift a significant amount of value over the next two years.

Another interesting area of the law is the GST. For 2010, the GST exemption is \$5 million with a GST tax rate of zero. In 2011 and 2012, the exemption is \$5 million with a tax rate of 35%.

Keep your eyes open for future issues on opportunities under the new estate tax law. As always, thanks for your referrals and your support. And of course, Happy New Year!

## **DAVIS SCHILKEN, PC**

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