



## Now is the Time to Give, Give, Give

Quite unexpectedly, in December 2010, the President and Congress engaged in a series of substantial and far reaching tax negotiations culminating in some rather substantial modifications to the estate tax system. The great tax extension of 2010 re-unified the estate tax exemption and the gift tax exemption. The result is now any individual can give away \$5,000,000 of wealth in their lifetime (or for at least another 18 months). A married couple can give away \$10,000,000. I believe this is one of the most significant changes to estate tax planning we have seen in a generation.

While the Bush tax cuts gradually phased out the estate tax, the same bill de-coupled the gift tax exemption from the estate tax exemption. At the time the tax cuts were signed into law, the gift tax exemption was \$1,000,000 per individual. So, as the first decade of the 21<sup>st</sup> Century wore on, the estate tax exemption gradually increased to \$3,500,000 in 2009 ending with a complete repeal of the estate tax for one year in 2010. In contrast, the gift tax remained constant at \$1,000,000 for the full decade. This low exemption amount substantially restricted the amount of wealth that could be transferred out of estates prior to death. If lifetime giving was the goal, estate planners were forced to transfer assets to entities such as family limited partnerships or limited liability companies in an effort to discount values and leverage the value of the gifts. The results were effective, but in the grand scheme of things, the results were far from perfect.

Congress has now given families and estate planners an extraordinary opportunity to assist their clients with lifetime transfers of substantial wealth without having to jump through all the hoops. For many estates, parents can now give virtually all of their wealth to their children without having to worry about forming entities and paying tidy sums to appraisers to get deep, defensible discounts for the units transferred. For instance, let's assume a client has a \$4,000,000 estate, and that she wants to give most of the wealth to her two kids now, while she is still living. Before the tax extension was put in place, we were looking at a \$1,000,000 lifetime exemption. Using a family limited liability company, we could probably get about a 40% discount on the gift valuation. The plan would provide substantial benefits, but would leave her at least partially taxable. Now, with the gift tax exemption at \$5,000,000, we can gift everything she wants to gift without relying on any type of discount. The real benefit to the client is that the gifts can be reported to the IRS without discount. This makes the transaction virtually audit proof.

The down side is that this window of opportunity only lasts for another 18 months. This is why I believe that the next two years will see the greatest migration of wealth between generations this country has ever seen. So, if your estate plan involves leaving assets to loved ones, now is the time to give, give, give.