Unprecedented Gift Planning Opportunities in 2011 and 2012

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On December 17, 2010, President Obama signed tax legislation which provides substantial tax relief for gift, estate and generation-skipping transfer ("GST") tax purposes. This legislation lowered tax rates and increased exemptions, but only for 2011 and 2012. Key changes are as follows:

- **Increased Gift, Estate and GST Exemptions for 2011 and 2012**

There is now a $5 million exemption for gift, estate, and GST taxes, and a flat 35% rate for each of these taxes if the transfer exceeds the exemption. The $5 million gift tax exemption is especially significant and useful in avoiding future transfer taxes, as explained below.

However, these new tax rates and exemptions will "sunset" after 2012. Unless new tax legislation is enacted, beginning in 2013 the tax rate for all three of these transfer taxes will be 55%, and the exemption will be only $1 million (slightly higher for the GST exemption). See the table below.

- **A Golden Gifting Opportunity:** In light of the current national deficit, and recent examples of Congressional dysfunction, there is a high degree of uncertainty as to whether the transfer taxes will remain as favorable after 2012. The only certainty is the tax law in effect now for 2011 and 2012, assuming no legislation is enacted to change it. ***Thus, we believe that the balance of 2011 and 2012 may prove to be the best time ever to shelter assets from gift, estate and GST tax through lifetime gift strategies.***

- **Why Make Tax Planning Gifts Now?**

Family gifting is often done through irrevocable trusts called "Dynasty Trusts" or "Generation Skipping Trusts" that can be structured to shelter assets from estate and GST taxes, as well as creditors, even into perpetuity in states that permit perpetual trusts (such as Missouri and Illinois). There are many potential benefits to implementing lifetime gift strategies, some of which are listed below:

— Avoid Estate Tax on Future Appreciation: If a $5 million gift were to grow to $15 million by the time of the donor's death, the estate tax savings could be $5.5 million (55% of the $10 million of appreciation).

— Asset Protection: Doctors and others in high-risk businesses or professions wishing to shelter assets from possible future claims can transfer assets to certain types of irrevocable trusts that shield assets from estate taxes and creditors.

— Shelter Assets from Estate Tax Exposure Through "His-and-Her" Gifting Trusts: In the case of a married couple, one spouse can create an irrevocable trust for the other spouse and/or their descendants and fund it with up to $5 million. The other spouse can be trustee with full control of the trust and can distribute trust funds for the beneficiaries' health, education, maintenance and support without trust funds being included in either spouse's estate for estate tax purposes. With special care to avoid the "reciprocal trust doctrine," each spouse can create an irrevocable trust in this manner, which should shelter the assets in the trusts from estate taxes.

— Gifts to a Terminally Ill Spouse: In the unfortunate case of a terminally ill spouse who is likely to die before 2013, the healthy spouse can transfer his or her assets to the ill spouse to optimize the use of the dying spouse's $5 million estate tax exemption. If the terminally ill spouse's estate plan creates a "credit shelter trust" for the benefit of the surviving spouse (with the spouse as trustee), the couple can permanently shelter their assets from estate taxes while leaving the surviving spouse in control of the trust assets.

— Business and Farm Succession Planning: To avoid estate tax on the family business or farm, consider gifting nonvoting stock or limited partnership interests to irrevocable trusts. The valuation discount on those gifts (which often is in excess of 30%) leverages the gift tax exemption, allowing it to "stretch" farther.

— Create a Cushion for Gifts or Sales of Hard-to-Value Assets to Trusts: The $5 million gift tax exemption creates additional cushion against the possibility of gift taxes being imposed on gifts or sales of hard-to-value assets, such as limited partnership interests or closely held business interests, to irrevocable family trusts.

These planning strategies can help families avoid confiscatory transfer tax laws that may result in estate taxes at rates over 50%. We recommend that clients take advantage of these exceptionally beneficial tax laws now, while they last. Beginning in 2013, there is a possibility that Congress will "tighten up" these rules, and possibly eliminate or curtail other estate tax avoidance strategies currently available, in an effort to raise deficit-reducing tax revenue. Please feel free to contact one of our Husch Blackwell estate planning attorneys for advice on these strategies.

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	2011	2012	2013
Gift Tax Exemption	$5,000,000	$5,000,000[1]	$1,000,000
Estate Tax Exemption	$5,000,000	$5,000,000[1]	$1,000,000
GST Exemption	$5,000,000	$5,000,000[1]	$1,400,000[2]
Maximum Gift, Estate and GST Tax Rate	35%	35%	55%

[1] This amount will be indexed for inflation.
[2] The 2013 GST Exemption is to be adjusted for inflation. $1.4 million is a rough estimate.

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