



Client Advisory
January 2011

Estate Planning
2011-2012

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The Tax Reform Bill passed by Congress and signed by the President in December of 2010 significantly affects estate planning for 2011 and 2012.

EXEMPTION:

The amount exempt from federal estate tax for the years 2011 and 2012 is \$5,000,000. The unlimited marital deduction has been retained so all amounts passing to the surviving spouse are exempt from estate tax. In 2013, the exempt amount will be reduced to \$1,000,000 unless new legislation is enacted.

The Tax Reform Bill does not affect the current Massachusetts estate tax exemption of \$1,000,000 (with an unlimited marital deduction).

PORTABILITY:

The new law allows a surviving spouse to claim the unused portion of the deceased spouse's federal tax exemption. This "Portability Provision" allows a surviving spouse to exempt \$10,000,000 from estate taxes if the decedent spouse did not utilize the federal estate tax exemption. This is a significant change from prior law and minimizes the need to establish "credit shelter trusts" for couples with estates under \$10,000,000.

ESTATE TAX RATE:

Estates over \$5,000,000 will be subject to a maximum tax rate of 35% for 2011 and 2012. The maximum estate tax rate will increase to 55% in 2013.

GENERATION SKIPPING TAX:

The amount exempt from the Generation Skipping Tax ("GST") is \$5,000,000 for 2011 and 2012. The GST exemption will be reduced to \$1,000,000 in 2013. The GST maximum rate is 35% for 2011 and 2012 and increases to 55% in 2013.

GIFT TAX EXEMPTION:

The lifetime gifting exemption has been increased to \$5,000,000 for 2011 and 2012. This is a significant change from the \$1,000,000 lifetime gift exemption which has been in place



since 2001. This allows a married couple to transfer up to \$10,000,000 during their lifetime without incurring a gift tax. The Gift Tax Exemption will be reduced to \$1,000,000 in 2013.

MASSACHUSETTS LAW:

The Massachusetts estate tax law has not changed. The recent federal tax law changes must be considered in conjunction with existing Massachusetts tax law. Any individual with a net taxable estate over \$1,000,000 or a couple with a net taxable estate over \$2,000,000 should have their current estate plans reviewed.

CREDIT SHELTER TRUSTS:

Credit shelter trusts were extremely common estate planning tools utilized by couples with estates over the federal exemption and were designed to maximize each spouse's exemption. The Portability Provision now makes these trusts unnecessary for federal estate tax purposes, although it may still be advantageous to retain these trusts for Massachusetts estate tax purposes. Credit Shelter Trusts typically divided the estate into a marital trust (controlled by the surviving spouse) and one or more exempt trusts which would not be subject to tax on the surviving spouse's death. The formulas for dividing the estate into these various trusts were frequently complex and tied to either the federal estate exemption or the Massachusetts estate tax exemption. Anyone with an estate plan that includes credit shelter trusts should have their trusts reviewed to determine the exact effect of the new estate laws on their existing trusts.

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If you have any questions or need more detailed information about Estate Planning, please contact attorney Donald Graham at dgraham@mhtl.com or (617) 479-5000.

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