# REDUCED ESTATE AND GIFT TAX RATES PRESENT CREATIVE OPPORTUNITIES IN 2011

*Author(s): William H. Davis*

As anticipated in my December Advisory, President Obama has signed the 2010 Tax Relief Act ("2010 Act"). After reading media summaries of estate tax changes in the 2010 Act, you may have concluded that your estate plan is fine and that there is no need to incur the time or expense to review or change your estate planning goals. Not true!

First, the 2010 Act is a short-term fix that fails to create long-term stability in estate planning laws. Since we all plan on living beyond December 31, 2012 (when the provisions in the 2010 Act end), a horrendous scenario may become reality when the 2010 Act expires. The existing formula clauses in your estate planning documents might cause more of your estate to end up in a trust than you intended.

Second, the 2010 Act provides short-term opportunities that may not extend beyond 2012. Consider the following opportunities now, as it is unlikely that these benefits will extend beyond 2012:

1. **Gifting in 2011 and 2012.** The gift tax exemption increases from $1 million in 2010 to $5 million per person during 2011 and 2012. This is the most significant estate planning change in the 2010 Act, and gives you the ability to gift an additional $ 4 million per spouse during 2011 and 2012. These provisions allow you to make large gifts to children or third parties that were not previously allowed without paying a 35% gift tax for any gifts exceeding $1 million during your life. Also, it is contemplated that gift and estate tax rates will increase above the 35% rate after 2012, and the $5 million gift tax exemption might be lowered after 2012, precluding you from gifting in excess of $1 million dollars after that date.

2. **Generation-Skipping Transfer ("GST") Tax exemption:** The GST Tax exemption increases to $5 million dollars during 2011 and 2012. This change allows tremendous

opportunities to transfer wealth to your grandchildren. It is also contemplated that this benefit may go away after 2012.

3. **"Portability":** The 2010 Act codifies the concept of "portability" to the estate tax exemption. Portability gives the surviving spouse's estate the option to utilize any unused estate tax exemption remaining on the first spouse's death. For example, if the first spouse used $3 million dollars of the $5 million exemption, the surviving spouse could combine the $5 million exemption with the $2 million unused from the first spouse's estate, without subjecting the $2 million to a 35% estate tax. By adding a portability provision to your estate planning documents, a significant estate tax savings may occur for your beneficiaries.

Third, don't simply focus on what was included in the 2010 Act. Analyze what was NOT in the 2010 Act! Estate planning attorneys and accountants were concerned that valuation discounts frequently used with various estate planning tools would be limited by Congress. Fortunately, the 2010 Act does not limit valuation discounts for entities such as family limited partnerships or family limited liability companies. Valuation discount planning continues to be an effective estate planning mechanism at the present time. Consult your estate planning attorney if a business entity is part of your estate plan or you are considering the formation of such an entity.

**WHERE DO YOU GO FROM HERE?** Although this Act dramatically impacts estate and gift taxes through December 31, 2012, don't assume that your estate planning is done or that you can safely wait to see whether Congress will extend the 2010 Act changes beyond 2012. Use this two-year window to make long-term revisions to your estate plan that will potentially save substantial estate and gift taxes. Contact me with respect to your estate plan and the 2010 Tax Relief Act to discuss the opportunities that may exist for you.