



LEGISLATION SUMMARY:

On December 17, 2010, President Obama signed the Obama-GOP Tax “Compromise” Bill (2010 Tax Act). Among other things this law will:

- Extend the Bush income tax cuts for two years for all tax-brackets;
- Raise the estate tax exemption to \$5 million (indexed for inflation) ;
- Lower the top federal estate tax rate to 35%;
- Be in effect only for two years; and
- Bring back the 2001 rates on January 1, 2013.

CONSIDER THE FOLLOWING:

- This is a two-year tax bill.
- The government is facing a fiscal crisis with a deficit that is not sustainable. Despite passage of this tax bill, the public does not seem to believe that we can avoid increased taxes in the future.
- The life insurance industry has been struggling with estate tax uncertainty for more than a decade — yet traditional tax planning has continued vigorously.
- Is this really an estate tax cut or is it an increase? In 2010 we had NO estate tax yet estate planning was not considerably different than previous years.

PLANNING OPPORTUNITIES

Two-year opportunity to leverage the increased exemption amounts with outright gifts.

FUNDING PREMIUMS JUST GOT EASIER

There is a two year window of opportunity for families to make outright gifts of assets up to \$5M per individual (\$10M per couple) directly to a beneficiary or in trust. This means a significant amount of family wealth can be permanently transferred out of the purview of the transfer tax system forever — before the scheduled return of the estate tax in 2013 at the \$1M estate tax exemption level and the 55% estate tax rate.

Maximize asset transfers in 2011 & 2012. Marketability and minority interest discounts through the use of an FLP or LLC can make significant leveraging possible.

REUNIFICATION MAKES OUTRIGHT GIFTS SIMPLER TO MANAGE

The exemption amounts are the same for gift, estate and GST purposes. This reunification simplifies planning and will further facilitate it as follows:

1. Large premium gifts will not be subject to gift taxes.
2. Large gifts of income-producing assets can be transferred to the next generation with the income from the asset used to fund premiums. When assets are discounted through the use of an FLP or LLC, the higher exemption amounts can be leveraged significantly.
3. In the very large case and the older markets, the large gift tax exemption of \$5M (\$10M per couple) will alleviate one of the biggest hurdles to the insurance sale — how to get money into the trust to fund premiums.

Leverage the GST Exemption through the use of a Dynasty Trust

4. Leverage asset transfers and low interest rates through a combination of larger gifts and smaller loans in financing arrangements.
5. Clients with illiquid estates can solve a liquidity problem by making a large gift to an insurance trust to fund ongoing premiums on policies designed to minimize the effects of inflation.
6. Large gifts can be made to an insurance trust to complete an exit strategy.

Refocus on under-insured market

REFOCUS ON UNDER-INSURED MARKET

Emerging affluent and middle class families often do not have enough insurance. Planning should include a focus on the underserved market — especially since the \$5 million estate tax exemption simplifies insurance ownership by reducing the complexity of planning and the need for trusts. According to LIMRA, 44% of households have individually purchased (non-group) life insurance. The number is only 56% for affluent families (defined as at least \$100,000 of net income). Even those households owning insurance are under-insured with the average insured household owning enough insurance to replace only between 3 and 4 years of income. Half of American households acknowledge being under-insured, including one-third of affluent households.

Spousal Access Trusts provide flexibility for future changes in transfer tax rules.

FLEXIBLE TRUSTS STILL A MUST

In the \$1 million to \$5 million net worth market, clients should consider putting an estate plan in place that assumes some level of estate tax, such as the 2009 estate tax level in which there was a \$3.5 million exemption and a 45% tax rate. However, the planning will need to be flexible with strategies like **Spousal ILITs** and other flexible trust designs in the event that the transfer tax rules change.

Focus on the tax-advantaged savings features of low cost cash value life insurance.

SAVINGS AND RETIREMENT FOCUS

While the permanence of the estate tax portion of this bill is debatable, it does seem clear that nearly everyone views the income tax cuts as temporary given the \$1 Trillion deficit. Most affluent individuals anticipate future increases in marginal income tax rates. This bill may prove to be the basis for a refocus on the income tax advantages and cash value story of life insurance through **Life Insurance in Retirement Planning (LIRP)** and through the use of variable policies in the deferred compensation marketplace.

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