

# WINTER 2011 ESTATE PLANNING NEWSLETTER

BY: A. Kel Long, III, Esq.

ONE BUCKHEAD PLAZA  
3060 Peachtree Road · Suite 1725  
Atlanta, Georgia 30305  
404-238-0174  
[KEL@AKELLONG.com](mailto:KEL@AKELLONG.com)  
[www.AKELLONG.com](http://www.AKELLONG.com)

To: Clients and Friends  
From: A. Kel Long, III  
Re: News from the Estate Planning World

## **SUMMARY OF TEMPORARY ESTATE AND GIFT TAX RELIEF SIGNED BY PRESIDENT OBAMA ON 12/17/2010:**

The estate tax exemption is set at \$5 million per person, through 2012. The exemption is inflation indexed beginning in 2012. On January 1, 2013, the estate tax exemption reverts to \$1,000,000.

The estate tax rate is 35%. This provision sunsets after 2012, when the tax rate becomes 55%.

The act reinstates full step up in basis to fair market value of assets at date of death.

The estate tax changes are made retroactive to January 1, 2010, unless an executor elects out of them. (An executor would opt out because the estate would benefit more from no estate tax vs. step up in basis.) The deadline for filing/electing for persons dying in 2010 is 9 months after enactment on 12/17/10.

A surviving spouse may use his/her deceased spouse's unused \$5 million exemption. This provision sunsets after 2012. (One more reason to continue to use credit shelter trust wills.)

The gift tax and estate tax are "reunified" as of 1/1/11. This means that the gift tax exemption available jumped from \$1 million to \$5 million and the gift tax rate is 35%. This provision also sunsets on 1/1/13. As before, any gift tax exemption used during life reduces the estate tax exemption available at death. **NOTE: THIS PROVISION RECEIVED LITTLE OR NO MENTION BY THE MEDIA, BUT IS THE MOST SIGNIFICANT CHANGE, ALLOWING FOR GREATER LIFETIME PLANNING BY TRANSFERRING ASSETS SUBJECT TO APPRECIATION OUT OF THE ESTATE. ALSO, IF THE ESTATE EXEMPTION IS ALLOWED TO REVERT TO \$1,000,000 ON 1/1/13, ONE IS NOT TAXED ON THE \$5,000,000 GIFT EXEMPTION USED DURING LIFETIME. IN SHORT, THIS IS A SIGNIFICANT LOOP HOLE AND ENCOURAGES GIFTING DURING 2011 AND 2012.**

The generation skipping Transfer Tax ("GST Tax") exemption was increased to \$5 million. This also sunsets on 1/1/13, but to the pre 2001 level of \$1,300,000. The GST Tax exemption does

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not inflation adjust. The GST Tax Exemption is not portable between spouses (One more reason to continue to use credit shelter trust wills.)

### **WHAT THE ACT DID NOT ADDRESS:**

The Act did not address the following items which have been on the IRS's "hit list" for several years:

1. Valuation discounts on family business entities (e.g., family limited partnerships);
2. Limiting the number of annual beneficiaries of the annual gift tax exclusion (currently \$13,000 per beneficiary) thru trusts; or
3. Restrictions on the use of grantor retained annuity trusts.

### **RECENT SPEAKING ENGAGEMENTS:**

On November 19, 2010 and December 17, 2010, I gave the Estate Planning Update to the Georgia Bar, including via satellite broadcast to multiple locations around the state. That seminar was seen by about 1,000 lawyers across Georgia.