YOUR FUTURE DESERVES

FORETHOUGHT

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A Recap of 2010 As We Look Toward 2011

I hope that the 2010 holiday season treated you well and that you are poised for a happy and prosperous 2011. With any luck, the snow will now relent so that we can all enjoy a much deserved break from shoveling!

At the end of each year, I try to stop and reflect upon the events which transpired over the preceding twelve months. The year was a good one for me, both personally and professionally. Personally, my wife Mindy and I were kept happily busy with the sports and social calendars of our three children, now ages 16, 14 and 12. No rest for the weary! Professionally, the firm continued to prosper, and this year we will celebrate our tenth anniversary. We look forward to continuing to provide you with the highest level of service for the next ten years and beyond.

To that end, I am thrilled to announce that I have made Jamie Shuster Morgan a partner and we are in the process of changing the name of the firm to Fendrick & Morgan, LLC. I feel so fortunate that, after all these years, I have have found such a compatible and compassionate partner to share in the practice of law and in the future development of the firm. We hope to complete the logistics of the name change over the next couple of months. Also, we are revamping our website and hope to have that process complete around the same time. I also want to again congratulate Jamie on the birth of her second child, a little girl this time, in June.

I am also fortunate that my staff has remained with me, fully in tact, for another year. Valerie Krauss and Vicky McDyre, both of whom have been with me since we first opened our doors, remain in charge of the front of our office and keep everything running smoothly. Nancy Kimsey has been with me for nine years now and she continues to efficiently manage our estate administration practice. Kathy Caruso, in her fourth year with our office, assists Nancy in that endeavor. I thank them for their continued hard work and dedication.

In addition to the service of our clients, Jamie and I will continue to lecture on various issues of estate planning, estate administration and elder law in 2011. Many of you have asked when we will next host a series of seminars for you to attend. We have a series of complimentary talks coming up in February. We hope to see many of you there. (Please see the back of this newsletter for dates, times and locations). Jamie and I also both have a number of talks scheduled this spring for other attorneys and professionals in our field, to help educate them on the ever-changing worlds of estate planning and elder care law. As always, we are dedicated to our continued growth and advanced education in the fields in which we practice, and strive to stay ahead of the curve with respect to estate and elder care planning strategies.

On behalf of myself and my staff, I thank you for your support and wish you all the best for a happy and healthy 2011.

Warmly,

Doug

Summary of New Estate and Tax Gift Laws

On December 17, 2010, President Obama signed the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (the "Act"). The Act significantly changes the federal estate tax, which impacts estate planning for many of our clients, and presents significant estate planning opportunities. This article summarizes the Act's key changes and provides you with our observations regarding the Act's impact from an estate planning perspective. Please note that there are several important changes made by the Act, including income tax provisions, which this article does not summarize.

ESTATE TAX

Under prior law, beginning in 2001, the federal estate tax was gradually reduced over a period of years and then eliminated for decedents dying in 2010. The estate tax was scheduled to be reinstated in 2011 with a maximum tax rate of 55 percent and $1 million applicable exclusion amount. Additional changes scheduled for years after 2010 affected the gift and generation-skipping transfer ("GST") taxes.

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The Act reinstates the federal estate tax for decedents dying during 2010 with an applicable exclusion amount of $5 million and a maximum tax rate of 35 percent. However, the Act gives estates of decedents dying during 2010 the option to apply either: (1) the new estate tax, with a 35 percent top rate, $5 million applicable exclusion amount and a return to the step-up in cost basis rule, or (2) no estate tax and modified carryover basis rules which were to apply for 2010 under prior law (discussed below).

BASIS ISSUES

Pre-2010, inherited property would receive a "stepped-up basis" in the hands of the beneficiary equal to the property's fair market value on the date of the decedent's death. However, under prior law, for the year 2010, "modified carryover basis" rules were to apply for property inherited from a decedent. Under the modified carryover basis rules, executors could increase the basis of estate property only by a total of $1.3 million (plus an additional $3 million for assets passing to a surviving spouse, for a total increase of $4.3 million), with other estate property taking a carryover basis equal to the lesser of the decedent's basis or the property's fair market value on the decedent's death. The Act also eliminates the modified carryover basis rules for 2010 and replaces them with the stepped-up basis rules that had applied before 2010.

EXPIRATION

This new estate tax regime, as promulgated by the Act, continues for decedents dying in 2011 and 2012. Unfortunately, this new regime is itself temporary and will sunset on December 31, 2012. At that time, the prior estate tax regime, with a 55 percent maximum estate tax rate and a $1 million applicable exclusion amount, is to be reinstated.

PORTABILITY

The Act also provides for "portability" between spouses of the estate tax applicable exclusion amount for estates of decedents dying in 2011 and 2012 if both spouses die before 2013. Generally, portability allows surviving spouses to elect to take advantage of the unused portion of the estate tax applicable exclusion amount (but not any unused GST tax exemption) of their predeceased spouses, thereby providing surviving spouses with a larger exclusion amount. Special limits may apply to decedents with multiple predeceased spouses.

To preserve the first deceased spouse's unused applicable exclusion amount, the executor for such spouse must file a federal estate tax return and make an election thereon, even if such an estate tax return would otherwise not be required.

GIFT TAXES

For gifts made in 2010, the maximum gift tax rate is 35 percent and the applicable exclusion amount is $1 million. For gifts made in 2011 and 2012, the Act limits the maximum gift tax rate to 35 percent and increases the applicable exclusion amount to $5 million. As discussed below, this change provides an opportunity to move significant amounts of wealth free of estate and gift taxes.

Donors continue to be able to use the annual gift tax exclusion before having to use any part of their applicable exclusion amount. For 2010 and 2011, the annual exclusion amount is $13,000 per donee (married couples may continue to "split" their gift and may make combined gifts of $26,000 to each donee).

GENERATION SKIPPING TRANSFER ("GST") TAX

The Act provides a $5 million GST exemption amount for 2010 (equal to the applicable exclusion amount for estate tax purposes) with a GST tax rate of zero percent for 2010. For transfers made after 2010, the GST tax rate would be equal to the highest estate and gift tax rate in effect for the year (35 percent for 2011 and 2012). The Act also extends certain technical provisions under prior law affecting the GST tax.

OBSERVATIONS REGARDING THE ACT

GENERALLY

Generally, the estate and gift tax provisions of the Act are very favorable to taxpayers because of the substantial increase in the applicable exclusion amount of $5 million, and the lower maximum estate and gift tax rate of 35 percent. The Act also addresses several technical estate, gift and GST tax issues in a manner that is favorable to taxpayers (e.g., the impact of the lapse of the estate tax, including the application of basis rules, on decedents passing away during 2010).

TEMPORARY FIX

The Act is a temporary fix, which sunsets on December 31, 2012, immediately after the next election cycle. It is impossible to predict whether it will be extended in either its current or some modified form, especially given the fact that it is a hot button issue with both major political parties. If Congress fails to act, the Act will lapse and the estate tax will revert to what it would have been under prior law (i.e, $1 million applicable exclusion amount and 55 percent maximum estate and gift tax rate).

INCREASED GIFT TAX APPLICABLE EXCLUSION AMOUNT

From 2001 to 2010, the applicable exclusion amount for gift tax purposes was $1 million. The Act increases this to $5 million, or $10 million per married couple. This change provides an unprecedented opportunity to move substantial amounts of wealth out of individuals' estates. There are several techniques that individuals can use to leverage this $5 million applicable exclusion amount to move substantially more wealth out of their estates.

Given the fact that the Act will sunset without further Congressional action in 2012, we are advising clients that it would be prudent to implement estate planning techniques utilizing lifetime gifts before the December 31, 2012 sunset date.

STATE ESTATE TAX

Many states have separate estate tax regimes with lower applicable exclusion amounts than the federal applicable exclusion amount. New Jersey happens to be one of those states. If you die and you are a New Jersey resident, then your New Jersey exemption is only $675,000. Consequently, it is critical that your estate plan address your current New Jersey estate tax exposure. There are different techniques that our office is utilizing to reduce or even eliminate New Jersey estate taxes that may apply at a person's death. Please make sure your estate plan includes one of these acceptable techniques. It is imperative that you realize that the Act does not avoid potential New Jersey issues that apply if your estate exceeds $675,000.

PORTABILITY

As described above, one of the more notable (and, surprising) provisions contained within the Act is the "portability" provision which essentially provides that if one spouse does not fully utilize his/her entire $5 million applicable exclusion amount, the unused portion can be used by the surviving spouse's estate. This provision is intended to avoid the need for Credit Shelter Trusts in estate planning documents. Unfortunately, both spouses must die before 2013 in order to benefit from the portability provision. In addition, because of the New Jersey Estate Tax, Credit Shelter and Disclaimer Trusts are still useful techniques to avoid or reduce New Jersey estate taxes.

YOU STILL WILL NEED A TRUST

Trusts in your estate planning documents continue to provide significant benefits beyond just tax savings. These include, but are not limited to, the following:

- Ensuring that assets contained in the Trust pass to your children and not to any new spouse of the surviving spouse.

- Ensuring that appreciation on the assets contained within the Trust, which may exceed the applicable exclusion amount at the surviving spouse's death are not subject to estate tax at that time.

- Protection of assets in the Trust from creditors of the surviving spouse, including any marital claims of future spouses.

Given the fact that the portability provision will sunset in 2012, as well as for the reasons stated above, we are advising clients to continue to use estate plans that incorporate Trusts.

THINGS NOT IN THE ACT

There are two key provisions that many attorneys feared would be in the Act, but which were not included in it. Specifically, there have been several proposals to place limits on Grantor Retained Annuity Trusts ("GRATs"), which allow individuals to transfer wealth out of their estates with as little as a zero estate or gift tax cost that would have made GRATs less valuable from an estate planning perspective. There have also been several proposals to limit valuation discounts in connection with certain estate planning techniques such as family limited partnerships. There were no such provisions included in the Act. Therefore, these techniques continue to be available to move wealth to lower generations.

TEMPORARY RELIEF DOES NOT EXTEND TO NON-US CITIZENS

The Act reinstates federal estate taxes on United States–situs property of non-US citizens who are not residents. The increased applicable exclusion amount to $5 million per person does not apply to non-US citizens who are not residents. US situs property exceeding $60,000 in value is again currently subject to US estate taxes beginning at graduated marginal rates starting at 18 percent. Accordingly, particular vigilance needs to be exercised in structuring the acquisition of US assets such as real property, so as to avoid imposition of US estate taxes at pre-2010 levels.

SUMMARY

To summarize, the Act makes significant estate and gift tax changes. The key points discussed above include the following:

- The estate tax exclusion amount increases to $5 million per person for 2010 through 2012.

- The maximum estate and gift tax rate is reduced from the 55 percent maximum rate under prior law to a maximum estate and gift tax rate of 35 percent for 2011 and 2012.

- A "portability" provision is included, which allows surviving spouses to use any applicable exclusion amount that is not used by the first spouse to pass away.

- The GST exemption amount is increased to $5 million for 2010 through 2012.

- The Act sunsets at the end of 2012, thus rendering the foregoing changes temporary and mandating that emphasis be placed on creating flexible estate plans.

As always, we recommend that clients review their estate plans periodically and/or whenever a significant life event occurs (e.g., birth of a child, birth of a grandchild, death of a spouse, purchase of a new home, health change etc.).

For clients with substantial amounts of wealth and/or with closely held business interests, we highly recommend that such clients consider using lifetime gifts to take advantage of the current $5 million lifetime gift tax applicable exclusion amount, which will expire absent further Congressional action at the end of 2012.

Please do not hesitate to contact our office to schedule an appointment to review your estate plan in light of the Act. Please see the schedule of our upcoming seminars that you can attend to learn more about the recent changes to the estate tax laws.

YOU ARE INVITED!

Please join us at one of the following free seminars offered by the firm.

The seminars will summarize the recent tax law passed by President Obama and will explain what changes you may need on your current estate planning documents

THE SEMINARS WILL BE HELD AT THE FOLLOWING LOCATIONS:

PRESENTED BY DOUG A. FENDRICK, ESQ.

Tuesday, February 15 • 10 am - 12 pm
The Mansion • 3000 Main Street • Voorhees

Wednesday, February 16 • 6:30 - 8:30 pm
Cherry Hill Library • 1100 Kings Highway North • Cherry Hill

PRESENTED BY JAMIE SHUSTER MORGAN, ESQ.

Tuesday, February 15 • 7 - 9 pm
The Mansion • 3000 Main Street • Voorhees

Thursday, February 17 • 10 am - 12 pm
Cherry Hill Library • 1100 Kings Highway North • Cherry Hill

CALL OUR OFFICE TO RESERVE YOUR SPACE AT (856) 489-8388.

Does your group need a guest speaker?

We are available to speak to your professional, civic, religious or special interest group on various topics (Estate Planning, Elder Law, IRA Planning, Special Needs Trusts, Disability Planning.) Give our office a call at **(856) 489-8388** to arrange a date and time or visit our website at www.fendricklaw.com

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To add a friend to our mailing list,
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