

Estate and Gift Taxes -

The Rules are Very Interesting for 2011 and 2012

One of the major tax stories in 2010 was the elimination of the estate tax for decedents dying in 2010 and whether Congress would reinstate it before the end of the year. As it turned out, Congress did reinstate the estate tax for 2010, but on an elective basis. More importantly, it made notable changes to the estate tax for 2011 and 2012.

Here are the rules for 2011 and 2012 -

- The highest marginal estate/gift tax rate stays at 35%.
- Up to \$5,000,000 of an estate will be tax-free. The exemption for gifts made during your lifetime has also been increased to \$5,000,000. The same amount is available for your spouse.
- If the value of the taxable estate of the first spouse to die is less than \$5,000,000, the executor of the estate can elect to add the excess to the surviving spouse's tax-free amount.
- The generation-skipping exemption is also \$5,000,000. This comes into play if the beneficiary of an estate or a gift is more than one generation below the decedent/donor.



That's the good news. The bad news is that, absent further legislation, the highest tax rate returns to 55% and the exemption to \$1,000,000 for decedents dying in 2013 and after. Thus, the \$5,000,000 exemption is only available for gifts made, or decedents dying in 2011, and 2012. (Actually, it could go up in 2012 because it is indexed for inflation).

BB recommends: *The estate of the first spouse to die must elect to transfer the excess of the \$5,000,000 exemption over the value of the estate of the first spouse to die. This means that estates below the \$5,000,000 should consider filing an estate return to make the election. The current gift and estate tax law is a major change, especially the \$5,000,000 exemption. Now is the time to review your gifting plans, as well as your wills. If you want to learn more, call our estate and gift specialist, Marcie duQuesnay in our New Orleans office or call your BB professional.*

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Now, What Can We Expense?

In late 2010, Congress and President Obama agreed on major tax legislation that included increased depreciation benefits. Perhaps, now is a good time to review what's available in 2011.

Bonus Depreciation – In past years, you have been able to expense 30% or 50% of qualifying depreciable property in the first year. For assets acquired in 2011, this percentage is 100%. That's right, you can expense the whole thing. Generally, to qualify, property must have a recovery period of 20 years or less or be qualified leasehold property. One of the biggest require-

ments is that the property be new. There is no dollar limit to the amount of bonus depreciation you can claim. If you don't want to expense the whole amount, you must elect out of the bonus depreciation, but that election covers all new assets in the same class (class relates to the depreciable life for tax purposes, i.e., 3-year, property).

Section 179 – Section 179 of the Internal Revenue Code allows you to expense up to \$500,000 of qualifying depreciable property for years beginning in 2011, but this limit is reduced as your total acquisitions exceed \$2,000,000. Unlike bonus depreciation, the section 179 deduction does apply to used property. However, also unlike bonus depreciation, the section 179 deduction cannot exceed the taxpayer's business income

(i.e., it cannot create a loss). It does apply to limited types of real property (qualified leasehold improvements, qualified restaurant property and qualified retail improvement property), but with a lower dollar limit. Note that the 100% bonus depreciation applies to calendar 2011 (and part of 2010) while the \$500,000 section 179 deduction applies to taxable years beginning in 2011.

In calendar year 2012, bonus depreciation drops to 50%. In fiscal years beginning in 2012, the section 179 deduction drops to \$125,000, with the phase-out beginning at \$500,000. Absent further legislation, the section 179 limit plummets to \$25,000 in 2013.

BB Recommends: For more information, contact your BB representative.

The IRS Can Deny Your Deduction

You make a nice gift to a charity. No problem deducting it, right?

Actually, the IRS can deny the deduction if you have not obtained the necessary substantiation. In a recent case, the Tax Court denied a \$1.9 million deduction for the contribution of an easement because the taxpayers failed to obtain the required contemporaneous written acknowledgement. We thought we'd cover some of these rules.

Cash – Cash contributions are no longer deductible unless you have adequate substantiation from the charity. Dropping the twenty dollar bill in the collection plate won't help you any come tax time. Cash is okay if the charity provides documentation reporting the donation. Any way you look at it, you are better off writing a check.

Contributions of \$250 or More – If you make a contribution of \$250 or more in a single contribution, whether in cash or in property, you must obtain a contemporaneous written acknowledgement from the charity. An acknowledgement is contemporaneous if you obtain it by the earlier of the due date of your return or the date the return is filed. A donation for which a benefit is received in return (such as a meal at a fundraising banquet) falls under this rule only if the deductible portion is \$250 or more. This acknowledgement should include -

1. the amount of cash contributed and a description (but not necessarily the value) of any property other than cash contributed;
2. whether the donee organization provided any goods or services in consideration, in whole or in part, for any cash or other property contributed;
3. if the donee organization provides any goods or services other than intangible religious benefits, a description and good-faith estimate of the value of the goods or services; and
4. if the donee organization provides any intangible religious benefits, a statement to that effect.



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Quid Pro Quo Contributions – You should also obtain a written statement from the charity if you make a contribution of more than \$75 and you receive something of value in return (such as a meal at a fundraising banquet). This obligation really falls on the charity, but you should ensure you get the written statement in some form (it can be included with the original solicitation of the donation). The charity is required to provide a good-faith estimate of the value of the goods or services you received in return for your gift.

Property – If you give property (other than publicly-traded securities) worth more than \$5,000, you generally must have the property valued by a qualified appraiser (the rule applies to nonpublicly-traded securities only if the deduction is more than \$10,000).

Both the appraiser and the charitable organization must sign Form 8283, Noncash Charitable Contributions, which you must attach to your return. Note that you must add together all similar property you donated during the year to determine if you meet the \$5,000/\$10,000 level. Thus, if you donate a painting worth \$3,500 in June and another painting worth \$4,200 in August, each to different charities, you must have both paintings appraised.



BB Recommends: *Most charities know what they must provide to their donors, but not all do. It's up to you to ensure you have the proper support for your donation. Check this issue when you gather your tax information.*