

## New Law Creates Two-Year Opportunity To Avoid Estate And Gift Taxes

**A**s a general rule, gifts you make during your lifetime will not be included in your estate at your death. There are exceptions for gifts made within three years of your death. Generally, if the asset is not in your name when you die, then it's not taxable as part of your estate. Therefore, it has always been a smart estate planning attorney's maxim to counsel clients to avoid estate taxes by giving gifts during their lifetime to the people that would otherwise inherit their estate.

The attorney's challenge is usually three-fold: (1) convince the client to part with their money (never easy); (2) ensure the gift doesn't create any unwanted gift tax liability; and (3) maximize estate tax savings. Because of the recent changes in the federal gift and estate tax laws, gifts in higher amounts can be given without worrying about gift tax. The old federal gift tax law provided that a person could give away up to \$1 million in gifts during that person's life without incurring any gift tax. Under the old law, the donor had to pay a tax for gifts that exceeded the \$1 million lifetime exemption. The new law provides for a \$5 million exemption for the next two years.

Last month, President Obama signed into law the *Tax Relief, Unemployment Reauthorization and Job Creation Act of 2010*. Under this new law, the following changes were made to the old federal estate and gift tax laws for the next two years:

**1. Maximum 35% rate for federal estate tax, gift tax and GST tax** (old maximum rate was 55%).

**2. \$5 million federal**

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**ESTATE tax exemption** (old exemption was only \$1 million).

**3. \$5 million federal GIFT tax exemption** (old exemption was only \$1 million). The used exemption decreases the estate tax exemption dollar for dollar.

**4. \$5 million Generation-Skipping Transfer (GST) tax exemption for gifts directly to grandchildren** (old exemption was only \$1 million).

**5. Portability of \$5 million ESTATE exemption between spouses, which gives married couples up to \$10 million in aggregate exemptions automatically** (old law had no portability feature).

**6. Step-up basis in assets at death to fair market value** (old law had modified basis rules).

This new law significantly changes the estate planning landscape for the next two years. Because the new federal gift and estate tax exemptions are a generous \$5 million each per person, and the federal estate tax exemption is \$10 million per married couple, most people will not have a federal gift or estate tax for the next two years.

But estate planning is done not only to save federal estate and gift taxes. Estate planning is also done to save New Jersey estate taxes. The salient features of the New Jersey Estate Tax and Inheritance Tax are as follows:

**1. Maximum 16% rate for Estate Tax and Inheritance Tax.**

**2. \$675,000 exemption for NJ Estate Tax.**

**3. All transfers to the following beneficiaries are**



**exempt from Inheritance Tax: spouse, charity, parents, children, and grandchildren.**

**4. \$25,000 exemption for NJ Inheritance Tax if transferred to Class C beneficiary (sibling, wife or widow of son of decedent or husband or widower of daughter of decedent).**

**5. No gift tax.**

Again, NJ does not have a gift tax. But NJ has an Estate Tax and Inheritance Tax with tax rates of up to 16%. Therefore, a very high amount of NJ Estate Tax and NJ Inheritance Tax could be avoided by gifting up to \$5 million (the amount of the new federal exemption) over the next two years and getting that money out of your estate.

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*Recent changes to federal estate tax and gift tax laws significantly alter the estate planning landscape for the next two years.*