DEVINE MILLIMET

ATTORNEYS AT LAW

# ESTATE PLANNING UPDATE FOR 2011

Congress recently passed the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (the "2010 Tax Relief Act") which President Obama signed into law on December 17, 2010. In addition to extending the Bush-era income tax cuts, the new law provides some significant changes to the estate tax law that present excellent estate planning opportunities. This is an appropriate time to review your existing estate plan, or to implement an estate plan if you have not yet done so.

## HIGHLIGHTS OF THE 2010 TAX RELIEF ACT

**Federal Estate Tax, Gift Tax and Generation Skipping Transfer Tax ("GST") Exemption Amounts Increase**
For 2011 and 2012, the Federal estate tax, gift tax and Generation Skipping Transfer tax exemption amounts have increased to $5 million per person. Therefore, any amount greater than $5 million and passing to beneficiaries other than a spouse will be subject to tax. The maximum Federal estate tax, gift tax and GST rate is 35% through 2012.

**Portability of Estate Tax Exemption Amount in 2011 and 2012**
A surviving spouse may use his or her deceased spouse's unused Federal estate tax exemption amount to further reduce or eliminate estate taxes due upon the death of the surviving spouse.

**State Estate Tax Laws Remain in Effect**
Many states, including Massachusetts, Vermont and Maine, have their own state estate tax. The 2010 Tax Relief act does not affect these estate tax laws. New Hampshire does not have such an estate tax. However, New Hampshire residents who own real estate in other states should be aware that there may be estate tax consequences in those states when they die.

**Expiration Date for IRA Charitable Rollovers has Been Extended to December 31, 2011**
Individuals over the age of 70½ may transfer up to $100,000 from their IRAs to a public charity without incurring income taxes on the amount of income withdrawn from the IRA. Eligible gifts from an IRA to a public charity made before December 31, 2011 may be used to satisfy minimum distributions requirements for 2011.


**TRUSTS & ESTATE PLANNING GROUP**

**Manchester, NH:**
**Anu R. Mullikin, Esq., LLM**
Chair
amullikin@devinemillimet.com
603.695.8536

**Steven Cohen, Esq., CPA, LLM**
scohen@devinemillimet.com
603.695.8504

**Patricia M. McGrath, Esq., LLM**
pmcgrath@devinemillimet.com
603.695.8537

**Jennifer Rivett Schick, Esq.**
jschick@devinemillimet.com
603.695.8620

**Andover, MA:**
**Nicholas Forgione, Esq., LLM**
nforgione@devinemillimet.com
978.289.1213

**Annmarie Roark, Esq.**
aroark@devinemillimet.com
978.289.1243

**Kelly M. Quigley, Esq.**
kquigley@devinemillimet.com
978.289.1245

DEVINEMILLIMET.COM

PROBATE@DEVINEMILLIMET.COM

## PLANNING OPPORTUNITIES FOR 2011 AND 2012

### Review of Wills and Revocable Trusts

You should evaluate your existing documents to ensure that any changes in your net worth have been addressed. In addition, you should review the individuals whom you have named as the guardians of your minor children, executor of your Will, Trustee of your Trust and agent under your Powers of Attorney and make sure that you are still comfortable with such persons serving in those roles.

Individuals with estates with a value of less than $5 million or married couples whose combined estate value is less than $10 million may be able to simplify their existing Revocable Trusts and should have their Trusts reviewed.

Married couples should also have their Wills reviewed to ensure that the surviving spouse may take advantage of the deceased spouse's unused estate tax exemption amount.

### Lifetime Gifting

The 2010 Tax Relief Act creates a unique and likely short-term, opportunity to transfer significant wealth to family members. During 2011 and 2012, individuals may gift up to $5 million and married couples may gift up to $10 million free of gift taxes. The annual gift tax exclusion amount remains at $13,000 in 2011.

Strategic gifts of closely held business interests with valuation discounts can further increase gift tax benefits.

### Generation Skipping Transfer ("GST") Tax Planning

Individuals can transfer up to $5 million ($10 million for married couples) to grandchildren and trusts for the benefit of multiple generations free of GST Tax.

## ESTATES OF DECEDENTS WHO DIED PRIOR TO DECEMBER 17, 2010

The estate tax exemption amount increased to $5 million on all 2010 estates. Inherited assets receive a step-up in basis. Executors of large estates have the opportunity to apply the law in effect prior to the passage of the 2010 Tax Relief Act, which results in no estate tax on 2010 estates, but also a very limited step-up in basis for inherited assets.

## ESTATE PLANNING DOCUMENTS

While the changes to the tax law may eliminate the need for complex estate planning, every client still needs a current, comprehensive estate plan. Existing estate plans should be reviewed to ensure that the plan has been updated in light of current state and federal law changes and make certain that your plan remains consistent with your wishes. A comprehensive estate plan should include the following documents:

> A **Will** is the document in which you name someone to administer your estate, and how and to whom your assets will be distributed upon your death. Additionally, guardians for your minor children (under age 18) are named in your Will.

**Office Locations:**

111 Amherst Street
Manchester, NH 03101
T 603.669.1000
F 603.669.8547

300 Brickstone Square
Andover, MA 01810
T 978.475.9100
F 978.470.0618

49 North Main Street
Concord, NH 03301
T 603.226.1000
F 603.226.1001

DEVINEMILLIMET.COM

PROBATE@DEVINEMILLIMET.COM

A **Revocable Trust** allows your survivors to avoid the probate process, which can be a costly and time consuming process. Using a Revocable Trust may also ensure that your assets will be used for the benefit of your children or other beneficiaries and that your assets are not distributed directly to your children at too early an age. Certain types of Revocable Trusts permit married couples with significant wealth to minimize or eliminate federal estate taxes.

A **Durable General Power of Attorney** allows you to name someone to handle your financial affairs in the event of incapacity without having to go to the Probate Court to obtain a formal guardianship.

The **Advance Directive** now contains two sections, a **Durable Power of Attorney for Health Care** and a **Living Will**. The Durable Power of Attorney for Health Care is designed to allow you to name someone to make medical decisions with respect to your medical treatments. The Living Will is a statement that you wish to have artificial life-sustaining procedures withdrawn under certain circumstances.

A **Nomination of Guardian Form** is a document that allows you to designate, in advance, the person who you would wish to be your guardian if it becomes necessary to obtain a guardianship through the Probate Court. Although we hope to avoid having to pursue guardianship proceedings by having the Durable Powers of Attorney in place, it is a simple matter to also have this document in place in the event that a formal guardianship does become necessary.

A **HIPAA Authorization Form** allows you to preauthorize certain people to obtain needed information about your health care and treatment from your medical care providers.

Assets should be reviewed to confirm that they are appropriately titled. IRA accounts, 401(k) accounts, pension plans, annuities and insurance policies should also be reviewed to confirm that any beneficiary designations are accurate. Homeowners' insurance policies, automobile insurance policies and so-called personal liability umbrella insurance policies should be periodically reviewed for adequacy of coverage.

Please contact a member of our Trusts and Estates Group to schedule a meeting to review and update your existing estate plan or to discuss establishing a comprehensive estate plan.


**Office Locations:**

111 Amherst Street
Manchester, NH 03101
T 603.669.1000
F 603.669.8547

300 Brickstone Square
Andover, MA 01810
T 978.475.9100
F 978.470.0618

49 North Main Street
Concord, NH 03301
T 603.226.1000
F 603.226.1001