PLANNING STRATEGIES SUGGESTED BY TRA 2010

Since gifting does not remove the gifted assets from the tax base for estate tax purposes under TRA 2010, the total estate and gift tax is the same whether or not gifts are made. However, appreciation of and income on the gifted assets is removed from the gross estate. And tax savings can be further increased if the grantor gifts assets to a "grantor trust" and pays the income tax on trust assets with funds outside of the trust, thereby further depleting his or her taxable estate and permitting the trust assets to compound tax free. Additional tax savings may be possible where the grantor sells assets to the trust in exchange for a low-interest rate note.

Following are some observations about the impact of TRA 2010 on often used gifting techniques:

- **GRATs**: The increased gift tax exemption makes these somewhat less attractive, since their principal advantage is that they remove future appreciation of the trust assets (above the Section 7520 rate) from the grantor's estate; the increased exemption amount neutralizes this advantage to some extent.

- **Life Insurance Trusts**: The increased gift exemption means that substantial additional coverage can be purchased. Consider making large gifts in 2011 and 2012 to cover future premiums as a hedge against the possibility that the exemption amount will be decreased beginning in 2013.

- **Qualified Personal Residence Trusts**: The principal downside to the use of this technique was the large gift element. With the increased gift exemption, it is now possible to transfer a residence of very significant value to the trust without gift tax consequences.

Here are some additional considerations when making estate planning decisions under TRA 2010:

- Fund the Bypass Trust with the state exemption amount [$675,000 in New Jersey] and rely on portability to shelter the remaining assets in the estate of the surviving spouse, assuming portability remains part of the Federal Estate Tax regime.

- Re-examine power of attorney language to determine whether the agent's authority to make lifetime gifts has been expanded as a result of TRA 2010.

- Where the gift tax rate is less than the estate tax rate, *inter vivos* gifts will result in tax savings equal to the difference between the two tax rates times the difference between the amount of the gift and the date of death applicable exclusion amount.

- Lifetime Credit Shelter Trusts: By creating a lifetime Credit Shelter Trust for the benefit of his or her spouse, the grantor spouse can take advantage of the increased gift tax exemption amount while allaying fears that gifting will impoverish the family, since the trust property can be utilized by the beneficiary spouse. At the same time the gifted assets are removed from the grantor's taxable estate. This technique can be utilized by one or both spouses, but beware the “Reciprocal Trust Doctrine,” which disregards substantially identical trusts created by both spouses and deems each trust a grantor trust as to the spouse who created it. [*United States v. Grace*, 395 U.S. 316 (1969); I.R.C. §677]