

Overview

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010

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The Legislation

Eight Titles:

- I: *Temporary* Extension of Tax Relief
- II: *Temporary* Extension of Individual AMT Relief
- IV: *Temporary* Extension of Investment Incentives
- V: *Temporary* Extension of Unemploy. Insurance...
- VI: *Temporary* Employee Payroll Tax Cut
- VII: *Temporary* Extension of Certain Expiring Prov.
- VIII: Budgetary Provisions

Title III

One Hundred Eleventh Congress
of the
United States of America

AT THE SECOND SESSION

*Began and held at the City of Washington, on Tuesday,
the fifth day of January, two thousand and ten.*

An Act

To amend the Internal Revenue Code of 1986 to extend the limitations on deductions

TITLE III --TEMPORARY ESTATE TAX RELIEF

- Sec. 301. Reinstatement of estate tax; repeal of carryover basis.
- Sec. 302. Modifications to estate, gift, and generation-skipping transfer taxes.
- Sec. 303. Applicable exclusion amount increased by unused exclusion amount of deceased spouse.
- Sec. 304. Application of EGTRRA sunset to this title.

Sec. 301. Temporary extension of increased alternative minimum tax exemption.

Sec. 303. Temporary extension of alternative minimum tax credit for nonrefundable personal credits.

TITLE III --TEMPORARY ESTATE TAX RELIEF

Overview of Transfer Tax Issues

- Transfer taxes:
 - Gift, Estate and Generation-Skipping
 - Other speakers covering:
 - 2010 deaths – Ed Koren
 - Generation-Skipping Transfer tax – Rick Gans
 - Portability – Elaine Bucher

The Basics

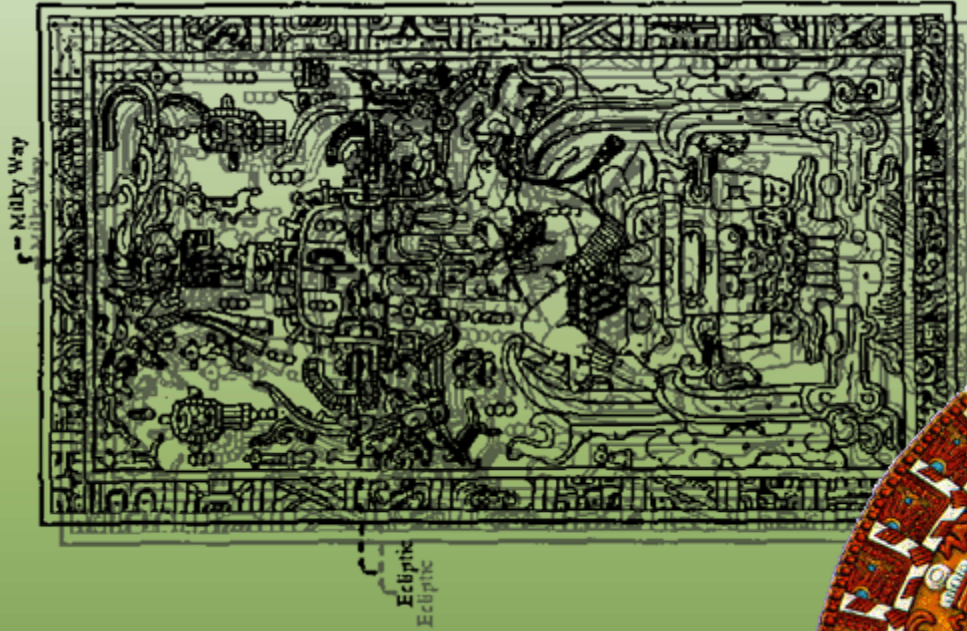
- Gift Tax is Still Around
 - \$5 million exemption
 - Beginning in 2011 (\$1 million for 2010)
 - 35% rate
 - Same as for 2010 gifts
- Estate Tax is Back
 - \$5 million exemption
 - 35% rate
 - Even for 2010 deaths unless election made
- Generation-Skipping Transfer Tax
 - \$5 million exemption
 - 35% rate
 - In 2010, rate is zero
- Indexing for inflation

Word of the Day:

Temporary

- On January 1, 2013
 - Back to 2001 law
- Lots of time, right?
 - Only 711 days from now
 - Fletcher Belcher will be ½ through his term as chair of the RPPTL Section
- Don't worry about 2013
 - December 21, 2012: Mayan long count
 - www.december212012.com/M-The_Mayan_Prophecy.htm

Mayan Sacred Tree



Mayan Calendar

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The End?



“But fears that the world is due to end in December 2012 is just a myth fuelled by internet rumour, according to a leading NASA scientist.”
(Source: The Daily Mail, 22 Oct 2009)

“Folks have to be very careful when they get information on the web.”
2012: A Scientific Reality Check, Donald Yeomans, Jet Propulsion Laboratory – Near Earth Object Program delivering “NASA Response to Crazy 2012 Claims” on a You Tube Video

2013

(Not the code section, the year)

- \$1 million exemption
- 55% rate
- State death tax credit
- Generation-skipping transfer tax issues

Use it or Lose It?

- Gift tax exemption:

\$5,000,000

- Amount not used during lifetime is available at death, so unused amount is not lost
 - Unless adjusted downward by later Congress
- Opportunity to “clean up” some haunting transactions
- Trust for spouse with broad powers
 - Caution: reciprocal trust doctrine
- Dynastic trusts

Got it, Use it -- Now!

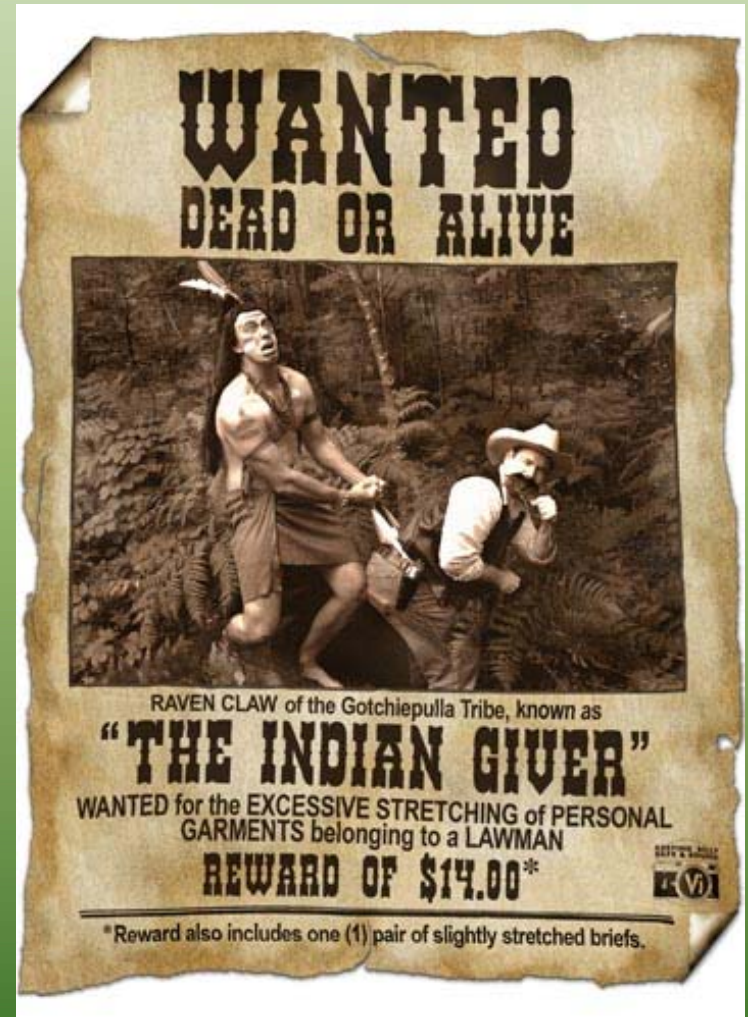
- Generation-skipping transfer tax exemption:
\$5,000,000
 - Available to allocate to 2010 gifts in trust
 - Available if electing out of estate tax in 2010
 - More from Ed Koren later this morning
 - Can be used for late allocations to pre-2011 gifts
 - More from Rick Gans later this morning
 - Not portable
 - More from Elaine Bucher later this morning

Not Yet, At Least

- GRATs
 - No minimum term
 - No minimum gift
- State Death Tax
 - Still a deduction, not a credit
 - Because of the extension of 2010 law
- Valuation Discounts, or Adjustments
 - No changes
- Limitations on Crummey or Annual Gifts
 - No changes

Native American Giver

- Undoing premature “gifts”
- Avoiding gift status



Calculation Issues

- Initially lack of consensus on some computational issues
- Many issues have been resolved regarding gifts and deaths during years with different rates and exemptions
 - Results now mostly as expected
- If tax rates increase in future, gifts now (at lower rates) may reduce aggregate tax
 - Clawback potential
- No substitute for “running the numbers”

Judicial Construction Statutes

- Florida Statutes 733.1051 and 736.04114
 - Applies to dispositions occurring between
 - January 1, 2010, and
 - ending on the end of the day on the earlier of:
 - December 31, 2010, or
 - the day before the date that an act becomes law that repeals or otherwise modifies or has the effect of repealing or modifying s. 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001.

Judicial Modification Statutes

- Florida Statutes 736.0416
 - Modification to achieve settlor's tax objectives.
Upon application of any interested person, to achieve the settlor's tax objectives the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intent. The court may provide that the modification has retroactive effect.

Conclusion

- Make Taxable Gifts to use Exemption
- Allocation Generation-Skipping Transfer tax exemption
- Now that the
 - Tax Relief Act of 2010 has Cometh, Goeth into the future
 - See you in 2013
 - Unless the Mayans got it right....



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