



ESTATE PLANNING

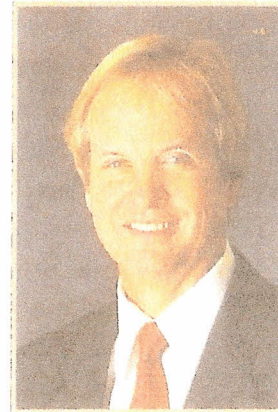
2012: A Closing Window of Opportunity?

By Robert M. Buckel, Esq.

he big news in the 2010 Tax Relief Act was not the \$5,000,000 estate tax exemption, but rather the \$5,000,000 gift tax exemption. Each person is given an amount that can be used to transfer assets tax-free to someone either at death or during lifetime. Until recently, the amount that could be passed tax free at death far exceeded the amount that could be passed tax-free during lifetime. Due to the Tax Relief Act, we are currently in the final year of a two-year period in which the entire inflation adjusted \$5,120,000 exemption can be given away either during lifetime or at death. Thus for the remainder of this year even those who have utilized their prior \$1,000,000 gift tax exemption, can now give away an additional \$4,120,000 (or \$8,240,000 for a couple). Unfortunately, this generous tax regime is scheduled to expire on December 31, 2012. If Congress and

the President fail to agree, the exemption will return to \$1,000,000. Given Congress's deadlock on tax and budget issues, many tax advisors believe after this year the amount that can be given away during life tax-free will be less than the current \$5,120,000 exemption.

There are a number of ways that one can utilize the gift tax exemption before year-end. However, the problem is that most people are unwilling to part with a \$5,120,000 gift (or \$10,240,000 in the case of a couple). Estate planners have come up with a technique that allows a couple to utilize their combined \$10,240,000 in exemptions but still retain the use or benefit of the property. The technique is the creation of a



Robert M. Buckel, Esq.

"Family Gift Trust."

A Family Gift Trust is an irrevocable trust established by the grantor spouse (e.g. the husband) to receive, for example, \$5,120,000. The beneficiaries of the Family Gift Trust typically include the grantor's spouse and descendants. Although the husband has gifted away property to the Family Gift Trust, if his wife is the primary beneficiary of the Family Gift Trust, she will have access to the use and benefits of the property. If structured properly the wife can also be the trustee or co-trustee of the trust. In instances where it is more appropriate to use an independent or corporate trustee, one or more of the family members can be given the power to remove and replace the trustee.