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## LYNN'S TOP FIVE New Estate Tax Laws: What You Need to Know NOW!

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I recently had breakfast with good friends and colleagues Paula Leibovitz Goodwin and Annette Knox, both certified specialist in estate planning, with practices in Orinda and Walnut Creek respectively, as we were preparing for an upcoming estate tax law planning webinar. After a long discussion about all the estate tax planning related issues to consider in the 2010 Tax Relief Act, we realized that for most taxpayers, deciding what to do boils down to paying attention to a few top issues. So, although there's been a lot of press about the last minute sweeping changes Congress put in place, let's focus here on five that truly deserve your attention and consideration.

First you have to know this: at this time the new laws are in effect only for two years. As you think about these top issues, work with your advisors to craft a plan that can move on a dime if the laws aren't extended or are revised yet again. Without further extensions, most of what was due to pop into place this year will be back in 2013. I'll point these out as we go through the list.

1) The estate tax exemption for 2011 - 2012 is \$5 million per person. The exemption was due to be reduced to only \$1 million dollars per person this year, so what a great benefit! At this point, it pops back to this number in 2013 if these new laws aren't extended.

2) The estate tax exemption and the gift tax exemption are reunited. Wow - that's maybe the best benefit of all. For the next two years, no longer are you limited to lifetime gifts of \$1 million passing estate and gift tax free --- you can now increase that to \$5 million that can pass during life or at death estate and gift tax free. And that is on top of the annual exclusion gifts of \$13,000 per person and the all important benefit of being able to pay for education and medical expenses for others outside the gifting limitations.

3) The estate tax rate has dropped to 35%. If Congress does nothing, this rate rises to 55% in 2013 for estates over \$1 million. Ouch.

4) Portability. There is now "portability" of the unused exemption between spouses. This means that a husband and wife together essentially have a \$10 million dollar exemption from gift and estate tax. The unused portion of the exemption at the death of the first spouse can now pass to the surviving spouse without any special estate planning being required. Cautionary tale: There still are several excellent reasons for continuing to use bypass trusts at the first spouse's death. Most of us leave our share of assets in trust for our spouse to use during their lifetime, providing that at the death of our spouse any residual will go to the beneficiaries we name (eg, children) and not to the beneficiaries our surviving spouse might name (eg, new spouse). This is a complex but extremely important issue to discuss with your spouse and advisors before rushing to undo existing bypass trust language or deciding not to have on in the first place because you believe portability takes care of all the issues. There are a lot of other provisions and planning issues, such as asset protection, within the realm of this topic that are too complex to go into here. Bottom line: Proceed with care!

5) Step up in basis on most assets outside of retirement plans at death. Here's what you need to know: most of the assets that we leave outside retirement plans to our heirs when we die receive a step up in basis to their value at our date of death. This provision in our tax code gives tremendous relief to heirs from potential double taxation and can play a key role in your estate planning.

As a reminder, this column is not intended as legal advice. To say that this column oversimplifies the estate tax portion of the new tax law would definitely be an understatement. Now more than ever it's critical that you consult and collaborate with your team of advisors, including your accountant and attorney, as you work your way through the provisions and their meaning to your own unique situation. I hope this column will at least help you get the conversation started!

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