



## Capitalizing on The \$5 Million Credit Against Gift Tax in an Uncertain Environment

Since the passage of the Budget Control Act of 2011 (the Budget Act), there has been speculation in the estate planning community that the “Supercommittee” established by the Budget Act would achieve some of its mandated deficit reduction by recommending an early reduction of the \$5 Million credit against gift and estate tax and the \$5 Million exemption from generation-skipping transfer tax that, under the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the 2010 Act), were not scheduled to be reduced until January 1, 2013. As the November 23 deadline for the Supercommittee’s recommendations to Congress draws near, this speculation has dramatically increased. Because of the possibility that a reduction in the credit amount could be effective as early as November 23, some advisors are suggesting that clients who have been considering making significant gifts complete these gifts before November 23.

The makeup of the Supercommittee, the politics of the gift and estate tax and the fact that the increased \$5 Million credit was negotiated fewer than 12 months ago suggest that an immediate reduction of the credit is not likely to win the approval of a majority of the bi-partisan committee. However, there will be no certainty on this issue until it may be too late to take advantage of the \$5 Million credit currently in effect.

Without regard to whether you have one week or 13 months remaining to take advantage of the increased credit afforded by the 2010 Act, a number of economic factors have converged to make this month an unusually good time to engage in gifting transactions:

- The discount rate used for determining the gift tax value of the remainder interests in a grantor retained annuity trust or charitable lead trust is 1.4%, the lowest discount rate ever set by the Treasury Department.
- The interest rates used for many intra-family loan and sale transactions are also at historic lows this month.

### Minimum Required Interest

0-3 year note: 0.19%

3-9 year note: 1.2%

9+ year note: 2.65%

- Many clients believe that both their securities portfolios and their real estate portfolios are currently undervalued, providing a good opportunity to transfer assets that they believe will appreciate following a gift. Valuation experts have also suggested that the volatility in the financial markets support additional discounting in valuing minority and illiquid business interests.

### **Implications**

The window to take advantage of the \$5 Million credit against gift tax may be shorter than expected. If you have been considering making major gifts before the end of 2012, it may be prudent to complete those gifts

before November 23 because of the risk, however minor, of losing the ability to use the \$5 Million credit currently in effect. There are, however, other issues that should be considered in determining whether to proceed with a gift, including the possibility that the Supercommittee will recommend a retroactive reduction of the credit against gift tax and the uncertainty of how gifts made before the reduction becomes effective will subsequently be treated for estate and gift tax purposes.

### **Questions?**

Your questions regarding estate planning transactions may be directed to one of the members of Greenberg Glusker's Estate Planning Group: [Robert Bennett](#), [Jon J. Gallo](#), [Marc M. Stern](#), [Laura A. Zwicker](#) or [Darryl Cluster](#) at (310) 553.3610.