

Special Insert to *Your Family's CFO Report* / Fourth Quarter 2009 Issue

Alert: Temporary Estate Tax Repeal

Inaction by Congress May Require Action by You

You've probably seen the many variations on the "You're better off to die in 2010 than in 2011" news headline. This morbid but tongue-in-cheek truth is a result of Congressional inaction on the federal estate and generation-skipping transfer taxes and carry-over basis rules.

How did we get here, and what's next?

In 2001, President Bush signed the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), which was designed to provide tax relief, including "permanent" relief from the federal estate tax. EGTRRA was designed to steadily lower the maximum estate tax and Generation Skipping Transfer Tax (GSTT) to 45% while increasing the exemption amounts to \$3.5 million in 2009 and eliminating federal estate tax and GSTT altogether in 2010. However, EGTRRA included a sunset provision, which meant that unless Congress acted, the law would revert back to pre-EGTRRA law. Meaning the federal estate tax exemption will be fixed at \$1 million with a maximum tax rate of 55% and the GSTT exemption will become \$1 million with a flat 55% tax rate (with an increase for cost of living changes since the 1998 calendar year).

Congress did not act and the result of this stalemate is that no federal estate tax will apply to estates of individuals dying in 2010 and no generation-skipping transfer tax will apply to transfers made in 2010.



Although the federal gift tax remains in effect, the highest applicable tax rate was reduced to 35% from 45%. As the law now stands, the federal estate and generation-skipping transfer taxes will return on January 1, 2011, with the rates (up to 55%, increased from the 45% rate in 2009) and exemptions (\$1,000,000, down from the \$3,500,000 exemptions in 2009) that were in effect as of December 31, 2001.

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Rumors have been swirling that Congress might act to keep the federal estate and generation-skipping transfer taxes in place this year, by retroactively reinstating the taxes and the step-up in basis rules, and raising the gift tax back to 45%. Whether this will happen – and whether it is Constitutional – remains to be seen.

Regardless, we strongly recommend that you review your will or trust. If your will or trust refers to the "marital deduction," the "federal estate tax," the "unified credit," the "estate tax exclusion" or "exemption" amount, the "credit equivalent" amount, the "credit shelter" amount or the "generation-skipping transfer tax exemption," you should seek guidance from a professional estate planning advisor to ensure that your assets will be distributed as you intended.



Another change taking effect in 2010 relates to the "income tax basis" of inherited assets, that is, the value from which gain or loss is measured on inherited assets that are sold or exchanged.

Previously, the income tax basis of an inherited asset was its value at the death of its former owner. However, beginning in 2010, a deceased owner's income tax basis will "carry over" to the person or persons who inherit his or her assets, with the following adjustments: there will be a \$1.3 million "step-up" in basis for heirs generally, and an additional \$3 million "step-up" in basis for property left to a surviving spouse. As the law now stands, on January 1, 2011, the income tax basis rules in effect in 2009 will return (i.e., the income tax basis of an inherited asset will be its value at the death of its former owner).

Please contact Smith & Howard Wealth Management at 404.874.6244 for information on properly planning for each scenario, to ensure your assets are distributed as you intended.



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