

Articles

Estate and Generation-Skipping Tax Repeal for 2010

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As you are probably aware, Congress failed in its efforts to pass estate and gift tax legislation in 2009, with the result that the federal estate and generation-skipping transfer taxes expired on January 1, 2010. As a result of the expiration of the tax provisions previously in effect, the following related transfer tax rules now apply:

- The gift tax rate on taxable gifts (that is, those in excess of the current annual exclusion amount of \$13,000) is now 35%, down from 45%. There continues to be a lifetime gift tax exemption of \$1,000,000.
- There is no longer a "step-up" in income tax basis for property acquired from a decedent at death. Instead, inherited property will have a basis equal to the lesser of the decedent's adjusted basis (i.e. the "carried-over" basis) or the fair market value as of the decedent's date of death. Estates will also have the ability to allocate \$1,300,000 of additional basis to appreciated property generally and \$3,000,000 of additional basis to property passing to a surviving spouse.

It is likely that Congress will enact new transfer tax legislation in 2010. Some in Congress have indicated that any new legislation will be applied retroactively to transfers taking place since the beginning of 2010, while others have expressed the view that reinstating such taxes retroactively would be unconstitutional. Accordingly, we expect any attempt to make legislation retroactive would be challenged in the courts.

Failure to pass legislation this year will result in a return in 2011 to estate, gift and generation-skipping transfer tax laws that were in effect prior to 2001, with the exemption amount returning to \$1,000,000 for both estate and gift taxes, and transfers in excess of that amount being taxed at an increased maximum rate of 55%. The generation-skipping transfer tax would also return with a \$1,000,000 exemption indexed for inflation since 1997.

As a result of the current repeal of the estate and generation-skipping transfer taxes and reduction of the gift tax rate, certain estate planning opportunities may exist for a limited time. Additionally, it is important for you to review your Will and any other estate planning documents to determine that they still effectuate your desires under the new transfer tax rules.

For more information, please contact Terri Lacy, Kathy Incerto, Doug Clarke, James Myers, Emily Macey or Rachel Spears.