

Tax & Family Wealth UPDATE

JANUARY 20, 2010

Estate Tax Uncertainty in 2010

Although estate planners nationwide felt certain that Congress would act before the end of 2009 to address the federal estate tax rules, it did not happen. As a result, under the tax laws passed in 2001, massive changes occurred in the federal estate tax planning arena as of January 1, 2010. The current law in 2010 provides:

- There is no federal estate tax for decedents dying in 2010.
- There is no generation-skipping transfer (GST) tax in 2010.
- The federal gift tax remains effective with a maximum federal gift tax rate for 2010 of 35% (down from 45% in 2009) and a continued \$1 million lifetime exemption.
- Beneficiaries who receive property from a decedent dying in 2010 will receive a carryover basis in the property for income tax purposes (the same basis as the decedent had at death), rather than a step-up in basis.
- The Oklahoma estate tax was repealed beginning in 2010. This change is separate and apart from the federal law changes.

It is likely that Congress will pass legislation in 2010 to amend these rules, and if that occurs, such changes may be made retroactive to January 1, 2010. If no legislation is passed in 2010, then beginning January 1, 2011, the estate, gift, and GST exemptions and rates in effect in 2001 will be reinstated. This means that there is a possibility of a return to a \$1 million federal estate and GST exemption in 2011 and a 55% estate and gift tax rate. If your current estate plan provides for formula bequests to your spouse, children/grandchildren or to charity, or if your

documents leave the “federal estate tax exempt amount” to certain persons or trusts, your current plan may need immediate revision as a result of the 2010 changes.

The future of the federal estate tax laws remains uncertain. Many planners believe it is likely that legislation, when it is passed, will result in a return to something akin to the 2009 rules, which provided for a \$3.5 million per person federal estate and GST tax exemption and a tax rate of 45%. Some opportunity may exist this year for high net worth clients to make GST gifts to grandchildren or to trusts without the imposition of GST tax. Also, if you have been considering transfers by gift or sale to children or grandchildren, this could be an opportune time to make those transfers.

Of course, any planning implemented at the present time should only be done after careful consideration of the potential impact of a retroactive repeal and a return to the higher gift tax rates and GST tax.

We look forward to working through these challenging times for estate planning with our clients in the coming months. If you would like additional information or if you have any concerns about the federal estate tax law changes and how they impact your personal estate plan, please feel free to contact Susan Shields, Steve Cole, or any of the lawyers in our **Family Wealth** transfer planning practice group.

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