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Repeal of the Estate Tax - What You Need to Know for 2010

The estate tax for 2010 has currently been eliminated, but is anticipated to be restored in 2011, with significant increases when compared to pre-2010 levels. However, the elimination of the estate tax in 2010 has come with a price, the most significant of which is the loss of the ability to "step-up" the basis of property inherited during this year.

You may need to amend your estate planning documents.

The elimination of this basis "step-up" will result in heirs paying tax on gain that existed at the time he or she inherits the property. A brief description of the unified credit and basis "step-up" rules will help illustrate how the current law differs from the estate tax laws of 2009 and those anticipated to be effective in 2011.

The unified credit amount is the amount that an individual can pass to his or her heirs without incurring an estate tax. Prior to 2001, the unified credit amount was equal to \$650,000. Accordingly, an individual passing away in 2000 could bequeath \$650,000 worth of property to his or her heirs without incurring an estate tax. The heirs' basis in such inherited property received a "step-up" to its then fair market value. If no further appreciation occurred with respect to such property, the heirs could sell such property without incurring a tax.

In 2001, Congress amended the estate tax to provide for incremental increases to the unified credit amount until it reached \$3,500,000 in 2009. This amendment also provided for an eventual phase out of the estate tax in 2010. Although many authors believed that Congress would act to prevent such repeal, health care reform took center stage. As a result, the estate tax has been eliminated for the tax year 2010 and so has the ability of an heir to "step-up" the basis on property inherited in 2010 in excess of predetermined statutory amounts, which are set forth below.

The following chart illustrates the estate tax law for tax years 2009, 2010 and 2011:

	2009	2010	2011
Unified Credit Amount (i.e. Amount not subject to Estate Tax)	\$3,500,000 for an individual (\$7,000,000 for couples)	Unlimited	\$1,000,000 for an individual (\$2,000,000 for couples)
Maximum Estate Tax Rates	45%	0	55% (with additional surcharges)



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"Step-Up" in Basis	All property included in estate received a basis "step-up" to fmv	\$1,300,000 of appreciation, plus \$3,000,000 of appreciation for surviving spouse	All property included in estate receives a basis "step-up" to fmv
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The elimination of the estate tax for the tax year 2010 may necessitate an amendment to your estate planning documents. Wills and trusts with formula clauses (which express inheritances in terms of fractions or percentages) should be carefully analyzed to ensure that an individual's dispositive intentions have not been altered. In addition, the new basis "step-up" provisions may necessitate a revision to many estate planning documents so that all of the benefits afforded by such new rules may be obtained. Please note that Congress may act in 2010 to restore the estate tax in 2010 at some level and may make any such restoration retroactive. It is unclear what Congress will do at this point in time.

If you would like to discuss how the 2010 amendments affect your estate plan, please feel free to contact us.

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