

# TAX, TRUSTS & ESTATES LAW MONITOR

UPDATES AND COMMENTARY ON BUSINESS AND INDIVIDUAL TAX AND ESTATE PLANNING

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### Estate Tax Repeal is Here

To the surprise of most estate planning practitioners, the arrival of January 1, 2010 brought with it a federal estate tax repeal. Congress was unable to compromise prior to year end on legislation that would have either maintained the status quo (\$3.5 million applicable exclusion amount and a 45% estate tax rate) or implemented new exclusion amounts and/or tax rates.

As a result, the following rules apply in 2010:

- There is no federal estate tax;
- There is no generation-skipping-transfer (“GST”) tax;
- While the gift tax exclusion amount remains fixed at \$1 million, the gift tax rate drops to 35%; and
- The basis step-up for inherited assets is eliminated. In its place, beneficiaries will inherit assets with the basis of the decedent (assuming the asset has appreciated). There are two exceptions: (i) there will be a \$1.3 million increase in basis to assets passing to beneficiaries on a decedent’s death and (ii) there will be an additional \$3 million increase in the basis of assets passing to the decedent’s surviving spouse.

The prevailing belief among estate planners is that Congress will act soon to re-institute the estate tax and make it retroactive to January 1, 2010. If Congress fails to act in 2010, the federal estate tax will be reinstated by law on January 1, 2011 with a \$1 million applicable exclusion amount and a \$1.2 million GST exclusion.

This is a brief summary of the major estate tax changes as a result of the repeal. We will be blogging frequently on this topic as developments unfold. Please also look for a letter we are mailing out to our clients and friends explaining some of our concerns regarding the repeal, a copy of which will be posted to the blog shortly.

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