

The Stealth Estate Tax of 2010

In 2001, Congress revised the federal estate tax schedule, gradually increasing the individual exemption from estate tax from year to year. Pursuant to this legislation, the exemption was raised to \$3.5 million per person (\$7 M per couple) in 2009, and there is a scheduled one-year exemption from all federal estate tax for 2010. But not many people realize that this one-year "gift" is really a Trojan tax horse!

At first glance, the one-year repeal would appear to be a good thing; however, it is not. The sunset of the estate tax is accompanied by a stealth tax increase delivered by means of a crazy tax concept called "carry-over basis."

Prior to 2010, when a person died (the "benefactor") the tax basis of his assets was their fair market value on date of death (and not their fair market value on the date of acquisition). Thus, when the heirs sold an inherited asset, their gain was the fair market asset value at time of sale minus the fair market asset value at the time of the benefactor's death (and not minus the value of the asset when the benefactor acquired it, which would yield a much greater gain).

But now the 2010 "carry over basis" provision ties the gain on sale of inherited assets to the price that the benefactor originally paid for the asset (plus the cost of improvement or reinvested dividends, if any).

There are steps you can take to plan around this disaster, and you can still take advantage of Section 1022(b) of the Internal Revenue Code, which provides for a carry over basis exemption of \$1.3 million for individuals or Section 1022(c), which provides for an exemption of \$3 million for any amount held by the surviving spouse. But without proper planning and legal assistance, your heirs could be exposed to increased stealth taxes in 2010, and perhaps beyond (depending on what Congress does this year).

In my next blog post, I will discuss what steps need to be taken in order to avoid the stealth tax increase and why it is important to review existing estate plans now. In the interim, if you want to schedule a meeting with one of our professionals or just learn more about our estate planning work, you can visit [our website](#).