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## Estate, Gift and Transfer Tax Update – No News Is Good News?

Authors: [Veronica K. Cerruti](#) | [Jill S. Dodd](#)

**With November and the federal midterm elections almost upon us, it appears unlikely that Congress will pass any transfer tax reform in 2010. There are still tax-planning opportunities available, however. Affluent individuals who wish to pass wealth to their beneficiaries should act now to take advantage of several factors that make gifting in 2010 an exceptionally attractive option.**

First, low asset values, especially for real estate and family businesses, and a gift tax rate of 35% (or even lower for certain “net gifts”)<sup>1</sup> for 2010, mean more assets may be transferred at a lower overall gift tax cost. Second, continued low interest rates make certain complex gifting strategies that use a discounted applicable federal rate for valuation purposes more appealing. Third, Congress has been threatening reform of current intrafamily transfer discounts. Anyone interested in establishing a family limited partnership, grantor-retained annuity trust or using similar discounting techniques, would be advised to implement such planning as soon as possible. Finally, since we expect to see a significant increase in both state and federal income taxes in 2011, and given that it is entirely possible that the 2001 transfer tax rates will reappear in 2011 (including an estate tax exemption of \$1 million and an estate tax rate of up to 55%), shifting assets and the income therefrom now to family members and/or individuals in lower tax brackets would be especially advantageous.

Those interested in gifting in 2010 should begin such planning immediately, so that (i) they will have sufficient time to fully implement the gifting plan, including obtaining appropriate valuations prior to December 31; and (ii) they can accumulate the necessary cash to pay the gift tax on such gifts (if any), which will be due on April 15, 2011.

Those wishing to gift in 2010 might wish to consider the following strategies:

Outright gifts in an amount equal to the donor’s remaining lifetime

### Newsletter Editors

[Jill S. Dodd](#)  
Partner  
[jdodd@manatt.com](mailto:jdodd@manatt.com)  
415.291.7421  
310.312.4160

### Other Trust & Estate Professionals

[Alvin T. Levitt](#)  
Partner  
415.291.7422  
[alevitt@manatt.com](mailto:alevitt@manatt.com)

[Sheldon H. Wolfe](#)  
Counsel  
415.291.7432  
[swolfe@manatt.com](mailto:swolfe@manatt.com)

[Arnold D. Kassoy](#)  
Counsel  
310.312.4314  
[akassoy@manatt.com](mailto:akassoy@manatt.com)

[Gary D. Rothstein](#)  
Counsel  
[grothstein@manatt.com](mailto:grothstein@manatt.com)  
415.291.7431  
310.312.4115

[Veronica K. Cerruti](#)  
Counsel  
415.291.7426  
[vcerruti@manatt.com](mailto:vcerruti@manatt.com)

[Vivian U. Redsar](#)  
Associate  
415.291.7433  
[vredsar@manatt.com](mailto:vredsar@manatt.com)

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gift tax exemption (currently \$1 million per individual)  
A gift or sale to an irrevocable family or dynasty trust structured to remove assets from the donor's taxable estate while incurring little or no transfer taxes  
"Net gifts," in which the donor requires the donee to pay the gift tax as a condition of the gift  
Discounted valuations, including the use of family limited partnerships, minority interest discounts and similar discounting techniques  
Discounted gifting strategies, including grantor-retained annuity trusts (GRATs) and charitable lead trusts  
Forgiveness now of existing intrafamily loans (e.g., an installment sale of a family business interest to a defective grantor trust).

Any attorney in our Family Wealth Transfer Tax group is available to discuss these and other gifting strategies with you.

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<sup>1</sup>The gift tax is calculated on a tax-exclusive basis (i.e., on the value of the property transferred), while the estate tax is calculated on a tax-inclusive basis (i.e., on the value of the property transferred plus any amount used to pay the estate tax). If a donor pays the gift tax (as is usually the case), and survives for three years, the donor effectively transfers \$1.35 of value (the gift plus the gift tax on the gift), for each dollar gifted (when compared to the estate tax), but is only subject to transfer tax on \$1.00. Alternatively, a \$1 million "net gift" in 2010 (where the donee pays the tax), results in a total gift tax of \$259,259, an effective tax rate of 25.93%, on the \$1 million transfer.

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**For additional information on this issue, contact:**



**Veronica K. Cerruti** Ms. Cerruti's practice focuses on estate and tax planning, with an emphasis on family wealth transfers for large estates, sophisticated estate, gift and generation-skipping transfer tax savings techniques, and complex probate and trust administrations.



**Jill S. Dodd** Ms. Dodd's practice focuses on the representation of charitable organizations, and on trusts, estates and wealth transfer planning for very high net worth individuals and families, with a particular emphasis on planned charitable giving. Ms. Dodd counsels very high net worth individuals in all aspects of gift, estate and philanthropic planning. She has extensive experience designing and implementing a variety of sophisticated structures, including family limited partnerships, grantor retained annuity trusts, insurance trusts, defective grantor trusts, qualified personal residence

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trusts, charitable lead trusts and charitable remainder trusts, all designed to transfer assets to heirs and to charities in a tax-efficient manner that respects the values of the families.

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