



# Estate Planning Law IN Brief

## The Current Status of Federal Estate Tax Laws

*Congress' failure to act has created much uncertainty.*

### 2010 – No Federal Estate Tax

The law currently provides that with respect to persons dying in 2010, there is no Federal estate tax or Federal generation-skipping tax. The Federal gift tax remains applicable.

Earlier this year, key lawmakers indicated that Congress would reenact the estate tax and generation-skipping tax during 2010 (on terms similar to the 2009 laws) and apply such reenactment retroactively to January 1, 2010. While still a possibility, Congress has yet to reach an agreement on this matter. Thus, it is unclear whether retroactivity will be a part of such legislation and, if it is, whether it would withstand a Constitutional challenge.

What happens if someone dies in 2010, and his/her estate planning documents use estate tax terms such as "unified credit" or "marital deduction"? Because the estate tax law is repealed for 2010, it may be difficult to determine how to allocate property under estate planning documents that contain such terms. To address this issue, a new Indiana law was enacted on April 13, 2010, that provides that such documents will be interpreted in Indiana as if the 2009 federal estate tax law applies. No federal estate tax will be payable, but allocations will be made as if 2009 law applied.

### Carry-Over Basis

Another change that became effective on January 1, 2010 relates to the income-tax basis of inherited assets. Income-tax basis is the amount from which gain or loss on assets sold is measured. Before 2010, the income tax basis of an asset was adjusted or "stepped up" to the asset's value at the time its owner dies.

Under the current law, this automatic adjustment in basis will not be applicable. Rather, the deceased individual's income-tax basis with respect to estate assets will "carry over" to the persons who inherit the assets. It may be appropriate for estate planning documents to be revised in order to address carry-over basis issues.

### Estate Tax Law for 2011

If Congress fails to enact any estate-tax legislation in 2010, then, effective January 1, 2011, the federal estate tax and the generation-skipping tax are reinstated at pre-2001 levels (\$1 million

unified credit and 55% top rate). The 2009 levels were \$3.5 million for the unified credit and the top rate was 45%.

A return to pre-2001 federal estate tax law would mean that more individuals and families will be subject to the federal estate tax. According to the Tax Policy Center, if the unified credit reverts to \$1 million, 44,000 estates will pay estate tax of \$34 billion (in 2009, when the exemption was \$3.5 million, 5,500 estates paid estate tax of \$14 billion).

In any event, it is important to have estate planning documents reviewed and for individuals to consider planning to reduce exposure to the federal estate tax.

Please feel free to contact Ron Salatich, Kent Broach, or Amy VonDielingen if you have any questions. We appreciate the opportunity to be of service.

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***\* Because different fact scenarios may create different legal obligations, this Estate Planning IN Brief article does not constitute legal advice. Please consult an attorney for advice about your specific matter***

