

Federal Estate Tax Repeal?

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Effective January 1, 2010, there is no federal estate tax for decedents dying before January 1, 2011. It is likely, but not 100% guaranteed, that Congress will act to reinstate the federal estate tax during 2010. Meanwhile, the following points are noteworthy:

- If Congress does not act, the federal estate tax will be reinstated as of January 1, 2011, with a maximum rate of 55% and with a \$1,000,000 estate tax exemption.
- While there is no federal estate tax, decedents are subject to a complicated carryover basis formula, with specific dollar amounts of basis step up to be allocated among a decedent's assets.
- If the federal estate tax is reinstated this year, it is uncertain whether this can be retroactive to January 1, 2010 because of constitutional issues.
- There is still a gift tax during 2010, with the tax rate being 35%, a reduction from last year's 45% rate. This may present an opportunity for some to make gifts to the next generations at a lower gift tax rate. However, if there is reinstatement in 2010, this may bring the rate back to 45%.
- It is possible that some formulas intended to optimally fund so-called "credit shelter" trusts may overfund such trusts to the detriment of the spousal trust for decedents dying during 2010 if the federal estate tax is not reinstated.

If you have a particular concern about your estate planning documents, you should consult your McNees estate planning attorney. As noted above, we believe that Congress will act during 2010 to clarify the current situation, but it is entirely possible that no action will be taken given the current congressional gridlock. Even aside from the current federal estate tax uncertainty, we recommend that you have your estate plan updated every five years or after significant changes occur in your personal situation.

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