



ESTATE TAX REPEAL – PLANNING FOR 2010 AND BEYOND

As of January 1, **2010**, federal estate and generation-skipping transfer (GST) taxes are temporarily repealed. However, lifetime gifts still remain subject to a tax. If no legislation is passed to address the estate tax, EGTRRA calls for the reinstatement of the estate and GST tax in **2011** at 2001 estate tax rate levels. The following chart summarizes the current state of the law:

Year	Estate Tax Exemption	Highest Estate/ GST Tax Rate	GST Tax Exemption	Gift Tax Exemption	Highest Gift Tax Rate
2010	\$0 (Tax Repealed)	0%	\$0- (Tax Repealed)	\$1,000,000	35%
2011 (and beyond)	\$1,000,000	55%	\$1,120,000	\$1,000,000	55%

Also, as of January 1, **2010** assets passing at death will no longer receive a step-up in basis. Rather it was replaced with a modified carry over basis rules. The new basis rules allow for a \$1.3 million increase in basis and an additional \$3 million increase for assets passing to surviving spouse in basis.

As a result of Congressional inaction, we are now faced with an unpredictable planning environment.

If Congress does nothing, there is an adjusted carryover basis, and no estate or generation skipping tax for people who die in **2010**. Not planning for these changes, if death occurs, can be disastrous. For example:

- Formula clauses (e.g. terms that allocated your estate exemption to a “by-pass trust”) in your planning documents could inadvertently disinherit some heirs and/or your surviving spouse and/or create conflicts among family members on how your documents should be properly interpreted.
- Conflicts could arise among your heirs and fiduciaries on asset basis issues.
- Inadvertent generation skipping taxes could be incurred after **2010**.
- Passing assets directly to your surviving spouse may result in higher estate taxes after **2010**.
- Inadvertent state taxes could be incurred from out of date terms in your documents.

If Congress does not enact new legislation in **2010**, then on January 1, **2011**, a number of automatic changes occur, including:

- Estate tax exemption drops to \$1.0 million.
- Estate tax rate increases to 55% above \$3.0 million and 60% above \$10 million.
- States which remain “coupled” to the federal estate tax will have their state death taxes restored. Thus, if you own property in one of these coupled states, you could have new exposure to a state estate tax for assets located in that state.
- Fair market value step up in basis returns.

Estate planning for **2010** and beyond is now very challenging. The prospect of new legislation, which might be retroactive to the beginning of the year, adds to this complexity. While it is hoped that there will be transfer tax reform in the near future that will provide more certainty, the current state of the law may present some unique planning opportunities. Effective planning should take all of these possibilities into account, and be as flexible as possible to adapt to future changes in the law. Everyone’s estate plan and documents should be reviewed in light of these uncertainties.