



client alert

Personal Planning Strategies

January 8, 2010

A report for clients and friends of the firm.

Temporary Estate Tax Repeal: Congressional Inaction May Require Your Action

The federal estate and generation-skipping transfer taxes were repealed as of January 1, 2010. Consequently, no federal estate tax will apply to estates of individuals dying in 2010 and no generation-skipping transfer tax will apply to transfers made in 2010.

Although the federal gift tax remains in effect, the highest applicable tax rate was decreased as of January 1, 2010 from 45% to 35%. As the law now stands, the federal estate and generation-skipping transfer taxes will return on January 1, 2011, with the rates (up to 55%, increased from the 45% rate in 2009) and exemptions (\$1,000,000, down from the \$3,500,000 exemptions in 2009) that were in effect as of December 31, 2001.

There have been reports that Congress might act to keep the federal estate and generation-skipping transfer taxes in place this year, but no one knows whether Congress will act at all or, if it does, how the current state of repeal may be resolved. On one end of the spectrum, these taxes could be reinstated retroactively. On the other end, there may be no resolution at all, leaving 2010 a "tax-free" year for some.

If your will or trust refers to the "marital deduction," the "federal estate tax," the "unified credit," the "estate tax exclusion" or "exemption" amount, the "credit equivalent" amount, the "credit shelter" amount or the "generation-skipping transfer tax exemption," it should be reviewed promptly to ensure that your assets are distributed as you intended.

Another change taking effect in 2010 relates to the "income tax basis" of inherited assets — that is, the value from which gain or loss is measured on inherited assets that are sold or exchanged.

Under the law in effect before January 1, 2010, the income tax basis of an inherited asset was its value at the death of its former owner. However, this year, a deceased owner's income tax basis will "carry over" to the persons who inherit his or her assets, with the following adjustments: there will be a \$1.3 million "step-up" in basis for heirs generally and an additional \$3 million "step-up" in basis for property left to a surviving spouse. As the law now stands, on January 1, 2011, the income tax basis rules in effect in 2009 will return (i.e., the income tax basis of an inherited asset will be its value at the death of its former owner).

In view of these changes, we suggest that you call to schedule a meeting with us to review your estate planning documents and avoid the risk of unintended consequences.

We look forward to hearing from you.

The Personal Planning Department at Proskauer is one of the largest private wealth management teams in the country and works with high net-worth individuals and families to design customized estate and wealth transfer plans, and with individuals and institutions to assist in the administration of trusts and estates.

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This publication is a service to our clients and friends. It is designed only to give general information on the developments actually covered. It is not intended to be a comprehensive summary of recent developments in the law, treat exhaustively the subjects covered, provide legal advice, or render a legal opinion.

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