

Temporary Federal Estate Tax Repeal?

Current Law (Maybe)

On January 1, 2010, the **federal estate tax** was repealed for decedents dying during 2010, under the “sunset” provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001. In 2011, the federal estate tax will return with a \$1,000,000 exemption, down from \$3,500,000. Its rates will range from 41% to 55%, instead of the 2009 45% flat rate.

The **federal gift tax** is still in effect, with a \$1,000,000 exemption and a flat rate of 35%, down from 45%.

The **Washington estate tax** also is still in effect, with a \$2,000,000 exemption. Its rates range from 10% to 19%. It is no longer a deduction from the federal tax. In 2011, the old “state death tax credit” (in essence, federal revenue sharing) returns, covering most of the Washington tax’s cost.

The **federal generation-skipping transfer tax** also was repealed, for transfers during 2010. In 2011 it returns with an exemption amount indexed for inflation, estimated to be \$1,340,000, down from \$3,500,000. Its 2011 rate will be 55%, up from 45%.

The beneficial “**step up**” in **income tax basis rules** also were repealed, for decedents dying during 2010, meaning new capital gains taxes for heirs. There is a minimum basis step up allotment of \$1,300,000, however, with another \$3,000,000 for property left to a surviving spouse. Otherwise, these “carryover basis” rules are similar to basis rules for lifetime gifts. In 2011, the new carryover basis rules will be automatically repealed, except for decedents who died during 2010.

Retroactive Reenactment of 2009 Law?

Democratic leaders in the Congress say that they will reenact these repealed 2009 rules (most important, the federal estate tax) early in 2010, retroactive to January 1, and make them permanent. Republican leaders say that they will block reenactment, unless significant changes are made to the 2009 rules. Commentators say that the validity of retroactive reenactment is questionable, likely to be decided by the U.S. Supreme Court after several years of litigation.

What Will the Congress Do?

We don’t know. As of January 14, reliable sources were saying that the Senate had made federal estate tax and generation-skipping transfer tax reform a “priority”, meaning that it would be taken up after higher priority items. Late spring? Sometime in 2010? No one really knows.

Interim Planning Points

- **Review your estate planning documents and overall strategy.** Many documents revised since 2001 will not need revision, at least until permanent federal estate tax and generation-skipping transfer tax reform occurs. Others will need significant revision, however. Even documents revised during 2010 might need further revision after Congress acts.
- **Watch out for formula clauses** (for example, “I give my wife the smallest fraction of the remaining property of my estate necessary to reduce the federal estate tax on my estate to zero” or “I give to my Trustee the [federal estate tax] Exemption Amount”), even those written since 2001. These are a particular problem, given the possibility of “temporary” estate tax and generation-skipping transfer tax repeal. For some documents the problem might be solvable with a brief amendment.
- **Think twice before making any significant charitable or noncharitable gift during 2010.**
- There might be planning opportunities resulting from temporary repeal of the federal estate and generation-skipping transfer taxes. One might involve generation-skipping trusts. We are analyzing this possibility—let us know if you are interested.
- **Bottom line:** Careful thought and flexibility will continue to be the keys to successful planning during 2010. If you have questions, contact us.

What If You Die in 2010?

If you are married and your spouse survives, we will carefully review your will or revocable living trust, regarding whether a court order to construe the document is needed.

If in 2009 your estate would have been subject to the federal estate tax and the Congress tries to retroactively reenact it, we will consider whether to pay the tax or fight it. Generation-skipping transfers in 2010 could raise similar issues.

The **Riddell Williams Trusts, Estates and Personal Planning Group** offers a unique blend of planning experience, technical expertise and responsiveness to our clients' needs. Estate planning requires skills in many areas—income and estate tax, corporations, partnerships and limited liability companies, marital property, real estate, financial management and insurance to name a few. Equally important, however, is sensitivity to the emotional needs of the participants.

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