

TRUSTS AND ESTATES ALERT

Estate Planning in 2010: A Strange New World ... of Uncertainty

No one thought it would happen - but it did! Congress, through its inaction, has allowed the federal estate tax and generation-skipping transfer tax to be repealed for 2010.

As of January 1, 2010, here are the “new” estate planning rules: if you die in 2010, there is no federal estate tax, regardless of the size of your estate. If you make an outright generation-skipping gift (e.g., to a grandchild) there is no generation-skipping transfer tax in 2010, but federal gift tax law still applies to taxable gifts in excess of your \$1 million lifetime exemption, albeit at a lower tax rate (35% rather than 45%).

Many thought that Congress would act before 2010 to defer the repeal for some period of time and continue the federal estate tax exemption at or above its 2009 level of \$3.5 million. The House passed such a bill toward the end of 2009, and there is much speculation whether Congress will act this year to retroactively restore the 2009 estate tax rules to the beginning of this year; and some question whether Congress can do so constitutionally. However, predicting Congressional action these days is tricky business.

The repeal of the federal estate tax does not mean there are no tax consequences for the heirs of individuals who die with estates of more than \$1,300,000 in 2010. That's because the rules for computing capital gains on inherited assets also have changed (the so-called “carryover basis” rules).

To make planning even more uncertain, the 2010 federal estate tax repeal and carryover basis rules will not apply in 2011 when the federal estate tax is scheduled to be automatically restored, but with a much lower estate tax exemption of \$1 million per individual and a new maximum estate tax rate of 55% (the exemption had been \$3.5 million for those dying in 2009, with a maximum rate of 45%).

If Congressional inaction continues, the new 2010 rules may frustrate your intended estate plan and have adverse income tax consequences. This uncertainty arises because the provisions of your existing estate planning

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documents may be phrased in terms of federal estate tax concepts, including formulas dependent on the estate tax exemption and the marital deduction, which are not in effect for this year. Unless Congress acts, there may be some question as to what your documents mean and how your assets should be disposed.

It is impossible to provide general advice about what you should do in light of the confusion that Congress has wrought, because each individual's circumstances are unique. We are available to review your plans if you do not want to wait and see if Congress acts. Your concern should be heightened if your estate plan: (1) establishes more than one trust and your spouse is not a beneficiary of each trust; (2) makes gifts to grandchildren based on the generation-skipping tax exemption; (3) includes provisions for your current spouse and children from another marriage; (4) makes significant charitable gifts; or, (5) involves a spouse who is not a U.S. citizen.

Editor's Note: Going forward we will be migrating our alerts and other informative communication to an **email format**. If you would like to receive future e-mail updates about estate tax repeal and other related topics please send your contact information and **email address** to contact@pullcom.com.

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