

· UPDATE ·

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BE AWARE – 2010 ESTATE TAX CHANGES!

The uncertain status of the estate tax laws in 2010 makes estate tax planning even more important.

In 2008, the federal estate tax law that applied gave an exemption of \$2 million federal estate tax free to beneficiaries upon a decedent's death. In 2009, this amount was \$3.5 million. Due to the failure of Congress to act on proposed legislation at the end of 2009, the federal estate tax is temporarily repealed as of January 1, 2010, allowing wealthy individuals who die in 2010 to leave an unlimited amount of assets with no federal estate tax penalty.

Although Congressional Democrats have stated their intention to reinstate the estate tax in the near future, it is unclear whether and when that may occur; and if the estate tax is reinstated, what the new legislation might provide, and if it will be retroactive to January 1, 2010. A current proposal from the Obama Administration would exempt \$3.5 million of assets for single (tax payer) estates and \$7 million for couples. The value of estates above these amounts would be taxed at 45%.

As stated above, if Congress does not pass any estate tax legislation this year, there will be no federal estate tax for 2010. The estate tax will automatically return (under a law passed in 2001) in 2011 with an exemption of \$1 million and the value of an estate above that amount would be taxed at 55%. Clearly, these changes in the estate tax laws will have substantial effects on the estate plans of a large number of families.

In addition to the changes to the federal estate tax, the generation-skipping tax was also repealed effective January 1, 2010. The generation-skipping tax is assessed on transfers to grandchildren and other beneficiaries. In 2011, this generation-skipping tax will become effective again with a \$1.1 million exemption and the remainder of the estate is taxed at up to 55%.

Moreover, the repeal of the federal estate taxes also increased the capital gains income taxes for many beneficiaries of estates because property owned at death will no longer receive a full step up in tax-cost basis. This means that, with few exceptions, the current tax-cost basis of an inherited property would be the value that the assets were purchased for rather than the date-of-death value, thereby increasing the capital gains tax when this property is sold. The first \$1.3 million dollars of a property would retain the step-up basis, with any value above that amount retaining the carry-over basis or the date of death market value, if less. In 2011, the step-up basis resumes.

Also, there is still a gift tax, with a \$1 million lifetime exemption for all gifts and a taxable rate of up to 35% (less than the 45% top rate allowable in 2009).

The bottom line of all these new tax changes is that they will affect many families. The estates of wealthy individuals who die in 2010 may escape federal estate taxes - though there is no escaping New Jersey estate taxes, which are still assessed on NJ estates that exceed \$675,000 in value. However, many more beneficiaries of estates this year will owe capital gains taxes upon the sale of inherited assets. And, for those individuals and families who have estate planning documents, those documents may no longer work well with these new tax laws. The tax changes create an imperative that individuals and families review their documents

and goals with an estate planning attorney to accomplish the important objectives of preserving family wealth and minimizing taxes.

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