

## Uncertainty in Estate and Gift Taxes for 2010 and Beyond

Happy New Year! Now that 2010 is officially on its way, we wanted to take a few minutes to let you know what Congress has been doing (or, stated more accurately, not been doing) as it relates to the estate, gift and generation skipping transfer tax laws and the income tax laws that apply to assets in a decedent's estate or trust. As you may know, Congress has not made any recent changes to these tax laws, so at this time, the following laws are in effect (the list below is not all-inclusive or exhaustive and does not contain any of the exceptions to the general rules):

- The federal estate and generation skipping transfer tax is repealed (*i.e.*, there is no federal estate or generation skipping transfer tax)
- The federal gift tax is still in effect, but at a 35% top rate (the \$13,000 annual exemption and the \$1,000,000 lifetime exemption still remain)
- The income tax basis of property acquired from a decedent (dying after December 31, 2009) is the lesser of the decedent's adjusted basis or the fair market value of the property on the decedent's death (no step-up in basis as in prior law)

Without any action by Congress, the following laws will be in effect in 2011:

- The federal estate and generation skipping transfer tax will return with a \$1 million exemption (with the GST exemption at \$1 million, indexed for inflation) and a 55% top rate
- The gift tax will return to the pre-2001 system of a \$1 million exemption and a 55% top rate
- The income tax basis rules will change again, and revert to the carry-over basis rules

Unfortunately, none of us has the proverbial "crystal ball," so we don't know if Congress will restore the tax laws to a position similar to 2009, or some other position, and do so in a retroactive manner, or in a prospective manner. Of course, Congress can always do something other than the above.

What we do know is that we will be watching closely as the story unfolds and are available to address your estate and tax planning needs, so feel free to contact us any time. May your new year be healthy and prosperous (and may Congress shed some light on us all!).

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