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Status of the 2010 repeal of the federal estate tax

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Congress continues to take no action regarding the 2010 repeal of the federal estate tax. Thus, it is important to be familiar with the basic estate tax rules that will apply this year and next.

The following rules apply for the 2010 calendar year:

- *The estate tax and the generation-skipping transfer (GST) tax are repealed;
- *The gift tax remains in effect, with a \$1 million lifetime exemption and a 35% top tax rate;
- *Modified carryover basis rules apply - a beneficiary who inherits appreciated property will receive a basis equal to the decedent's basis in the asset rather than a basis stepped up to fair market value. There is a \$1.3 million general exemption and a \$3 million spousal exemption to this rule.

Some practitioners believed that under the 2010 rules, a transfer in trust would not be treated as a gift for gift tax purposes if the trust was a wholly-owned grantor trust owned by the grantor or the grantor's spouse, but the IRS recently addressed this issue. In Notice 2010-19, dated 02/02/2010, the IRS clarified that the gift tax continues to apply to such transfers.

The estate tax is not repealed (at the state level) in states that have a stand-alone death tax. In the New England area, for example, Massachusetts continues to have an estate tax for all estates over \$1 million. Connecticut, Rhode Island, and Vermont also have stand-alone estate taxes.

On January 1, 2011, the estate tax will return, with the same rules and terms that applied prior to the Economic Growth and Tax Relief Reconciliation Act of 2001. Thus, unless Congress changes the law, in 2011 the following will apply:

- *The estate tax is restored, with a \$1 million exclusion amount and a 55% top rate. Estates over \$10 million have a 5% surtax;
- *The GST tax is restored, with a \$1 million GST exemption and a 55% rate;
- *The top gift tax rate returns to 55%; and
- *The carryover basis rules are repealed and the step-up in basis rules return.

Contact your tax or estate planning advisor if you have questions about how the 2010 or 2011 estate tax rules will affect you and your clients or customers.

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