

Congress Repealed the Estate Tax or Did They?

INTRODUCTION

On May 26th, both houses of Congress passed the Economic Growth and Tax Relief Reconciliation Act of 2001, which we refer to as “the Act,” and on June 7th, President Bush signed the act into law. This Act Repeals the Estate Tax in 2010. Our Consumer Alert explores the nuances of the new Act, and reveals what the changes in law really mean.

ESTATE TAX CHANGES IN A NUTSHELL

To grasp the essence of the new law, consider this. The new legislation changed 441 tax laws. The sum result of these changes totaled the biggest reductions in estate tax in 20 years, and the first cut in individual income tax since the 1986 Act became law. We can put this into perspective when we consider that there have been more than 7,000 changes since 1986. Undoubtedly, these latest revisions are not to be the last.

As illustrated in the chart below, the Act lowers tax rates on several types of estate tax. Among those lowered are: 1) the marginal estate tax, 2) the generation-skipping transfer (GST) tax, and 3) the gift tax. Also, beginning in 2002 and effective through 2009, there is an increase in the amount of assets that can be transferred at death without estate or GST taxes. And finally, on December 31, 2009, estate and generation-skipping transfer taxes will be repealed altogether. *But let's take a closer look.*

THE SERPENTINE WEAVE OF THE NEW ACT

Beginning in 2002, the amount we could give tax free increased steadily – from \$675,000 to \$3.5 million in 2009. In the year 2010, the true repeal of the estate tax enters the tax world for a mere 12 months. This means that during the year 2010 you can give an unlimited amount of assets to your heirs IF in fact you die during the year 2010. Ironically, should you die one year later, in 2011, the estate tax repeal laws “sunset” and we revert back to estate tax exemption plan that caps the amount that can be passed on tax free at \$1 million.

After a closer investigation of the new Act, we see that its 441 changes make for a maze of law that requires careful navigation by a professional.

Make sure you take the necessary steps to ensure that you make the most of these new laws when you can, and plan for the aftermath once the repeal is rescinded.

A REVAMP OF GIFT TAXATION

Year	Highest Marginal Estate & GST Tax Rates	Highest Marginal Gift Tax Rate	Estate Tax Applicable Exclusion Amount	Generation- Skipping Tax Exemption Amount	Gift Tax Exemption Amount
2001	55%	55%	\$675,000	\$1,060,000	\$675,000
2002	50%	50%	\$1,000,000	Indexed for Inflation	\$1,000,000
2003	49%	49%	\$1,000,000	Indexed for Inflation	\$1,000,000
2004	48%	48%	\$1,500,000	\$1,500,000	\$1,000,000
2005	47%	47%	\$1,500,000	\$1,500,000	\$1,000,000
2006	46%	46%	\$2,000,000	\$2,000,000	\$1,000,000
2007	45%	45%	\$2,000,000	\$2,000,000	\$1,000,000
2008	45%	45%	\$2,000,000	\$2,000,000	\$1,000,000
2009	45%	45%	\$3,500,000	\$3,500,000	\$1,000,000
2010	Repealed *	35%	Repealed *	Repealed *	Indexed for Inflation

Gift taxation was included in the new tax law overhaul. Because Congress realized the income tax planning gains that many Americans would realize from the repeal of the gift tax, it froze the level of tax-free lifetime gifts at \$1 million beginning in 2002. Starting in 2010, the \$1 million gift tax exemption amount will be indexed for inflation and taxable gifts will be taxed at a flat rate of 35%. **If you are currently *gifting* portions of your estate to your heirs, you'll want to talk with your attorney regarding how this new change impacts you.**

TAX SAVINGS ARE THE RESULT

On a positive note, the Act provides for several tax savings. The new tax law raises the estate tax exemption amount over the next few years and eliminates estate and generation-skipping-transfer (GST) taxes on January 1, 2010. Unfortunately, this change also eliminates the income tax "basis step-up" that many assets receive at death.

But there are provisions in the new Act that are clearly confusing. All the more reason why a consultation with your attorney will help clear the smoke and allow you to see what impact the new tax laws will have on you and your estate. Here is an example that demonstrates the complexity of these new changes. Although the estate tax is repealed altogether in 2010, it is only repealed for one year. Also in 2010, assets are inherited at their purchase price instead of market value (carryover basis). This means that heirs inherit old capital-gains tax liabilities. The bookkeeping burden alone will prove to be a huge challenge, and anyone who is not tax-savvy should definitely consult with a professional who can help them lead the way.

THE NEW TAX LAWS AND YOU – STEPS TO TAKE

Our main message to clients over the years is that the laws have always changed and they are certain to continue to change. For this reason we offer client seminars and estate plan reviews free of charge, to keep you up to date. New laws usually represent new opportunities, as well as loopholes that can either help or hurt your estate.

These latest changes reinforce that it is very important to periodically review your plan. A review meeting, which takes approximately 45 minutes, is recommended every three years to give you time

to ask all of your questions concerning the latest updates in the tax law and get feedback on how you should change your course, if in fact you should. It is especially important to promptly review your financial plan, including your insurance policies, to be sure that you get maximum benefits and protection.

TAX LAW AND ESTATE PLANNING

The steps you take to find out about the latest changes in the estate tax laws are only part of the entire picture when it comes to ensuring you have your estate plan in proper order. Here are 17 of the most common reasons to maintain your estate plan.

17 COMMON REASONS TO CONSIDER ESTATE PLANNING

1. Designate who will manage your affairs if you become disabled and when you pass away.
2. Plan for Medicaid and its impact on your estate if you must go into a nursing home.
3. Avoid probate, during your lifetime and when you pass away.
4. Protect children from a prior marriage if you pass away first.
5. Protect assets inherited by your heirs from lawsuits, divorces and other claims.
6. Impose discipline upon children (and/or grandchildren) who may not be capable or experienced in managing money.
7. Provide for special needs children and grandchildren.
8. Insure that a specific portion of your estate actually gets to grandchildren, charities, etc.
9. Protect a portion of your estate if you pass away first and your surviving spouse remarries.
10. Address different needs of different children.
11. Prevent or discourage challenges to your estate plan.
12. Reward/encourage heirs who make smart life decisions, and prevent the depletion of your estate from those who do not make smart choices.
13. Assure an education for children/grandchildren, despite what they (or their parents) dream of doing with the inheritance.
14. "Brady-Bunch" family estate planning: assure the stepparent doesn't spend your children's inheritance and/or provide for a spouse without sacrificing the intended legacy for children of a prior marriage.
15. Minimize or avoid death taxes.
16. Minimize or avoid capital gains taxes.
17. Provide peace of mind on knowing that your affairs are in order.

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