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Estate Tax Repeal for 2010

As you are probably aware, the federal estate and generation skipping taxes have been repealed as of January 1, 2010. Unless Congress acts, or makes any changes that are retroactive to January 1, 2010, these taxes will remain repealed until 2011. On January 1, 2011, they are reinstated, but with the exemptions dropping back to \$1 million and the top tax rate rising to 55 percent. For decedents dying in 2009, the exemption was \$3.5 million and the top tax rate was only 45 percent.

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The gift tax remains in place, but with a top rate now at 35 percent (vs. 45 percent previously). You should keep in mind that taxable gifts over \$1 million remain subject to the gift tax in 2010.

One other major change is in the income tax arena relating to basis of property inherited from a decedent in 2010. Instead of the step-up in basis (to the fair market value on the date of death or the alternate valuation six months later), there is a carry-over of the decedent's basis to the beneficiaries which would subject appreciated property upon sale to capital gain taxation. The law provides that each estate has \$1.3 million of property entitled to be stepped up, and if a surviving spouse is involved, there is an additional \$3 million of step-up in basis available.

We firmly believed that Congress would have acted prior to the end of 2009. The entire estate planning community nationwide expected Congress to address the estate tax repeal, either by enacting new legislation or by simply extending the law as it was in effect at the end of 2009. The fact that Congress did not act leaves everyone wondering how to address whether this repeal is only temporary and what its effect will be on an estate plan presently in place. We do believe that Congress will reinstate these taxes, but there is no indication that it will do so any time soon.

Many of our clients have current estate plans which were drafted based upon the estate tax regime that has been in place for many years and which may return in 2011. In most instances, we believe that the existing estate plan will not create unexpected property dispositions if death occurs while repeal is in effect. However, there may be language in the will or trust document in certain estate plans which could cause estate assets to be held or distributed in a manner which was not intended or contemplated.

Feel free to contact one of the listed attorneys if you have questions about your estate plan.