

# CWS CLIENT ALERT!

## Estate Tax Bulletin

As the result of tax law changes adopted in 2001, the federal estate tax and generation-skipping transfer (GST) taxes were repealed for 2010. Most estate planning professionals anticipated that by the end of 2009 Congress would have enacted federal estate tax legislation to address the impending repeal. This did not occur. This bulletin is intended to provide some insight as to the status of the current law and answer questions that many may have on how this may affect their own estate plans.

### Current Law

There is currently no federal estate tax or GST tax in effect for decedent's estates with a date of death occurring in 2010 (state estate tax statutes are still applicable). However, unlike prior years, beneficiaries who receive assets from a decedent who dies in 2010 will have an income tax basis in those assets which is the lower of the decedent's basis (generally what the decedent paid for them) or the fair market value of the assets at the decedent's death. This is often described as "carryover" basis. In other words, under current law there is no "step-up" in basis for the assets of a person dying in 2010. However, estates will be able to take advantage of an aggregate basis increase for assets up to \$1.3 million, and an additional \$3 million of basis may be applied to property that passes to a surviving spouse.

For those who have made or will be making lifetime gifts in 2010, the gift tax will still apply. The exemption amount for each donor remains \$1 million, and the gift tax annual exclusion is \$13,000 per donee. However, taxable gifts resulting in payment of gift tax will be subject to a 35% rate in 2010, rather than the 45% rate applicable in 2009.

Absent further action by Congress this year, federal estate and GST taxes will be reinstated on January 1, 2011. Maximum gift, estate and GST tax rates will be 55%, and the exemption amounts will return to \$1 million. The carryover basis system will also end.

Members of Congress are likely to act in 2010 to reinstate the estate and GST tax. However, such legislation, if enacted, may or may not be retroactive to January 1, 2010. Furthermore, a retroactive reinstatement is likely to be challenged upon constitutional grounds by estates of individuals who died prior to the date of enactment.

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## What Should You Do?

Should existing estate plans be changed or will lifetime transfers be beneficial while waiting on Congress to act? There may be advantages to making current gifts or plan revisions during this gap period, unless retroactive reinstatement is upheld, in which event unnecessary expense and potential taxes may have been incurred. As such, we recommend the following:

Review your current estate plan. We suggest that in any event you do this every few years in order to address changes in financial or family circumstances, whether or not there has been a change in law affecting your plan. It is always wise for persons with diminished or declining health to review their estate planning documents. Many estate plans using tax based formulas may operate differently than intended in the current year, yielding unexpected and undesirable tax results, or inequitable distribution among intended beneficiaries. Revisions to plan documents may be required to correct these issues.

In light of the uncertainty involved in predicting what the law will be later this year, individuals in good health may want to take a wait-and-see approach until additional information regarding possible legislation, timing, and retroactivity is forthcoming. Fiduciaries administering estates with dates of death in 2010 will want to pay particular attention to such developments, and should consult with their advisors to help them navigate these issues. We will continue to monitor this matter, and will update this article on our [website](#) from time to time as new information becomes available.

Please contact Todd A. Weber, Esq., or a member of the Estate Planning Group at Chester Willcox & Saxbe, LLP if you have any questions or need assistance in determining the best course of action for your individual circumstances.

