

The Estate, Gift and Generation Skipping Tax - Where Are We Now?

When some of us first started out, the estate tax exemption was \$60,000 and the top bracket, for estates in excess of \$10,000,000, was 77%. Not a lot had changed since an estate tax was first adopted in 1916 with a \$50,000 exemption. However, starting in 1977 a movement began to increase the exemption first to \$120,000 building up to \$600,000 in 1987 where it remained for ten years. At this time, the top bracket was 55% on estates in excess of \$3,000,000. In 2001, the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) made sweeping changes to the estate tax to take effect over a ten year period starting with a \$1,000,000 exemption in 2002 (with a top rate of 55% on estates in excess of \$3,000,000) gradually increasing to as high as \$3,500,000 in 2009 with an unlimited exemption in 2010. Under this Act, on January 1, 2011, the estate tax would revert back to the \$1,000,000 exemption.

Providing advice on estate planning over the past ten years has been challenging, to say the least. Conventional wisdom said Congress would never allow the estate tax to drop to zero in 2010. Both houses seemed ready to fix the estate tax exemption at \$3,500,000 and candidate Obama campaigned on supporting that position. However, two wars and health care diverted the attention of Congress and nothing was done – until ...

On December 17, 2010, President Obama signed into law the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. Under the Act, for decedents dying after December 31, 2010, the estate tax exemption amount is \$5,000,000, with a flat rate of 35% on estates in excess of \$5,000,000. There will be a cost-of-living adjustment for decedents dying after December 31, 2011, but the estate tax exemption will revert back to \$1,000,000 for decedents dying after December 31, 2012. In other words, the Act

gives us a two-year reprieve from the \$1,000,000 limitation. The generation-skipping tax exemption moves with the estate tax exemption to \$5,000,000, as does the gift tax exemption which is now reunified with the estate tax exemption. There are special rules for decedents dying in 2010 giving the estate the option to keep the unlimited exemption but forego step-up in basis or elect the \$5,000,000 estate tax exemption but retain the step-up in basis.

The last ten years has been a roller coaster ride when it comes to estate planning. We now have some clarity, at least for the next two years. If it has been awhile since you have reviewed your estate planning documents, now might be a good time to do so. Family circumstances, asset values, the titling of assets have likely changed. If you would like to get together to update your plan, please give us a call.

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