



Client Alert



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Estate Tax Alert from AGG's Private Wealth Group

"[M]assive, massive confusion."

Senate Finance Committee Chairman Max Baucus, on the estate tax in 2010

As you may have read in the news, the estate, gift, and generation-skipping transfer (GST) taxes are all facing significant uncertainty in 2010. In 2009, the estate and GST tax exemptions were \$3.5 million per person with a 45% rate. As of January 1, 2010, both the estate and GST taxes have essentially been repealed. The gift tax remains in place, but the rate has dropped from 45% to 35%. Though this may seem a happy state of affairs, if Congress does nothing, the estate and GST taxes will return in 2011 and the gift tax rate will rise. The estate tax exemption will be only \$1 million, with a rate of 55%.

Virtually all estate planners assumed that Congress would remedy the current state of affairs by passing a permanent estate and GST tax before we reached the repeal. Many assumed that the 2009 system would become permanent. But Congress failed to act by the end of 2009. The House did indeed pass a permanent extension of the 2009 law, but the Senate did not vote on the bill by December 31. Thus, the estate and GST taxes have been temporarily repealed, only to come roaring back in 2011.

To add to the confusion, Congress may pass a permanent estate, GST, and gift tax bill in 2010, but it is not clear if it will be effective only upon passage, or whether it will be retroactive to January 1, 2010.

So what does this mean for you?

First, it is uncertain what most current tax-planning Wills mean, since most contain formulae which refer to the "current estate tax exemption amount". As no exemption or estate tax currently exists, most planners are unsure how the vast majority of American tax-planning Wills will be interpreted. This may well distort the distribution of your estate to your beneficiaries in ways you do not intend. Thus, if you are concerned about this issue, or your mortality risk in the near term, please contact us presently to discuss your current documents and desires. If the House bill becomes law retroactively, this concern will become irrelevant, but it should at least be considered by all clients.

Second, if you are already considering making any taxable gifts this year, especially to grandchildren, it may be prudent to make such gifts early in 2010.



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Since the gift tax rate is low and the GST tax has essentially been repealed, it may be an excellent time to make large gifts. But again, it is not certain if a future tax bill might retroactively reinstate the GST tax and raise the gift tax rate. If you are considering a taxable gift in 2010, you should contact us to discuss this matter.

The current transfer tax system is in a massive state of flux. To plan for the changes discussed here, we encourage you to contact any of our Private Wealth Group attorneys.

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