



ATTORNEYS

2010 Estate Planning Alert

Significant changes in the Federal tax law that took effect as of January 1, 2010, will dramatically affect the way an individual's property is taxed upon death. As discussed below, because of these changes we think it important for you to consider discussing your estate planning objectives with us to make sure that these changes don't cause unintended consequences for you and your beneficiaries.

For decedents dying this year (2010), *there is no Federal estate tax*. Several states such as Maryland and the District of Columbia will however continue to impose estate taxes on residents and non-residents owning property there, and the total exemption amount for many states is limited to \$1 million. It may be uncertain how the provisions of your existing estate planning documents will be interpreted if there is no Federal estate tax. This is because provisions commonly found in traditional documents may be phrased in terms of tax concepts, such as the *estate tax exemption amount* and the *marital deduction*. Because those tax concepts are not in the Federal law this year, there may be some question as to whether your property will be distributed as you intended under your current documents.

In addition, there are changes in the way the Federal income tax laws apply to property inherited in 2010. Previously the *income tax basis* of most inherited property was adjusted in value to equal the property's fair market value as of the date of the transferor's death. However, due to changes in the Federal law, this basis adjustment will not apply to assets inherited from a decedent dying this year. Except in limited circumstances, the deceased owner's original income tax basis in the property will "carry-over" to beneficiaries inheriting property in 2010, resulting in significant and perhaps unintended income tax consequences if the property is later sold.

Other complications for 2010 include: (i) changes to the Federal gift tax and generation-skipping transfer tax which provide significant opportunities; (ii) the fact that the tax laws for 2010 are currently set to change yet again in 2011 when the Federal estate tax is to be re-instated at higher rates (up to 55%) and apply with a smaller exemption amount (\$1 million) than under the 2009 law; and (iii) the possibility that Congress may enact entirely new legislation that applies retroactively to 2010.

Please don't hesitate to call us if you would like to discuss how the changes in the Federal tax law may affect your particular situation.

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