



Trusts & Estates Client Alert

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ESTATE, GIFT AND GENERATION SKIPPING TRANSFER TAXES IN 2010

Please read the important information relating to U.S. tax advice at the end of this Client Alert.

As you may be aware, Congress has yet to pass legislation which would repeal or amend the provisions of The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) with respect to estate, gift and generation skipping transfer (GST) taxes in 2010, and news sources are reporting that Congress has abandoned any effort to do so before year-end. It is, therefore, likely that the following changes to the estate, gift and GST taxes made by EGTRRA will take effect on January 1, 2010:

- There will be no federal estate tax
- There will be no GST tax
- The maximum federal gift tax rate (for transfers in excess of the lifetime exemption from gift tax) will drop to 35%
- Individuals inheriting property from a decedent will take a *carryover* basis in such property (the same basis that the decedent had at the time of his or her death) for federal income tax purposes

The lifetime exemption from gift tax will remain at \$1,000,000.

Please note that it is anticipated that Congress will pass legislation in 2010 to repeal or amend these changes. If such legislation is passed, it is possible that it may be retroactive to January 1, 2010. If no new legislation is passed in 2010, these changes will “sunset” on December 31, 2010 and the estate, gift and GST tax exemptions and rates in effect for 2001 will be reinstated.

In light of these changes, we recommend that you contact us to discuss your current estate planning documents in order to ensure that your documents properly account for the changes which will take effect on January 1 and to discuss any possible planning opportunities.

The attorneys listed below will be pleased to discuss the potential consequences of these proposed changes with you.

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STATEMENT ABOUT CIRCULAR 230

Recent amendments to a Treasury Department regulation, known as Circular 230, require lawyers and accountants to follow strict rules in issuing a written statement about a Federal tax issue. The most onerous rules of compliance under §10.35 of the Circular involve written advice about so-called Listed Transactions, arrangements that have tax avoidance as their principal purpose and what are called Marketed Opinions. We do not believe any issue discussed in this memorandum relates to a Listed Transaction. We believe the tax benefit sought is consistent with the Internal Revenue Code of 1986 as amended (Code) and Congressional purpose. That means the principal purpose is not tax avoidance. We also believe no issue discussed herein is a significant Federal tax issue – meaning that we believe the IRS does not have a reasonable basis for a successful challenge on the overall Federal tax treatment of the issues discussed in this memorandum. That means we do not think this memorandum must comply with §10.35 of the Circular. Nevertheless, we add the following statements to ensure compliance with said §10.35:

1. The written advice contained in this memorandum is not intended or written by us to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties.
2. No one may use any part of this memorandum in promoting, marketing or recommending an arrangement relating to any Federal tax issue to any taxpayer.
3. Nothing herein shall be construed to impose a limitation on disclosure by any person of the tax treatment or tax structure of any transaction that is addressed herein.

Notwithstanding these statements, we believe the conclusions reached herein are correct.

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