

## Estate-tax Overhaul Is Temporary

The new 2010 Tax Relief Act provides estate-tax relief to certain families, but the “fix” is only temporary. Unless Congress acts again, the new law provisions will expire after 2012. Therefore, estate planning for the future remains somewhat uncertain.

First, here are the old rules: Under the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), the estate-tax exemption equivalent gradually increased from \$1 million in 2001 to \$3.5 million in 2009. At the same time, the top estate-tax rate decreased from 55% to 45%. Among other changes, EGTRRA also separated the estate- and gift-tax regimes and maintained a \$1 million lifetime gift-tax exemption.

Then the estate tax was completely repealed for decedents dying in 2010. Also, the rules allowing a step-up in basis for inherited assets were replaced by modified “carryover basis” rules for decedents dying in 2010 (with exemptions of up to a total of \$4.3 million). Beginning in 2011, the estate tax was scheduled to be reinstated under pre-EGTRRA levels.

Now, here are the new rules: Under the new tax law, the estate-tax exemption is increased to \$5 million, with a top estate-tax rate of 35%. These figures will remain in effect for 2011 and 2012 (with indexing for 2012). The new law also reinstates the rules allowing a step-up in basis for heirs.

Be aware that the families of decedents dying in 2010 can effectively choose between the “old rules” in effect for 2010 or the “new rules” that take effect in 2011. The new rules are actually the default position. In other words, an executor can elect to apply a zero estate-tax liability with the modified carryover basis rules as opposed to the \$5 million exemption and the step-up in basis.

The new law also allows estate-tax exemption to be “portable” for decedents dying in 2011 or 2012. As a result, a family may be able to utilize the full \$10 million in exemptions for a married couple, regardless of how they have divided up assets. Reminder: The portability provision expires after 2012.

For gifts made in 2010, the new law provides a lifetime gift exemption of \$1 million with a top gift-tax rate of 35%. The estate- and gift-tax systems are “reunified” for transfers after 2010 with an exemption of \$5 million and a top gift-tax rate of 35%. Finally, the new law coordinates changes in the generation-skipping transfer tax with other estate- and gift-tax law changes.

Although the estate-tax future remains cloudy, it generally makes sense to continue giving gifts that qualify for the annual gift-tax exclusion. This can reduce the size of a taxable estate. For 2011, a family member can give each recipient up to \$13,000 without triggering any gift tax (\$26,000 for joint gifts by a married couple). Any

excess may be covered by the \$5 million gift-tax exemption (but that reduces the estate-tax shelter).

Do not make any assumptions or be lulled into inaction by the temporary tax relief. Consult a professional estate planner.