

Possible Temporary Estate and GST Tax Repeal

To our clients and friends:

As many of you know, the federal tax law on estate and generation skipping transfer taxes is currently in a state of some uncertainty.

As the law stands now, if Congress does not act by December 31, 2009, then on January 1, 2010, the federal estate tax and generation skipping transfer tax are repealed for one year. This means that there will be no federal estate tax on the estates of individuals who die in 2010, and there will be no generation skipping transfer tax on transfers made that year. There will still be a federal gift tax at a maximum rate of 35%, with each individual entitled to a \$1,000,000 exemption from the gift tax. In addition, individual state laws regarding estate, gift and generation skipping transfer taxes will continue in effect.

On January 1, 2011, the federal estate and generation skipping transfer taxes are scheduled to return; the top estate and GST rate will increase to 55% with only a \$1 million estate tax exclusion and a GST tax exemption of \$1 million, indexed for inflation. The top gift tax rate will increase to 55% with a \$1 million gift tax exclusion.

In addition, on January 1, 2010, the rules pertaining to capital gains tax on property included in a decedent's estate will change. Currently, if property that was included in an estate is sold, the tax basis of the property is "stepped up" to the value on the decedent's date of death, and capital gains tax is payable only on the difference, if any, between the sale price and date of death value. As of January 1, 2010, the basis step up rules will no longer apply, and instead capital gains tax will be payable on the difference between the sale price and the basis that the decedent held in the property. Certain exclusions to these rules will apply. On January 1, 2011, we will return to a "step-up in basis" regime.

Congress has been attempting to pass legislation which would avoid the estate tax repeal and would extend the current top estate and GST tax rate of 45% and the \$3.5 million exemption. The House passed such a bill early in December. However, the Senate has not acted on the bill. It now appears that Congress will not pass any legislation before December 31, so the taxes will expire effective January 1, 2010.

The question then becomes: will Congress act after the new year to reinstate the taxes and, if so, will the reinstated taxes be retroactive to January 1? The answers to these questions are unknown, but the situation could present alternate planning strategies for some individuals.

We encourage you to monitor the news regarding this situation, and invite you to contact us to discuss the impact that these changes in the law may have on your estate plan. ♦

This alert was updated December 22, 2009 and should replace previous alerts. If you would like more information about this alert, please contact one of the following attorneys:

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