

Date: January 12, 2010

Subject: Federal Estate Tax Uncertainty

Field of Relevancy: Estate Planning

Summary: Congress' failure to pass legislation addressing the estate tax means that under the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), the estate tax has been temporarily repealed since January 1, 2010. Currently, the House and Senate have recessed and thus are unlikely to address the estate tax issue until they return.

Analysis: Although the House passed H.R. 4154, which permanently extends the top federal estate tax rate of 45 percent with a \$3.5 million exclusion, the Senate failed to pass any legislation addressing the estate tax. Despite entering 2010 without an estate (or Generation-Skipping Transfer (GST)) tax, the Senate has indicated that they will take up estate tax legislation sometime in 2010, and may make it retroactive to January 1, 2010.¹ Thus, restoration of estate tax in 2010 is still a possibility. If a new estate tax bill fails to pass, however, then estate, gift, and GST taxes resume as they existed prior to EGTRRA. The following are highlights of the current federal estate tax law in 2010 and beyond:

Year 2010	Year 2011 (and thereafter)
<ul style="list-style-type: none">Estate & GST tax repealed	<ul style="list-style-type: none">Estate/gift tax exemption at \$1 million per person (with adjustments for inflation)
<ul style="list-style-type: none">Gift tax exemption of \$1 million per person & gift tax rate at 35%	<ul style="list-style-type: none">Estate, Gift, and GST tax rate at 55%
<ul style="list-style-type: none">Basis of inherited property: carry-over basis, with additional step-up basis of up to \$1.3 million for non-spousal heirs; property left to surviving spouse allowed additional \$3 million step-up (total basis of \$4.3 million).	<ul style="list-style-type: none">Basis of inherited property: Full step-up in basis

¹Retroactive application of federal law has been upheld as constitutional by the courts. See NationsBank of Tex., N.A. v. United States, 269 F.3d 1332 (2001).