

Congress adjourned for the year without addressing the estate tax law which means that on January 1, 2010, (1) the federal estate and generation skipping transfer taxes are repealed for one year and (2) estates of those dying in 2010 will lose the step-up in cost basis for assets and a new carryover basis system will apply.

This comes as a surprise as estate planners thought Congress would pass a permanent extension of 2009 estate tax law. Apparently, the press of other business, including health care, caused Congress to simply run out of time. Although this may seem like good news, I want to alert you to the ramifications of these changes.

- The elimination of the estate tax may cause a problem with your estate plan. For those of you who are married, your estate plan is likely drafted to divide your estate at your death into two subtrusts: The "B" trust, or credit shelter trust, is funded with the amount of the current estate tax exemption (\$3,500,000 in 2009). The "A" trust, or marital deduction trust, is funded with the balance of the assets. If your spouse is the sole beneficiary of both trusts, then these changes will not impact your estate plan. However, if you have different beneficiaries in both trusts there may be a problem. Here is an example. Assume a second marriage situation and children from the first marriage are beneficiaries of the "B" trust and the second spouse is the beneficiary of the "A" trust. If you die in 2010, all of your assets will pass to the "B" trust because there is no estate tax exemption limit and nothing will pass to the "A" trust.
- Starting in 2010, the income tax bases of assets acquired from an individual dying in 2010 will not equal their estate tax values. Instead, the bases of the decedent's assets will "carryover" to those who inherit the property with some limited exceptions. Your executor will now have to determine the bases of each of your assets and then will have to make appropriate decisions regarding their allocation.
- There may be a gift planning opportunity early in 2010. If you have already used your \$1,000,000 lifetime gift exemption, consider making gifts early in 2010 when the gift tax rate is 35%.
- We think that sometime in 2010 Congress will act to modify the "no estate tax" rule and will do so retroactively to the beginning of 2010. However, in the meantime your estate plan may need to be amended. In addition, please let your executor know where your income tax information is kept.

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Please call me at 216-736-7214 if you have any questions or concerns about the impact of the law on your own estate plan.

