

New Estate-tax Relief

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At long last, revisions to the estate-tax rules were included in the new federal tax legislation signed late last year. The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010—or “Tax Relief Act of 2010,” for short—creates several estate- and gift-tax breaks for families with a significant amount of assets. But the new law provisions are only temporary—they expire after 2012 unless Congress takes any further action.

Thus, uncertainty continues to cloud estate planning, at least for the next two years. If at all possible, planning for the future may be even more complicated than before. Here’s a brief overview of the changes affecting the estate-tax law.

Under the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), the estate-tax exemption for an individual gradually increased from \$1 million to \$3.5 million for decedents dying in 2009. At the same time, the top estate-tax rate decreased from 55% to 45%. EGTRRA also “decoupled” the estate- and gift-tax systems and retained a lifetime gift-tax exemption of \$1 million.

Then EGTRRA repealed the estate tax, but only for decedents dying in 2010. It was scheduled to be reinstated in 2011, with a \$1 million estate-tax exemption and a top 55% estate-tax rate, under the EGTRRA “sunset” provisions. Also, for decedents dying in 2010, EGTRRA imposed “carryover basis” rules for heirs inheriting assets, instead of allowing a step-up in basis in value on the date of death. A spousal beneficiary could benefit from up to \$4.3 million in exemptions (\$1.3 million for nonspousal beneficiaries) under the carryover basis rules.

There are new rules to the Tax Relief Act of 2010 as it overrides the EGTRRA sunset provisions and creates an estate-tax exemption of \$5 million, with a top estate-tax rate of 35%. These figures will remain in effect only through 2012. The new law also reinstates the “step-up in basis” rules that existed prior to 2010. Furthermore, the new law reunifies the estate- and gift-tax systems with a \$5 million lifetime gift-tax exemption and coordinates other changes involving the generation-skipping tax.

The new law allows for “portability” of estate-tax exemptions for married couples. If a deceased spouse’s estate does not exhaust the entire exemption, the balance is available to the estate of the surviving

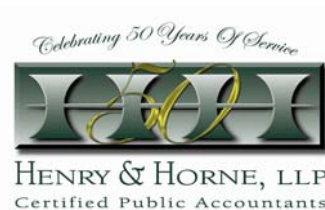
spouse. Thus, heirs may more easily benefit from the maximum \$10 million in exemptions, but only under the current rules.

Finally, the executor of a decedent dying in 2010 can choose to use the new estate-tax rules under the Tax Relief Act of 2010 or the rules in effect under EGTRRA. This depends on the family's particular needs.

Lifetime gift-giving to reduce the size of a taxable estate remains a viable option for many individuals. For 2011, you can give each family member up to \$13,000 without any gift-tax consequences (\$26,000 for joint gifts by a married couple). This is in addition to the lifetime \$5 million gift-tax exemption.

This article is only a summary of the main rules. Other changes, including coordinated changes in the generation-skipping tax for transfers by grandparents, may affect estate planning. It is recommended that you review existing wills and other estate-planning documents with the assistance of your Henry & Horne, LLP professional adviser.

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