

## **Review Your Trust and Will to Determine if Changes in the Estate Taxes for 2010 and Beyond Impact your Estate Planning**

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Congress' changes in the estate tax exemptions that became effective in 2010 have left many people confused and wondering if their current estate plan needs to be revised. Whether these changes impact your estate planning depends on your individual situation, but it is still important to understand the specifics of the new estate tax exemptions to determine if you need to revise your current will and trust.

The Estate Tax is a tax on your right to transfer property at your death. It consists of an accounting of everything you own or have certain interests in at the date of death. If your estate exceeds the IRS limit, anything you transfer to your heirs that is over that limit is subject to the estate tax.

In 2009 the estate tax exemption was \$3.5 million per person, but recent changes means in 2010, the exemption is unlimited. For 2011 the law provides for a reduction of the estate tax exemption amount to \$1 million per person. In addition, the maximum estate tax rate increases to 55 percent as opposed to a maximum of 45 percent in 2009.

In 2009 and 2011, the estate tax provides a step-up in basis on the deceased person's assets. For example, if one purchased stock years ago at \$1 per share and at the time of death it was worth \$100 per share, upon the stock passing to the deceased beneficiaries, they would then take a basis of \$100. Therefore, if the stock was sold shortly after death the gain would be minimal.

Under the law for 2010 for property transferred by a decedent to a beneficiary, the beneficiary will receive the same basis as the decedent had in the property for calculating capital gains when the property is sold at a later time. This is called a carry-over basis. In this case, for example, the stock purchased for \$1 per share would be the same basis in the hands of the beneficiary. If the beneficiary then sold the stock shortly thereafter the deceased's death, the beneficiary would have a gain of \$99. An exception to this rule is that the surviving spouse can shield \$3 million transferred. The non-spouse beneficiaries can shield a combined total of \$1.3 million.

Therefore, beneficiaries can use a step-up in basis of up to \$1.3 million worth of appreciation. A spouse may receive additional appreciation of \$3 million. Sales of assets received from one's death would then be treated as capital gains and the capital gains tax rates would then apply on the sale.

For individuals with significant assets, a death would result in no estate tax liability for 2010. However, the beneficiaries may then be responsible for capital gains tax when those assets are sold. This may result in a greater amount of tax owed under the current law than if one passed away in 2009 (with an exemption of \$3.5 million per person).

For 2011 the estate tax exemption is reduced to \$1 million per person and the maximum estate tax rate of 55 percent. The step-up in basis will apply to assets in 2011.

At the current time there has been proposed legislation to extend the \$3.5 million per person exemption for 2010. However, at this time no law has been put into effect. For planning purposes, one should review their assets and how they are owned as well as the gains on those specific assets.

With all the confusion surrounding estate taxes, it may be a good time to sit down with an estate attorney to revise your current estate plan to take into account the changes. If you have any questions or would like to discuss your estate planning needs for 2010, please feel free to contact me at 248-932-5200 or via email at [jonathan@bloomlawfirm.com](mailto:jonathan@bloomlawfirm.com).