

Federal Estate Tax Repeal Effective January 1, 2010

January 12, 2010

In an unexpected turn of events, the Federal estate and generation-skipping transfer taxes were repealed as of January 1, 2010, creating uncertainty and, in some cases, wreaking havoc with people's estate plans. The repeal was a result of a sunset provision contained in the legislation enacted in 2001 which increased the estate and generation-skipping tax exemptions and reduced the taxes' marginal rates. It was widely anticipated that Congress would extend the provisions in effect in 2009 before the end of that year, but this did not occur.

The greatest impact of the repeal is on persons whose estate planning documents contain formula bequests making use of the estate tax and generation-skipping tax exemptions, as these formulas now refer to provisions of the tax law that have now been repealed. These formula bequests may be void and, thus, the disposition of assets may be altered, in some cases significantly.

As the law stands today, no Federal estate tax will be imposed on the estates of persons dying in 2010. In addition, there is no longer an automatic "step-up" in the cost basis of assets at death, which acted to limit the capital gains tax imposed on heirs when inherited assets were subsequently sold. Instead, a decedent's executor can allocate an increased cost basis to a portion or all of an estate's assets, subject to certain dollar limitations. If no further changes are made to the tax laws, the estate and generation-skipping tax will come back into effect in 2011 – with the \$1,000,000 exemptions and higher marginal rates that were in effect before 2001. There is also a possibility that Congress may retroactively re-enact and extend the estate tax in effect prior to its repeal.

During this period of uncertainty, we recommend that you consult with your legal or tax advisors, to review and, and if necessary adjust, your estate plan to ensure that the repeal of the estate and generation skipping transfer taxes does not adversely affect you.