

Trusts and Estates Attorneys

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ESTATE PLANNING OPPORTUNITIES IN 2010

As the end of 2010 draws near, so does the one-year repeal of the federal estate tax and the generation-skipping transfer tax. In 2011, there will be a number of changes to the income, gift, estate and generation-skipping transfer tax statutes, including a reversion to the transfer tax regime as it was in 2000.

In 2011, the law will be as follows:

- The federal estate tax exemption amount will be \$1 million
- The generation-skipping transfer tax exemption amount will be \$1 million, indexed for inflation from 2001 (or, approximately \$1,340,000)
- The highest estate tax rate increases to 55%, with an additional 5% surtax applied to estates over \$10 million
- The highest federal gift tax rate increases to 55%
- The generation-skipping transfer tax rate increases to 55%
- The basis of assets acquired from a decedent will be the fair market value of the property at the date of the decedent's death

Given the favorable federal transfer tax system in 2010 and the current economy, the last months of 2010 present an excellent opportunity for individuals to take steps to reduce future estate taxes. The depressed values of assets and the historically low interest rates allow individuals to transfer wealth to later generations with fewer tax consequences than transfers made in 2011. The following are two examples of these unique opportunities:

Lifetime Gifting

For 2010, the federal gift tax lifetime exclusion amount remains at \$1 million. The gift tax rate is 35%, compared to 45% for 2009 and the scheduled top rate of 55% for 2011. The annual gift tax exclusion amount remains at \$13,000 per donee. For individuals who have used their entire lifetime exclusion amount and are interested in making gifts above the annual exclusion amount, 2010 is an ideal year for additional gifting.

Transfers to grandchildren and more remote descendants are normally subject to the imposition of the generation-skipping transfer tax, in addition to gift and estate taxes. Since the generation-skipping transfer tax has been temporarily repealed for 2010, clients who are interested in shifting their wealth to younger generations may benefit from making transfers to grandchildren in 2010 while the gift tax rate is substantially lower than it will be in 2011, and when no generation-skipping transfer tax applies.

Short-Term GRATs

A grantor retained annuity trust (GRAT) can be a useful tool for transferring appreciating assets to beneficiaries with minimal estate and gift tax consequences. A GRAT is an irrevocable trust to which a grantor transfers property in exchange for the right to receive a fixed annuity for a term, with the balance payable to certain beneficiaries at the term's expiration. The success of a GRAT depends in part on whether its assets outperform the interest rate set by the IRS. Currently, that rate is 2%, which is historically low. If the grantor lives until the end of the term, the appreciation in the assets passing to the beneficiaries is free from gift and estate tax. Although the IRS currently permits the use of short-term GRATs, proposed legislation will make GRATs less attractive if enacted. Consequently, this may be the right time for clients to consider the use of GRATs as a part of their estate plan.

Changes in the tax laws and the current uncertainty of future tax laws warrant a review and update of your current estate plan. Reinhart attorneys are available to review and discuss your current estate plan and to revise the plan as necessary to create the flexibility needed for the current law, as well as the future uncertainty.

This *Trusts and Estate Perspectives* provides general information and should not be construed as legal advice or a legal opinion. Readers should seek legal counsel concerning specific factual situations confronting them.