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The Return of the Estate Tax

As discussed in prior Real Estate Reports, with the end of 2010 comes the end of the one-year federal estate tax hiatus. On January 1, 2010, the one-year repeal of the federal estate tax and the generation-skipping tax began. On January 1, 2011, the federal estate tax comes roaring back, with a $1,000,000 exemption and a tax rate beginning at 49%.

Summary of the Law

The current 2010 federal law is as follows:

- There is no federal estate tax for individuals dying in 2010;
- There is no generation-skipping transfer tax in 2010;
- There is no income tax step-up in basis for beneficiaries who receive property from a decedent who died in 2010. Instead, beneficiaries will receive a carryover basis. Specifically, the beneficiaries' basis will be the same as the decedent had in the asset at death; and
- The federal gift tax continues with the same $1 million lifetime exclusion amount. The gift tax rate is reduced to 35% from 45% in previous years. The annual exclusion amount remains at $13,000 per donor per donee.

In 2011, the law is scheduled to change as follows:

- The federal estate tax exemption amount is $1 million;
- The generation-skipping transfer tax exemption amount is $1 million;
- The highest estate tax rate increases to 55%;
- The federal gift tax rate increases to 55%; and
- The generation-skipping tax rate increases to 55%.

These laws for 2011 are likely to change in the future, but without a crystal ball, and the election season looming, it is impossible to predict accurately.

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What This Means for You and Your Estate Plan

Proactive estate and gift tax planning in this environment is very difficult and fraught with risk. However, there are opportunities:

1. Outright gifts to grandchildren without imposition of generation-skipping tax.

2. Taxable gifting at only 35%.

3. Utilize depressed asset values and historically low interest rates, combined with valuation discounts to shift wealth to future generations, oftentimes via a dynasty trust. This is an especially attractive strategy for clients with significant real estate holdings, which are at depressed values.

4. Take advantage of a potentially vanishing opportunity with short-term Grantor Retained Annuity Trusts (GRATs).

Changes in the tax laws and the current uncertainty of what is to come may 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. We welcome your call.