

## Winter 2010 Estate Planning Newsletter

### Expiration of the Estate Tax

Although the federal estate tax expired January 1, 2010, the future of the estate tax remains uncertain. Under current law, the estate tax has been eliminated for 2010, and is scheduled to be reinstated in 2011, but with a lower exemption of \$1 million and a higher rate of 55%. In 2009 the exemption was \$3.5 million and the rate was 45%.

The January 1 expiration of the estate tax does not guarantee that individuals who pass away in 2010 will not be subject to estate tax. Senate Finance Chairman Max Baucus, D-Montana, and others have voiced their intent to revisit the status of the estate tax in early 2010 and many predict that the tax will be reinstated, retroactive to January 1, 2010. There are questions as to the constitutionality of such retroactive reinstatement, but some precedent to allow for it exists. It is likely that for deaths occurring during this period of estate tax repeal, heirs of large estates will challenge the constitutionality of any retroactive reinstatement.

The expiration of the estate tax also limits the income tax "step-up" in cost basis for assets left to heirs. While the estate tax was in place this basis step-up was unlimited, meaning that heirs selling inherited assets shortly after receiving them would pay little, if any, capital gains tax. Beginning in 2010, this basis step-up is now limited to \$1.3 million of assets, with an additional \$3 million for the decedent's surviving spouse. Effectively, the estate tax is being replaced with a 15% tax on the capital gain of inherited assets. If the estate tax is reinstated, the unlimited basis step-up would likely be part of that legislation. However, with the current estate tax repeal, the total tax liability for many individuals on inherited assets may be substantially larger than it otherwise would have been had the estate tax not been repealed.

With the uncertainty of the estate tax in future years and even future months, it is important that your estate plan allow for the needed flexibility to address these uncertainties. Reinhart attorneys are available to review your current estate plan and to revise the plan as necessary to create such flexibility.

#### POSTED:

Dec 25, 2010

#### RELATED PRACTICES:

[Trusts and Estates](#)

<https://www.reinhartlaw.com/practices/trusts-and-estates>

## Continuation of the Gift Tax

The gift tax continues in 2010 with the same \$1 million lifetime exclusion amount. The gift tax rate for 2010 (at least for now) is 35%, down from 45% in previous years. The gift tax annual exclusion amount remains at \$13,000 per donor per donee.

Many of the estate and tax planning strategies we have utilized in previous years are still effective for 2010 and later years. These techniques include annual exclusion gifting, irrevocable life insurance trusts and sophisticated leveraged gifting techniques. Many of the sophisticated techniques, such as Grantor Retained Annuity Trusts (GRATs) and Installment Sales to Intentionally Defective Grantor Trusts (IDGTs), work particularly well in today's low interest rate environment.

## Roth IRA Conversions

Money invested in a traditional IRA is tax deductible and then grows tax-deferred until it is withdrawn. Money contributed to a Roth IRA is not income tax deductible, but all earnings and withdrawals from the account are income tax-free. In some cases it is possible to convert a traditional IRA to a Roth IRA and achieve significant tax savings.

Effective January 1, 2010, the income limits that have previously prevented taxpayers with a modified adjusted gross income exceeding \$100,000 per year from converting their Traditional IRAs into Roth IRAs are removed for federal income tax purposes. You will have to pay income tax on all assets converted from a traditional IRA to a Roth IRA, but you are allowed to spread the tax liability out over two years if the conversion occurs in 2010.

Wisconsin, however, is one of a small minority of states that has not aligned the state's income taxation of Roth IRA conversions with that of the federal government. Wisconsin residents who convert Traditional IRAs to Roth IRAs would be subject to a penalty of 3.33% on the initial withdrawal from the Traditional IRA and an additional 2% each year for having the funds in the Roth IRA. Wisconsin representatives have introduced a bill that would eliminate these penalties. However, this bill has not been passed and may never pass. Therefore, it is critical that Wisconsin residents factor in these additional penalty amounts when considering whether to convert to a Roth IRA.

## Domestic Partnerships in Wisconsin

On June 29, 2009, Wisconsin Act 28 was enacted and, among other things, it created a new legal status in Wisconsin—registered domestic partners. Under this new law, couples of the same sex may apply for a Declaration of Domestic Partnership, which entitles them to certain legal protections.

Domestic partnership entitles domestic partners to some but not all of the legal protections that the law affords to spouses. It does not include many of the core provisions of the legal relationship of marriage, including the intricate property system that applies to married couples under the marital property law, the support obligation that spouses have during a marriage, or the provisions for division of property and spousal support relating to divorce. A domestic partnership does not have any effect on a partner's legal relationship to the children of the other party. A domestic partnership does not afford any rights or privileges in the area of taxation. For example, domestic partners cannot file joint income tax returns, whereas married couples can.

Some of the legal protections that the law does provide domestic partners include:

- A surviving domestic partner will generally inherit from the deceased domestic partner's estate as a spouse would.
- Real estate that is titled in the names of both domestic partners is presumed to be held in joint tenancy.
- Transfers of real estate between domestic partners are exempt from the real estate transfer fee.
- A domestic partner may also have certain medical, hospital and visitation rights.
- The Wisconsin Family Medical Leave Act now also covers an employee in a domestic partnership.

A domestic partner may terminate the domestic partnership, in which case the termination will automatically revoke the appointment of a partner as agent under a health care power of attorney, the appointment of a partner as agent under a durable power of attorney and the provisions in a will in favor of a former domestic partner.



*These materials provide general information which does not constitute legal or tax advice and should not be relied upon as such. Particular facts or future developments in the law may affect the topic(s) addressed within these materials. Always consult with a lawyer about your particular circumstances before acting on any information presented in these materials because it may not be applicable to you or your situation. Providing these materials to you does not create an attorney/client relationship. You should not provide confidential information to us until Reinhart agrees to represent you.*