



Taking Care of Business for 60 Years.

ESTATE TAX REPEAL

AND ITS EFFECT ON BASIC ESTATE PLANNING

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This material is presented to point out selected changes in Federal and California statutes as well as to look at some proposed legislation that may become law in the near future. As is the case with materials of this nature, it is not legal advice and should not be relied upon to form legal analyses or substituted for proper consultation of the applicable statutes, cases or other authorities.

Transfer Tax System

- ❑ Tax Imposed When Property is Transferred

- ❑ Three Separate Taxes
 - Estate Tax
 - Gift Tax
 - Generational Skipping Transfer Tax (GSTT)

2001 Estate Tax Legislation

<u>YEAR OF DEATH</u>	<u>EXEMPTION</u>	<u>TAX RATE</u>
2001	\$675,000	55%
2002	\$1,000,000	50%
2003	\$1,000,000	49%
2004	\$1,500,000	48%
2005	\$1,500,000	47%
2006	\$2,000,000	46%
2007	\$2,000,000	45%
2008	\$2,000,000	45%
2009	\$3,500,000	45%
2010	No Tax	No Tax
2011	\$1,000,000	55%

2001 Gift Tax Legislation

Annual Exclusion

- \$10,000 in 2001
- \$13,000 in 2010

Lifetime Exemption

- \$1,000,000
- Tax Rate Followed Estate Tax Until 2010
- 2010 Rate 35%

2001 Gift Tax Legislation (Continued)

- ❑ Gift Tax Still in Effect
 - Reasons

- ❑ Gift Tax in 2011 and Following
 - Annual Exclusion \$13,000 indexed
 - Lifetime Exemption \$1,000,000
 - Tax Rate 55%

2001 GSTT Legislation

- ❑ Starting in 2004 the Exemption Equaled the Estate Tax Exemption
 - 2009 Exemption \$3,500,000
 - 2010 Tax Repealed
 - 2011 Exemption \$1,340,000± indexed

- ❑ Tax Rate
 - 2009 → 45%
 - 2010 → No Tax
 - 2011 → 55%

Basis

- ❑ The value assigned to a taxpayer's investment in property and used primarily for computing gain or loss from a transfer of the property.
 - Capital gains and losses
 - Depreciation

Adjusted vs. Carryover Basis

For Estates

Adjusted Basis

- Stepped Up or Stepped Down to FMV
- 2009 and Prior
- Returns in 2011

For Gifts

Carry Over Basis

Adjusted vs. Carryover Basis (Continued)

- ❑ **Modified Carryover Basis**
 - 2010
 - \$1,300,000 Adjustment
 - Additional \$3,000,000 Adjustment for qualified spousal transfers
 - Executor Makes Allocations
 - Adjustment up can't exceed FMV but Adjustment Down still applies
 - Record Keeping

Issues

- ❑ Formula Clauses for Exemption Trusts
 - Potential to Disinherit spouse

- ❑ Formula Clauses for GSTT Trusts
 - Potential to Disinherit children

- ❑ Carryover Basis
 - Use of 2010 Adjustments
 - Calculation of basis
 - Sale of Assets after Stepped Up basis is restored

Potential Solutions

- ❑ HR 3905 and HR 4154
- ❑ Retroactivity – Constitutional or not?
 - *United States v. Carlton (1994)*

What Hasn't Changed

- ❑ Gifting
 - Annual Exclusion Gifts
 - Use of Fractional Discounts

- ❑ Flexibility in Plans

- ❑ Non Tax Planning
 - Trusts vs. Probate
 - Powers of Attorney
 - Advance Health Care Directives

Potential Opportunities & Risks

□ Gifting

- 35% Tax Rate
- Fractional Gifts
- Depressed Property Values
- GSTT Gifts

Conclusion

- Review Existing Documents
- Consider 2010 Opportunities
- Stay Tuned for Developments
- Keep Healthy