

January 7, 2010

ALERT: Estate tax currently repealed as of Jan. 1, 2010;
Review your estate plan now to evaluate options

The U.S. Congress did not pass an extension of 2009's estate and generation-skipping tax (GST), as most expected to occur. Thus as of Jan. 1, ***wealth transferred through an estate or through generation-skipping will not be taxed for 2010.*** The gift tax remains in place with a reduced tax rate of 35% instead of 45%.

While Congress will undoubtedly address and make estate tax law changes again soon, ***this current window of estate-tax and GST repeal creates a period of uncertainty requiring a decision whether to act,*** especially for those who may be considering large gifts, whose estates are sizable or whose estate plans could be triggered in coming months through a death.

Gift planning

Although the gift tax was not repealed, a 10% tax rate reduction (which provides a 22% tax reduction) is a significant benefit for those determining if and when to make large gift transfers. If these situations apply to you, consider making your gift as early as possible this year, before potential estate-tax law changes may be made.

- If you plan to make large taxable gifts (above the \$1,000,000 lifetime exclusion)
- If you want to take advantage of unlimited generation-skipping transfers during this repeal window
- If you want to transfer property while valuation discounts are still available. (See following copy of earlier tax alert related to valuation discounts.)

Estate planning

For each estate, Allen, Gibbs & Houlik, L.C. encourages consideration of two options with your AGH tax professional and your attorney or other estate planning counsel:

- Wait and see: Congress is highly likely to make additional estate tax changes, and the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) reinstates the estate and generation-skipping tax in 2011 to pre-EGTRRA levels anyway without additional Congressional action.
- Aggressive approach: Review your estate plan assuming current law will prevail when your plan is implemented. Most estate plans were created assuming specific levels of estate taxation, and a change in the tax laws may create unintended consequences to your plan. Your review should ensure that your plan would reach your specific goals for wealth transfer in the current tax environment. The more sizable your estate and the sooner you believe the plan may be implemented, the more important this option is.

The estate-tax repeal carries many other technical repercussions, such as a change in how the tax basis is determined for inherited property. However, AGH's primary focus in this alert is to ensure that ***you are aware of the current estate-tax and generation-skipping tax repeal as of Jan. 1, 2010, and to encourage your strong evaluation of your own estate plan's current status*** with your AGH tax professional and any other estate plan counsel you may choose. For more information, please contact your AGH tax professional at (316) 267-7231.

NOTE: Pursuant to federal regulations imposed on practitioners who render tax advice ("Circular 230"), we are required to inform you that any discussion of tax matters contained herein is not intended or written to be tax advice, and cannot be relied upon as such, nor can it be used for the purpose of: (i) avoiding tax penalties that may be imposed by the IRS or states, or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. If you seek definitive tax advice on a matter, please request a written tax memorandum from your AGH tax advisor.

October 7, 2009

ALERT: Likely estate-tax law changes make family wealth transfer timely before end of 2009

A unique combination of legislative and economic factors makes the **remainder of 2009 a window of opportunity for those seeking to transfer assets to other family members while minimizing tax liability. Those who have set up entities such as family limited partnerships specifically for this purpose should seriously consider the tax advantage available now through Dec. 31, 2009.**

Through year-end, currently \$3.5 million in assets may be transferred from one family member to another without incurring estate taxes. Some of the proposed legislation supported by the Obama administration would make that \$3.5 million applicable federal estate tax exclusion permanent. If no new legislation is passed (which appears unlikely at this point), the estate tax would be repealed completely in 2010, then would revert to a \$1.0 million applicable exclusion amount in 2011.

Aside from likely changes in the estate-tax laws, two other factors affect the amount of tax liability incurred for intra-family transfers:

- **Some of the proposed bills, if adopted, would eliminate “lack of marketability and minority interest” discounts** when valuing assets for gift and estate taxes in certain types of entities where family members hold a majority interest. Those discounts can deliver substantial tax reductions – significant enough that **those considering transferring assets may want to consider setting up an entity which would be eligible for the discount while it is still available or making additional gifts from an existing entity.** The legislative bills supporting an exclusion of these discounts indicate interest in eliminating the discounts, whether in current legislation or future versions.
- Current asset values are likely to be lower due to depressed economic conditions, which also reduce tax liability on transfers.

These three factors suggest that family businesses and others with significant estates who are planning to make gifts or transfer assets should consider doing so as soon as possible during the balance of 2009, before additional estate-tax legislation is passed.

If you would like additional information about the potential tax impact of proposed estate-tax legislation, please contact your AGH tax professional at (316) 267-7231.

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