

The New Federal Estate Tax Law

For much of 2010, the future of the federal estate tax was unclear. Now due to recently enacted legislation, the federal estate tax, which disappeared in 2010, springs back to life in 2011 - at least for the next two years. The following is a brief overview of the new federal law and its possible affect on estate planning. We encourage those with any questions they may have about these issues to contact one of [our estate planning attorneys](#).

Estates. During 2011 and 2012, the top tax rate will be 35% for estates valued over \$5 million per individual (indexed for inflation after 2011). At those levels, the vast majority of estates (all but an estimated 3,500 nationwide in 2011) will not be subject to any federal estate tax. The new law also gives heirs of decedents dying in 2010 a choice of which estate tax rules to apply – 2010's or 2011's. That's important because although there is no estate tax in 2010, some inherited assets are subject to higher capital gains tax under the 2010 rules, a situation that actually raises the tax burden for some heirs. Inherited assets under the 2010 rules have a tax basis equal to the price when they were purchased (referred to in tax parlance as “carryover basis”) rather than the price at death. That could lead to a significant tax burden for heirs who sell assets such as stocks that had been held for many years and have greatly appreciated in value. Under the 2011 rules, by contrast, heirs will be allowed to inherit assets at date of death values (“stepped-up basis.”)

Lifetime Gifts. For gifts made after December 31, 2010, the gift tax will be reunified with the estate tax, which means that the \$5 million estate tax exemption will also be available for gifts. The law in effect prior to 2010 provided a \$3.5 million lifetime exemption for estates, but only \$1 million for gifts. The exemption from the generation-skipping tax (GST) – the additional tax on gifts and bequests to grandchildren when their parents are still alive – will also rise to \$5 million from the \$1 million it would have been without the new law. The GST and gift tax rates for transfers made in 2011 and 2012 will be 35%. From a planning standpoint, a nice feature of the new law is that it makes it easier to transfer the \$5 million exemption to a surviving spouse, so married couples can shield \$10 million of their assets from taxes. In the language of tax professionals, the estate tax exemption will be “portable.”

Future Uncertainty. Starting January 1, 2013, the federal estate tax returns to the 2000 law of \$1 million exemption (\$2 million for couples) and the top tax rate returns to 55%, unless Congress takes further action by 2012. Thus, 2011 and 2012 present a real window of opportunity for gift planning.

If you would like more details about the estate tax or any other aspect of the new law, please [contact us](#).

DISCLAIMER: Wyse Kadish LLP has provided this newsletter for general information and educational purposes only. Wyse Kadish LLP does not offer this newsletter as legal advice and the newsletter does not constitute legal advice or opinion. Although we intend to keep this information current, we do not promise or guarantee that the information is correct, complete, or up-to-date. You should not act or rely upon the information in this newsletter without seeking the advice of an attorney.