Estate and Gift Tax in 2010

Congress failed to pass tax legislation in 2009 to keep the estate and gift tax law as we have known it in effect. As a result, the estate tax is repealed for 2010, and the following rules now apply:

- The gift tax remains in effect, but the tax rate on taxable gifts (those in excess of the annual exclusion) is reduced from 45% to 35%.
- The gift tax credit continues to shelter up to $1,000,000 in taxable gifts.
- The generation-skipping transfer tax is repealed for both lifetime transfers and those at death.
- The universal step-up in income tax basis at death no longer applies. Instead, estates will have the ability to allocate $1,300,000 of additional basis to appreciated property generally and $3,000,000 of additional basis to property passing to a surviving spouse. Beneficiaries who inherit appreciated property with appreciation in excess of the available basis allocation amounts will pay capital gains tax when they later sell the property.

Most Congressional watchers expect new (and hopefully permanent) estate and gift tax legislation in 2010, possibly with retroactive application, the constitutionality of which is almost certain to be challenged in the courts. Failure to pass legislation this year will result in a return to pre-2001 law, with estate tax imposed on estates over $1,000,000 in value and a top tax rate of 55%.

For those of you with some risk tolerance, we are evaluating what opportunities may exist, albeit for a limited time period, as a result of these changes to the tax law. In addition, if it has been several years since you reviewed your will or revocable trust, you may wish to do so in light of these changes.

If you have questions about the existing law and how it may affect your estate and gift planning, please contact us.

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