

# Client Alert: Temporary Estate Tax Repeal



By now, almost everyone has heard that the federal estate tax was eliminated as of January 1, 2010. Although tax repeal usually is a welcome development, the 2010 estate tax repeal is only temporary, and the full tax is scheduled to be reinstated in 2011 at even higher effective rates. Moreover, since many Wills are drafted with potential taxes in mind, this temporary repeal has and will lead to a great deal of confusion and consternation among clients and their advisors. Furthermore, do not expect the repeal to last. Most prognosticators believe that Congress will act early in 2010, probably with retroactive effect, to reinstate the estate tax as of January 1.

So, what should you do if you feel that your estate plan may be affected by the temporary repeal? First, do not panic. Instead, review your estate planning documents with a few guidelines in mind in order to determine if you need to take action now.

1. Remember that, regardless of changes in the law, you should review your Will and other estate planning documents periodically to determine if modifications are necessary as a result of changes in your personal circumstances (e.g., marriage, divorce, death of a spouse, a significant increase or decrease in net worth, birth of a child or grandchild, etc.). Now would be a good time for you to undertake such a periodic review and to contact us if you have any questions or concerns.

2. For unmarried individuals, or for married individuals either without children or with Wills that leave all assets to a surviving spouse, the temporary repeal in the estate tax **probably** has **no impact** on your overall testamentary plan. Of course, every individual's circumstances are unique, so if you think your Will or family situation is atypical, then you should contact us to determine if further review and modification of your estate plan is warranted.

3. For married individuals with children **and** with tax-motivated Wills or revocable trusts (i.e., Wills that leave the estate tax exemption amount to a family trust and the balance to a surviving spouse), the temporary repeal **probably** justifies **some action** on your part. This is because the temporary repeal may affect the dispositive provisions of your Will, thus potentially altering the amount you leave to your spouse and your children if you die in 2010 and the law remains unchanged. Fortunately, though, a relatively simple, inexpensive Codicil to your Will may be all that is necessary to preserve the benefits you intended for your spouse and children when your Will originally was prepared. Further, this Codicil may be drafted so that it **only applies during 2010 and only if the estate tax is not reinstated**. Therefore, if new law is passed in 2010, or if the estate tax is reinstated in 2011 as scheduled

under current law, your existing Will and estate plan remains intact and no further action may be required on your part.

We hope this client alert helps you determine if you should take any corrective steps as a result of the temporary repeal of the estate tax for 2010. If, however, you have any lingering questions or concerns, please call any member of our Tax and Wealth Planning Practices below and we will be happy to assist.



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