



GawthropGreenwood  
Attorneys At Law

TO: Our Clients and their Financial Advisers  
FROM: Trusts & Estates Group  
SUBJECT: Temporary Repeal of the Federal Estate Tax  
DATE: March, 2010

As you may have heard, Congress adjourned for 2009 without addressing the automatic repeal that was incorporated in the federal estate tax in 2001. Congress' failure to act makes it impossible to interpret many wills and trusts without going to court, if an individual dies in 2010. Because thousands of our clients may be affected, we are sending this memo to everyone for whom we have prepared instruments, except those we know have changed lawyers.

If, after reading this memo, you think you might be affected by these changes, please contact a member of our Trusts & Estates Group listed at the bottom of this letter either by phone or email. Of course, you need not take any action, but, as discussed below, failure to do so could have negative consequences for your beneficiaries.

### Background

In 2001, Congress enacted the Economic Growth and Tax Relief Reconciliation Act ("EGTRRA"). EGTRRA provided for substantial increases in the estate tax exemption, while decreasing the applicable tax rate on taxable estates. EGTRRA also provided for a temporary repeal of the federal estate tax and the federal generation skipping transfer tax for tax year 2010. Tax practitioners, since 2001, have unanimously assumed that Congress would never permit the repeal of the federal estate tax, but, here we are, with no estate tax and substantial uncertainty.

### Effects of the Repeal

For tax year 2010, both the federal estate tax and generation skipping transfer tax have been repealed. The federal gift tax, however, has not been repealed, and individuals still have a \$1 million lifetime exemption. In addition, taxpayers can still take advantage of the \$13,000 per donee annual exclusion amount from the federal gift tax. For individuals making taxable gifts in 2010, the federal gift tax rate has been reduced to 35%.

For 2010, there have also been substantial changes regarding the treatment of the basis for inherited assets. Instead of all the assets receiving a stepped up basis, the new regime is largely a carryover of the existing basis, with \$3 million of additional basis that may be

allocated to transfers to a decedent's spouse and \$1.3 million of basis that may be allocated to transfers to a spouse or any other individual.

#### Impact on Existing Estate Plans

Many individuals and couples have wills or trusts that contain a formula marital computation that is tied to the federal estate tax exemption amount or the generation skipping transfer tax exemption amount. As there is currently no such tax or exemption, these formulas may no longer work as once envisioned, or may create ambiguity in the estate planning documents. The unfortunate result in some instances may be the disinheritance of spouses or children, or disputes over the meaning of these documents.

In addition, the lower gift tax rates and the repeal of the generation skipping transfer tax may present tax planning opportunities for the certain taxpayers. Although not related to the repeal, the current interest rate climate and depressed value of assets may also make 2010 an opportune time to review your current estate plan.

#### Future of Transfer Taxes

It is, of course, impossible to forecast how or if Congress will deal with the repeal of the estate tax and the generation skipping transfer tax. Most practitioners believe Congress will enact legislation reinstating both taxes in 2010. This reinstatement may be retroactive to January 1, 2010, which will almost certainly result in substantial litigation.

Perhaps the larger questions yet to be resolved are at what level the exemption amounts for each tax will be set, and whether this legislation will be effective only in 2010 or will extend into the future. There is little doubt that the exemption level will be at least \$1 million, and some proposed legislation has suggested the level may be set as high as \$5 million per person. Most likely, however, the amount will be between \$1 million and \$3.5 million.

Although this is an uncertain time, steps can be taken to make sure your estate plan is effective in 2010 and beyond, regardless of the changes Congress may implement. Please feel free to contact one of our estate planning attorneys listed below to discuss the changes in the law, and whether or not your estate plan needs to be modified to deal with Congress' gross negligence in failing to deal with the repeal.

The Gawthrop Greenwood Trusts & Estates Group:

Kevin Holleran ([kholleran@gawthrop.com](mailto:kholleran@gawthrop.com))  
J. Stoddard ("Tod") Hayes, Jr. ([jhayes@gawthrop.com](mailto:jhayes@gawthrop.com))  
Vera Parenti-Ancone ([vpancone@gawthrop.com](mailto:vpancone@gawthrop.com))  
Stephen J. Olsen ([solsen@gawthrop.com](mailto:solsen@gawthrop.com))  
Ann Duke ([aduke@gawthrop.com](mailto:aduke@gawthrop.com))  
Leonard Olsen ([lolsen@gawthrop.com](mailto:lolsen@gawthrop.com))