



Estate Tax Update

In 2009, the Federal estate tax exemption rose to \$3.5 million per person (in effect \$7 million per married couple). The top Federal estate tax rate is 45%. Under current law, the Federal estate and generation-skipping transfer taxes (but not the gift tax) are repealed in 2010, but come back in 2011 with a \$1 million exemption and a 55% top rate.

During his campaign, Barack Obama supported a permanent \$3.5 million exemption and a top 45% rate. Since taking office, he has reiterated his support for keeping an estate tax in effect. A new Senate bill has been introduced to make the \$3,500,000 exemption and top rate of 45% permanent. Some Senators may push for a \$5,000,000 exemption. There appears to be no realistic chance of a total repeal at this time.

Additional good news is that the bill also makes the exemption "portable" between husband and wife. This means that, if the first spouse's estate does not fully use the first spouse's exemption, the unused portion will be available to the second spouse's estate. However, while it may not be necessary to create a "bypass" or "exemption" trust when the first spouse dies to use that spouse's exemption, a trust may still be advisable for exempting appreciation on trust assets from estate tax at the death of the surviving spouse, asset protection, Medicaid planning, state estate tax savings, and maintaining control over how the assets pass after the surviving spouse dies.

Finally, the bill raises the gift tax exemption from \$1,000,000 to \$3,500,000. Please note that this is not in addition to the estate exemption. It simply allows more of the \$3,500,000 estate exemption to be used during life instead of at death.

To make up for the favorable changes, unfavorable changes may come to pass. It is possible that the popular estate planning techniques of Grantor Retained Annuity Trusts ("GRATs"), Qualified Personal Residence Trusts ("QPRTs"), and valuation discounts for Family Limited Partnerships ("FLPs") may be restricted or eliminated. If you are interested in these techniques, you should act now to secure these favorable devices for your estate plan.

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To learn more about these matters, please contact Doris L. Martin at (516) 393-2205 or dmartin@gwtlaw.com.

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