

## GOMEL, DAVIS & WATSON, LLP

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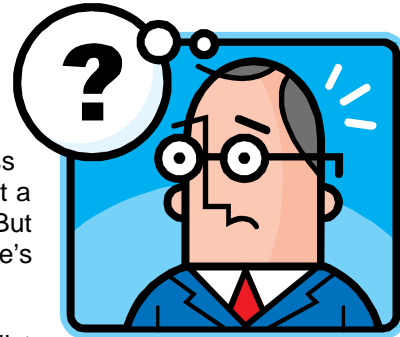
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## Surprise! How Does the Repeal of the Estate Tax Affect You?

March 2010

The unthinkable has happened! As of January 1, 2010, there is no federal estate tax for a one year period. While this has been “on the books” since 2001, the near unanimous opinion of the estate planning community was that Congress would never allow this to actually occur, and would implement a last minute patch to continue the estate tax in its 2009 form. But other matters, especially health care, dominated the Senate’s attention, and nothing was done.



But before you scratch estate planning off your “to do” list, consider a few possible twists:

- Congress may yet reinstate the estate tax in the coming months, and attempt to make it retroactive to January 1. There would almost certainly be a legal challenge to such a step, but there is good chance that a retroactive law would be upheld by the courts.
- If the tax is not reinstated, the repeal only lasts for the year 2010, and then in 2011 reverts to 2001 levels (\$1 million exemption; 55% tax rate), absent further Congressional action. Warning – wealthy individuals might want to be extra careful around their heirs during 2010!
- For those who die during the repeal period, although there is no estate tax, there are two issues to consider:
  - A potential income tax disadvantage. Instead of a “step up” in the tax basis of all of the deceased’s assets to current value, the basis stays the same (except for a maximum \$1.3 million increase, or \$3 million for property passing to a spouse).
  - If the deceased’s Will or Trust includes language that is based on the federal estate tax exemption or generation-skipping tax exemption, there may be confusion and possible disagreement as to how to distribute the assets in the estate.

So, how might one respond to this unexpected situation? Here are a few thoughts:

- One could assume that the estate tax will be reinstated on a retroactive basis and upheld by the courts, and therefore no action should be taken at this time.
- One could assume that his or her chance of dying while repeal is in effect is too remote to worry about.

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- If one's estate is modest sized and his or her documents do not include language that references the estate tax laws, repeal may have little or no effect on his or her situation.
- Most others should consider whether to have their plans reviewed and/or updated to deal with the repeal (especially married couples with medium to large estates). However, due to the myriad of factors and possible scenarios to consider, expect this to be a fairly detailed review and analysis versus a quick fix, so it may depend on how much one is willing to spend for the additional work.
- Please let your Congressman and Senators know how irresponsible it was for them to put their constituents in this predicament.

If you have any questions, or if you would like specific guidance as to how we may be able to assist you in your particular situation, please contact one of our attorneys who practice in this area:

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