



# Estate Tax Alert: Uncertainty In 2010

December 30, 2009

Despite last-minute efforts by Congress in December of 2009, we have significant uncertainty for estate, gift, and generation-skipping transfer tax laws in 2010 that could dramatically impact existing estate plans. House and Senate members have pledged to act quickly in 2010 to clarify these taxes, with the legislation expected to be retroactive to January 1, 2010. It is not yet clear what they intend to do or when they will get it done. If Congress is unable to pass new legislation quickly regarding these taxes for 2010, you should contact your Gray Plant Mooty attorney for a review of your estate plan to determine whether the 2010 estate tax repeal, 2010 GST tax repeal, and other 2010 tax law changes have altered your existing estate plan.

## **Background on Estate, Gift, and GST Taxes**

For Minnesota residents and property owners in 2009, the transfer tax system consists of a federal gift tax, both federal and Minnesota estate taxes, and a federal generation-skipping transfer tax. If you live in or own property in another state, that state's transfer tax laws may also apply. For 2009, the federal gift tax provides for a \$13,000 per year annual exclusion per recipient, a \$1 million lifetime exclusion for gifts exceeding the annual exclusion, and a gift tax rate of 41 percent to 45 percent for gifts exceeding those exclusions. The federal estate tax for 2009 has a 45 percent tax rate with a \$3.5 million exclusion amount (reduced by any lifetime gift tax exclusion used). The federal generation-skipping transfer tax for 2009 has a flat 45 percent tax rate with a GST exemption of \$3.5 million. While Minnesota does not have a gift tax or GST tax, Minnesota does impose an estate tax on estates of \$1 million or more.

## **Federal Transfer Tax Law as of December 2009**

In 2001, Congress passed the Economic Growth and Tax Relief Reconciliation Act with sweeping tax law changes. As the table above shows, the legislation increased the gift tax exclusion to a fixed \$1 million and gradually increased the estate tax exclusion and GST exemption to \$3.5 million by 2009. The legislation also provides for a one-year repeal of the estate tax and GST Tax for 2010. However, the legislation expires in 2010, so that for 2011 and beyond, the transfer tax laws revert back to the way they were written before the 2001 legislation. Minnesota imposes a separate estate tax on Minnesota residents and also on nonresident Minnesota property owners, and Minnesota's estate tax is not repealed for 2010.

## **Recent Legislative Developments**



Gray Plant Mooty has closely monitored the bills introduced in Congress in 2009 that impact these transfer taxes. For the federal estate tax, these bills generally fall into three categories: (1) make the 2009 federal estate, gift, and GST tax laws permanent with a 45 percent maximum tax rate and a \$3.5 million estate tax exclusion amount; (2) gradually increase the federal estate tax exclusion amount to \$5 million over a period of years; or (3) repeal the federal estate tax and GST tax entirely for 2010 and beyond. The fourth option is for Congress to do nothing, which would mean the federal estate tax and GST tax would be repealed in 2010 but would come back with a vengeance in 2011.

When Congress prepared its revenue budget for 2010 and beyond, it budgeted for federal estate tax revenues using a \$3.5 million exclusion amount, leading many to believe that this was the most likely legislative change for 2010. On December 3, 2009, the House passed H.R. 4154, which would make permanent the 2009 federal estate, gift, and GST tax rates and exclusion amounts. On December 15 and 16, the Senate tried to bring up that bill but was unable to pass it. News interviews with House and Senate members indicate that there are no other plans to introduce transfer tax legislation before the end of 2009, which would mean the federal estate tax and GST tax will be repealed for 2010 and other important tax law changes will also happen in 2010.

Repeal of the federal estate tax and GST tax in 2010 may be retroactively revoked in early 2010. House and Senate members who have been involved in the attempts to address these transfer tax issues intend to enact legislation in early 2010 that would apply retroactively to January 1, 2010. In other words, even if a person died on January 5, 2010, when no federal estate tax law is in effect, later in 2010 Congress might rewrite the tax laws retroactively to impose an estate tax for that decedent.

### **Review Your Estate Plan**

Until Congress takes action, there will be uncertainty and confusion in the federal transfer tax system. House and Senate members intend to act on these transfer taxes in early 2010, but the key challenge will be finding 60 votes in the Senate to move the legislation forward. If Congress does not pass legislation for 2010 retroactive to January 1, you should contact your Gray Plant Mooty attorney to review your current estate plan.

Repeal of the federal estate tax and GST tax for 2010 could rewrite your existing will or revocable trust. Many estate plans provide that the entire federal estate tax exclusion amount or the entire GST exemption amount passes to a trust, and the balance of the assets pass to the surviving spouse either in trust or outright. If there is no federal estate tax or GST tax for 2010, these formulas may no longer work as intended. While many of these formulas in wills and revocable trusts will continue to operate exactly as they were intended, it is important to contact your estate planning attorney to make sure these federal transfer tax law changes do not negatively impact your estate plan.



Gray Plant Mooty's Trust, Estate, and Charitable Planning practice group is closely monitoring the proposed transfer tax legislation in Congress, and we hope this confusion and uncertainty can be clarified by Congress soon. If you have any questions about your estate plan or the latest proposals in Congress regarding the transfer tax system, please contact your Gray Plant Mooty attorney.

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