



ESTATE TAX REPEAL (OR NOT)

As many of you will recall, the federal estate and gift tax system was significantly modified in 2001. Many of the modifications of the 2001 Tax Act were to be phased in over a number of years.

As it stood *in 2009*, the major components included:

- An estate tax exemption of \$3.5 million
- A gift tax exemption of \$1 million
- A \$3.5 million exemption from the so-called generation-skipping transfer tax ("GST tax")
- A tax rate of 45% on transfers subject to estate tax, gift tax or GST tax

The 2001 Tax Act provided for the following major changes to these transfer taxes to take effect *after 2009*:

- Complete repeal of the estate tax (subject to certain exceptions applicable to noncitizens whose spouses died before 2010) and the GST tax, but not the gift tax
- Repeal of the rule which gives an income tax basis step-up to assets (subject to certain important exceptions) owned by an individual at death
- Reduction of the gift tax rate to 35% for gifts made in 2010
- Treatment as completed gifts of certain transfers in trust, which would not have been so treated before 2010.

Many of the modifications brought about by the 2001 Tax Act, including those outlined above, are subject to a "sunset" provision which would undo all of the modifications of the 2001 Tax Act *after 2010* (which would have the much harsher pre-2001 rules come back into place).

Remarkably and regrettably, Congress adjourned in 2009 without addressing this wild roller coaster ride.

Although most observers believe that Congress will enact legislation in 2010 which will reinstate the estate, gift and GST taxes, probably at levels more or less consistent with the 2009 rules, and that these changes will be made retroactive to January 1, 2010, it is obvious there can be no certainty about this.

Given the circumstances, consideration should be given to having estate plans reviewed to determine whether and what action, if any, should be taken. Although in many cases no changes or other action will be appropriate, in cases where estate plans have been structured in anticipation that the estate tax exemption or GST tax exemption would be limited, it is possible that changes may be warranted.

Please contact us if you wish to discuss this or review how the current or potential tax landscape may impact your planning.

Of course, we will continue to keep you advised about any new legislation or other developments.

COZEN O'CONNOR PRIVATE CLIENT SERVICES GROUP

Raymond G. Console.....	856.910.5011	rconsole@cozen.com
Leonard J. Cooper	215.665.4152	lcooper@cozen.com
Richard J. Duffy.....	212.883.4951	rduffy@cozen.com
Herbert B. Fixler.....	212.297.2670	hfixler@cozen.com
Robert I. Friedman, Chair	215. 665.4180	rfriedman@cozen.com
Edward M. Glickman	215. 665.4147	eglickman@cozen.com
David R. Glyn	215.665.4117	dglyn@cozen.com
Gail Goldfarb	212.297.2667	ggoldfarb@cozen.com
Adam Grandwetter	215.665.3722	agrandwetter@cozen.com
Donald J. Hayde	212.883.4935	dhayde@cozen.com
Kathleen S. Huang.....	215.665.7209	khuang@cozen.com
Helene S. Jaron.....	215.665.4657	hjaron@cozen.com
Matthew H. Kamens	215.665.2079	mkamens@cozen.com
David S. Kovsky	215.665.4611	dkovsky@cozen.com
Charles B. Law, Jr.....	212. 883.4904	claw@cozen.com
Stephanie F. Lehman	212.297.2665	slehman@cozen.com
Lester E. Lipschutz.....	215.665.3718.....	lester@cozen.com
Alexander Sanford	215.665.4612	asanford@cozen.com
Amy Neifeld Shkedy	215.665.2731	ashkedy@cozen.com
Judith E. Siegel-Baum	212.883.4902.....	jsiegel-baum@cozen.com
Burton K. Stein.....	610.941.2349.....	bstein@cozen.com
Michael R. Stein.....	215.665.5579	mstein@cozen.com
Margaret Gallagher Thompson, Vice Chair	215.665.6959	mthompson@cozen.com
Steven G. Winters.....	215.665.3733.....	swinters@cozen.com

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