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# Estate and Gift Tax Law – What to Expect for 2010 Tax Returns



# Economic Growth and Tax Relief Reconciliation Act of 2001

- Estate Tax does not apply to estates of decedents dying after December 31, 2009
- Generation-Skipping Transfer Tax (“GSTT”) does not apply to generation-skipping transfers (“GST”) after December 31, 2009

# Economic Growth and Tax Relief Reconciliation Act of 2001 continued

- For Gifts made in 2010:
  - Exemption of \$1 million
  - Maximum Rate of 35%
- Provisions of EGTRRA pertaining to estates, gifts, and GST will sunset on December 31, 2010

# 2010 Basis Provisions

- **Property acquired by gift**
  - Carryover Basis Rule applies
  - To determine loss, lesser of donor's adjusted basis or the fair market value of the property at gift
- **Property acquired from a decedent**
  - Modified Carryover Basis Rule applies
  - To determine gain or loss, lesser of decedent's adjusted basis or the fair market value of the property at death

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# Exceptions to Carryover Basis

- **Executor may allocate up to \$1.3 million to increase the basis of assets**
  - Amount is increased by unused losses and loss carryovers
  - Cannot increase the basis of any interest in property above its fair market value as of the decedent's date of death
  - For nonresident, non-citizen decedents, the amount is \$60,000

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# Spousal Transfers

- Executor may allocate up to an additional \$3.0 million to increase the basis of assets passing to a surviving spouse
- Applies to assets that pass either outright or as Qualified Terminable Interest Property (“QTIP”)
- Does not apply to property that is subject to a terminable interest

# Limitations on Basis Increase

- **Property must be owned by the decedent at the date of death**
- **Special Rules apply for:**
  - **Jointly Held Property**
  - **Property Held in a Revocable Trust**
  - **Property Subject to a Power of Appointment**
  - **Community Property**

# Limitations on Basis Increase

- Basis increase does not apply to property acquired by the decedent by gift within 3 years of death
- This limitation does not apply to property acquired by gift from the decedent's spouse

# After Sunset

- **Transfers after December 31, 2010**
  - Exemption of \$1 million
  - Top Rate of 55%
  - Additional 5% surtax on certain large estates
- **Basis rules revert to pre-EGTRRA regime**



# Current E&G Program Priorities

- **Examinations of returns filed for estates of decedents dying before January 1, 2010**
- **Gift Tax Returns**
- **Non-filed estate and gift tax returns**
  - **Federal/State Initiatives**
  - **Non-filer Projects**
  - **Whistleblower Office Referrals**

# Estate & Gift Resources

- [www.irs.gov](http://www.irs.gov)
  - Key word search: “estate and gift tax”
- Questions about return accounts and extensions only, (no tax law questions):  
(866) 699-4083
- Many general estate and gift tax law questions can still be answered by calling  
(800) 829-1040

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E-File Resources for Providers and EROs	provider resource
E-Services – Online Tools for Tax Pros	Eservice
IRS Stakeholder Partners' Headliners	headliners
Issue Management Resolution System	IMRS
Practitioner Priority Service	priority service
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