
2010 Estate Tax Repeal

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January 12, 2010

The U.S. Wealth Transfer Tax System

	2009	2010	2011
Estate Tax Exemption	\$3,500,000	All exempt	\$1,000,000
Estate Tax Rate	45%	0	55%
Gift Tax Exemption	\$1,000,000	\$1,000,000	\$1,000,000
Gift Tax Rate	45%	35%	55%
Generation Skipping Exemption	\$3,500,000	All exempt	\$1,000,000
Generation Skipping Tax	45%	All exempt	55%

Income Tax Law Changes

Like transfer taxes, income taxes will change, with or without Congressional action.

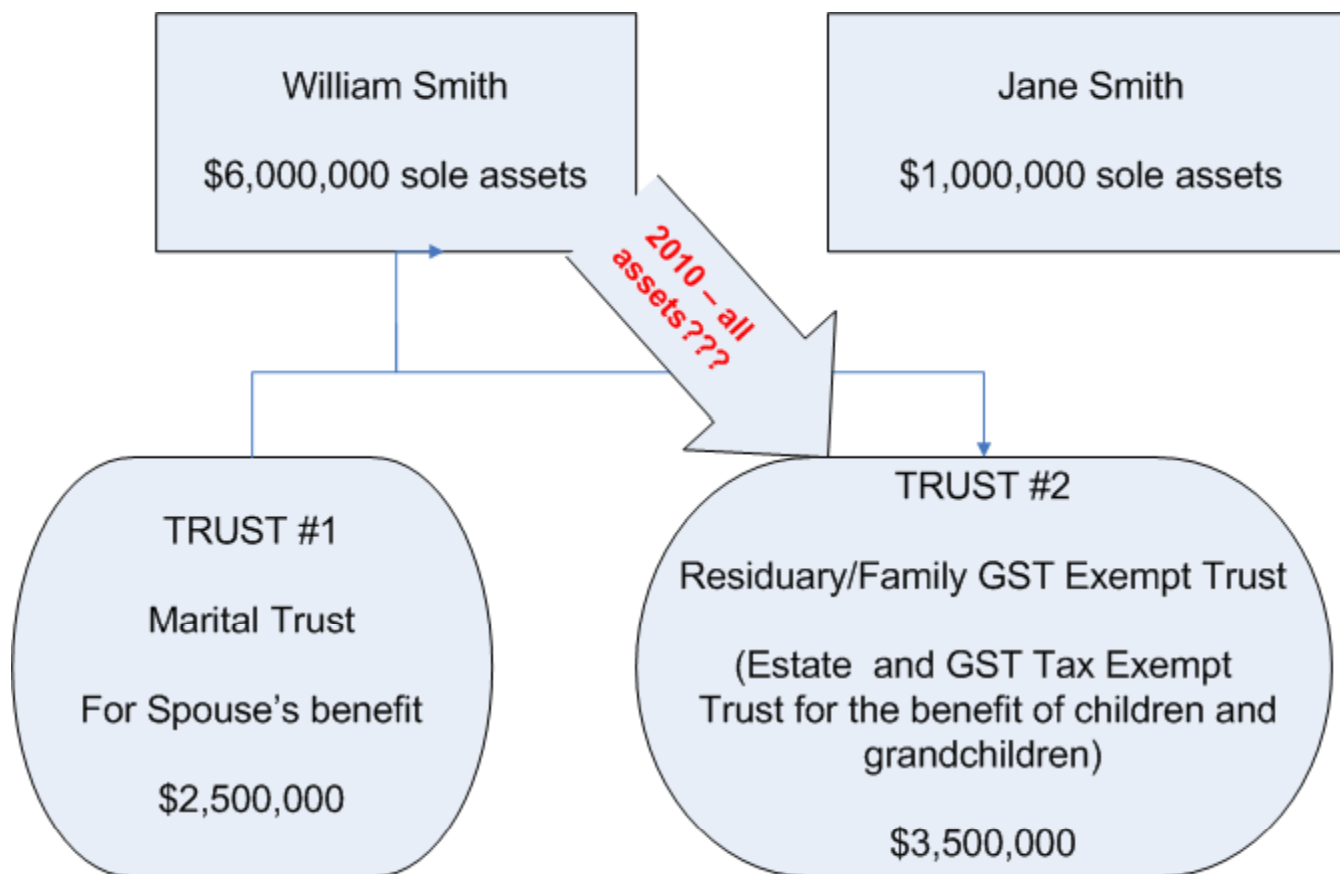
	2009	2010 without new legislation	2011 without new legislation	Proposals for future tax (2010 or 2011?)
Highest Marginal Rate	35%	35%	39.6%	39.6-45%
Qualified Dividends	15%	15%	39.6%	20%
Long-Term Capital Gains	15%	15%	20%	20%
Non-Taxable Charitable IRA Distributions	Yes	No	No	unknown
AMT Relief	Yes	No	No	Yes
Earned Income Credit	Yes	Yes	No	Yes
Deduction for State Sales Tax	Yes	No	No	unknown

New 2010 Carryover Cost-Basis Rules

- Any estate asset with a date-of-death fair market value **greater** than historical cost-basis **does not receive a step-up** in cost-basis.
- Any estate asset with a date-of-death fair market value **less** than historical cost-basis **does receive a step-down** in cost-basis
- An executor may allocate \$1,300,000 of increased basis among the estate assets (plus an additional \$3,000,000 increased basis to any property passing to the surviving spouse or marital trust).

Pitfalls of Tax Formula-Based Distributions

What will happen to the distribution of your estate without reference to tax exemption amounts?



Update on Proposed Estate Tax Law Changes

Future of Estate and Gift Tax:

- Exemption Levels
- Tax Rates
- Portability Between Spouses
- Reunification of Estate and Gift Tax Exemption
- State Death Tax Credit/Deduction
- Step-Up vs. Carry-Over Basis
- Unrelated Revenue Raisers
 - Reforming Valuation Issues
 - Cost basis inconsistencies in estates
 - Limited partnerships
 - Tightening Down on GRATs
 - Term not less than 10 years
 - At least 10% taxable gift (remainder value)

What's in Play?



Planning Opportunities

Factors to Consider

- Uncertainty about timing and retroactivity of new estate, gift and GST taxes
- Low interest rates and applicable federal rates
- Optimism about future growth
- Likelihood of increase in income tax rates
- Possible future restrictions on planning techniques
 - GRATs
 - FLPs

Planning Opportunities: Intra-Family Transfers

- ◆ **Outright Gifts**

- Utilize annual exclusion

- Currently \$13,000 per person (\$26,000 per couple) per recipient

- Utilize \$1,000,000 lifetime exemption

- ◆ **Intra-Family Loans**

- Older generation (lender) makes loan to younger generation (borrower)

- Current interest rates - low for borrower

- Mid-Term AFR for January 2010: 2.45%

- Lender may forgive portions of loan in future

- ◆ **Sell Assets**

- To younger generation

- To intentionally defective grantor trust

Planning Opportunities: Building in Flexibility

◆ New Techniques for Gifts

- Being developed to provide flexibility if estate, gift or GST tax is retroactive to January 1, 2010.
 - Examples (but not recommendations):
 - Large outright gifts to grandchildren
 - Gifts to trusts for grandchildren
 - Trusts that can be qualified as QTIP Marital Trusts if higher gift tax rate becomes retroactive
- Disadvantages – no real certainty, significant tax exposure; legal costs for advice and drafting

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