

# PUBLICATION

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## A Letter to Our Estate Planning Clients

January 15, 2010

You may have received announcements from one or more of your financial advisors informing you that the federal estate tax has been repealed effective January 1, 2010, and explaining the technical details of this development. Our Tax Alert on this issue was distributed on January 5th.

We are now writing to you because we would like to discuss how this repeal may adversely affect the estate plans of many individuals. You may be one of the individuals so affected.

There are many examples of how the estate tax repeal may have unintended consequences for an individual's estate. For example, many Wills or Revocable Living Trusts divide an individual's probate estate into a marital share for their spouse, and a family share for their children. For the past three decades, this plan, popularly known as the "credit shelter" plan, has been one of the most effective strategies for a married couple to minimize their exposure to the estate tax. However, now that the tax has been repealed, the credit shelter formula may result in a division of an estate in a manner contrary to an individual's wishes. For example, the Family Trust in such a Will or Living Trust was designed to hold all of the assets covered by the "tax-exempt" amount, with the balance of the estate passing to the spouse (or to a trust for the spouse). Now that the entire estate can be considered "tax exempt," it appears that the entire estate, except for personal items, will be transferred to the family trust, and that the spouse could receive nothing.

Estate tax repeal may also affect a client's gifts to grandchildren. A Will or Living Trust which provides that the grandchildren will receive "the largest amount which can pass free of the generation-skipping transfer tax" may result in the grandchildren receiving the entire estate. This outcome could result from the fact that the generation-skipping transfer tax was repealed along with the estate tax.

In a third commonly seen situation, the Will or Living Trust makes a gift to a charity in an amount calculated to zero out the estate's liability for the estate tax. Such a formula may now be meaningless, with the result that the charity could receive nothing.

These are just a few of the many examples of unintended consequences in certain estate planning situations. Your estate planning documents may or may not be so affected.

We wish that we could forecast with some assurance what the chances are that the tax repeal will prove to be permanent. Unfortunately, Congress adjourned in December without providing any indication of likely action in 2010. All we can say for sure at this point is that if Congress does not act before January 1, 2011, the estate tax will be reinstated with a personal exemption of \$1 million.

If any of the issues outlined above trigger questions or a concern that you would like to discuss further, or if you would like us to review your estate planning documents in light of the estate tax repeal, please contact any attorney in our Tax Department.