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Estate Tax Planning, Estate Administration, Probate, and Elder Law

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## ALERT: Federal Estate Tax Repeal What Happened?

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### One Year Repeal of the Estate Tax.

Contrary to all predictions, the Congress has failed to extend or revise the federal estate tax. As a result, there is no federal estate tax (so far) in 2010. Under current law, the federal estate tax will be reinstated in 2011 with an exemption of \$1,000,000 and all of the other rules that were in place in the beginning of 2001.

### Will the repeal last through the year?

No one knows. There may be pressure to raise revenue. Congress could

1. Reinstatement of the tax in some form retroactive to January 1, 2010;
2. Reinstatement of the tax as of the date the bill is signed into law;
3. Leave the repeal in place for 2010 but modify the exemption and other rules for 2011 and beyond.

### Why Do I Care?

First, if you die while there is no federal estate tax and the language in your will or trust is tied to the federal estate tax, your estate may not pass to your intended beneficiaries. Most recently drafted documents contain formulas that rely on the federal estate tax to allocate an estate among the beneficiaries. Without the federal estate tax, your beneficiaries' shares may be different than what you had planned when the documents were written.

Second, the "step-up" in income tax basis rules no longer apply and new "carryover" basis rules are in effect for 2010. Before 2010 the executor only had to know the date of death value of the assets in the estate and distribute them using those values. For 2010 (and only 2010) executors and/or trustees will be required to learn the basis (generally the amount you paid) for each asset in your estate and then will be required to take actions based on those determinations. The decisions they make will determine the basis your beneficiaries have in the property you leave them.

The temporary repeal of the tax will impact many plans and planning situations including:

- Second marriages with children from a prior marriage
- Gifts based on a percentage or formula relating to the taxable estate
- Residents of states without a state estate tax such as Florida or New Hampshire
- Generation skipping gifts
- People considering a transfer of a home or other low basis property
- Plans which have not been reviewed in three or more years

### What Should I Do?

If you think the repeal of the federal estate tax may affect your plan or if you have any questions about it, you should call your estate planning attorney who can review your situation and make recommendations. Because of the uncertain state of the law at this time, it is a good idea in any case to be apprised of changing developments as they occur.