

## Significant Changes In the Federal Gift, Estate, and Generation-Skipping Tax Laws Have Recently Gone Into Effect

The purpose of this alert is to advise you about some significant changes in the federal gift, estate, and generation-skipping tax laws that have recently gone into effect. These changes to the federal transfer tax laws are based on legislation that was originally enacted in 2001, which has been phased in over a number of years. Beginning in 2002, the estate and gift tax exemptions were unified at \$1,000,000 each, with a maximum tax rate of 50%, and the generation-skipping tax exemption was set at \$1,060,000, also with a maximum 50% tax rate. By 2009, the estate tax and generation-skipping tax exemptions had both increased to \$3,500,000, while the gift tax exemption remained at \$1,000,000. The maximum tax rate for all of these taxes in 2009 decreased to 45%. However, effective January 1, 2010, federal estate and generation-skipping taxes do not apply to transfers or deaths occurring in the 2010 calendar year. At the same time, the federal gift tax continues to apply with a \$1,000,000 lifetime exemption and a maximum tax rate of only 35%.

In the absence of new legislation, this one-year “repeal” of federal estate and generation-skipping taxes will “sunset” at the end of 2010, so that on January 1, 2011, the estate and gift tax

exemptions will be reduced to only \$1,000,000 each with a maximum tax rate of 55% (plus a 5% surtax), and the generation-skipping tax exemption will be reduced to \$1,000,000 (as indexed for inflation) with a 55% rate. It is possible that Congress will pass new legislation regarding the transfer tax laws to be effective after 2010, and might even pass legislation that is retroactive to January 1, 2010 (potentially eliminating the one-year repeal of the estate tax that is currently in effect). However, there is no way of knowing whether this will actually happen, or whether such retroactive legislation would even be constitutional. At the present time, Congress is considering how to address these issues and consequently, various bills have been proposed. One possibility that has received support is to extend the exemptions and rates provided by 2009 law (i.e., estate and generation-skipping tax exemptions of \$3,500,000 each), but so far nothing has been enacted.

Of course, the biggest question is how does all of this uncertainty in the law affect your estate planning? To begin with, depending upon the size of your estate, the amount of estate tax that could be payable at the time of your death will



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vary greatly depending upon the exemption amounts and rates in effect at that time. Furthermore, many estate planning documents contain formulas and other provisions that are based upon the expectation that estate and generation-skipping taxes will continue to be imposed. For example, a trust might leave an amount to children equal to the federal estate tax exemption in effect at the time of the decedent's death, with everything else being distributed to the surviving spouse. If there is no estate tax in effect at that time, there may be uncertainty as to how this trust provision is to be interpreted.

There are a number of different ways in which these issues can be addressed. One approach would be to amend the documents to provide that they will be interpreted during repeal as

if the tax laws in effect on December 31, 2009 were still in effect. In fact, a new law has been passed in the state of Utah providing that during repeal, tax formulas such as these will be construed to refer to the transfer tax rules in effect on December 31, 2009.

## Because it matters!™

Other states have enacted or are considering similar laws. Although many of our clients' estate plans will not be affected by the issues described above, because every estate plan is different, we wanted to at least make you aware of the possibility. Please let me know if you have any questions or if you would like us to review your estate planning documents.

Sincerely,  
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*Chair, Tax and Estate Planning Group*



Van Cott's Tax and Estate Planning Group advises clients in all aspects of the estate planning process, including the preparation of wills, durable and medical powers of attorney, and all types of trusts; the various forms of gifting and charitable giving; the formation of family limited partnerships and limited liability companies; and asset transfers and asset protection. We also advise clients with respect to the tax issues that arise in the estate planning area, and have worked extensively with the income, gift, estate, and generation-skipping transfer tax laws.

We offer complete tax planning services. We represent clients before the Internal Revenue Service, the Utah Tax Commission and other tax authorities.

Additionally, the Tax and Estate Planning Group also represents clients with respect to the administration of trusts and estates, including probate, the division and distribution of assets, income tax matters, and the preparation of federal estate and gift tax returns.

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