

Tax Alert

RELEVANT ALERTS DIRECT TO YOUR INBOX

January 2010



GREEN HASSON & JANKS LLP
BUSINESS ADVISORS AND CPAs

WHAT'S INSIDE

Updates on Estate Tax and
Generation Skipping Transfer (GST) Tax

Dear Clients and Friends:

As a result of changes made by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), the Estate tax and the Generation Skipping Transfer (GST) tax was repealed for estates of decedents who pass away in 2010. EGTRRA also provided for a modified carryover basis regime in 2010. Starting in 2011, absent a change in law, the exemption amount reverts back to \$1 million and the top estate tax rate will go back to 55 percent (55%) which were the amounts in effect prior to the passage of EGTRRA. While it was common belief that Congress would extend the exemption amount and tax rate that was in effect for 2009 to 2010, this did not occur. On December 3, 2009, the House of Representatives passed H.R. 4154, the *"Permanent Estate Tax Relief for Families, Farmers, and Small Businesses Act of 2009."* The bill made permanent the estate, gift, and GST tax laws that were in effect for 2009 ... (\$3.5 million exemption from Estate tax and a maximum Estate tax bracket of 45 percent [45%]). The Senate, however, did not take up the bill before the end of the year. Consequently, the status of estate and gift tax legislation is currently in a state of limbo. However, most observers believe that Congress will enact a "patch" of sorts that would retroactively reinstate Estate and Gift Tax Law in effect for 2009.

Estate and Gift Tax under Present Law

- EGTRRA repealed the Estate tax and the GST tax for estates of individuals who pass away in 2010.
- Modified carryover basis rules apply for 2010 for inherited property. This allows heirs to obtain a step-up in basis to a limited extent with respect to inherited assets. A step-up in basis to Fair Market Value (FMV) will be allowed up to \$1.3 million and an additional \$3 million for assets inherited by a spouse. Capital loss carry forwards can potentially be utilized to increase your basis.
- The executor of the estate is ultimately responsible for determining which assets receive the step-up in basis.
- Gift Tax is not being repealed during 2010. The unified credit exemption amount remains at \$1 million and the top gift tax rate is 35 percent (35%).
- Starting in 2011, the unified credit exemption will be \$1 million for both Estate and Gift tax purposes and top tax rate reverts to 55 percent (55%).

Estate and Gift Taxes under the House-passed Bill (*Permanent Estate Tax Relief for Families, Farmers, and Small Businesses Act of 2009*)

- The unified credit exemption amount for Estate tax purposes would be \$3.5 million for decedents passing away during 2010 and later years.
- The unified credit exemption amount for Gift tax purposes would be \$1 million for 2010 and later years.
- The highest Estate and Gift tax rate would be 45 percent (45%).
- The GST exemption would equal the unified credit exemption amount for Estate tax purposes (\$3.5 million), and the GST tax rate would be determined using the highest estate and gift tax rate.
- The House-passed Bill would repeal the modified carryover basis rules that were to apply for purposes of determining basis in property acquired from a decedent who dies in 2010. Property acquired from a decedent who dies after December 31, 2009, generally would receive date-of-death fair market value basis (i.e., "stepped-up" basis) under the basis rules in effect in 2009.

[Continued]

Tax Alert

RELEVANT ALERTS DIRECT TO YOUR INBOX

January 2010



GREEN HASSON & JANKS LLP
BUSINESS ADVISORS AND CPAs

WHAT'S INSIDE

Estate Tax and
Generation Skipping Transfer (GST) Tax

Illustration of Tax Consequences—Current Law versus Proposed Law

Assume a single individual has an estate worth \$3.5 million and having a basis of \$1.2 million. Under existing law if the individual dies in 2010, there would be no tax imposed on the individual's estate. However, the individual's heirs would face income tax on \$1 million worth of gain when they sell the inherited assets. The gain is computed by taking the \$3.5 million the heirs would receive upon any potential sale, less a basis of \$2.5 million (the individual's original \$1.2 million basis has increased by \$1.3 million under the carryover basis rules). On the other hand, if the 2009 rules are restored for 2010, there would still be no estate tax and the heirs would face no income tax on any pre-death appreciation.

Eye on Potential Estate Planning

As a result of these income tax changes, some heirs could face higher combined estate and income tax costs if their loved one passes away in or after 2010. We want you to be aware of the current law changes and keep an eye on potential estate planning opportunities.

- Consider making taxable gifts (gifts in excess of \$1 million cumulatively during your lifetime), in 2010 to your children and grandchildren. This is due to the gift tax rate differential (35% currently versus 45% on or after 2011).
- By gifting to your grandchildren, you can avoid GST in 2010. Under the current law, GST rate will be 55% starting in 2011.
- Take advantage of favorable long-term capital gain rates by selling inherited assets which have appreciated in 2010.

We will update you on any changes to the tax provisions of the Estate and Gift Tax legislation as soon as it becomes available.

Talk to Us

Like many tax matters, these rules are complex and we have only provided a brief overview of the issues. Please contact your GH&J tax advisor for further details at (310) 873-1600.

GREEN HASSON & JANKS LLP | 10990 Wilshire Blvd, 16th Floor | Los Angeles, CA 90024-3929 | 310.873.1600 | www.ghjadvisors.com

To update your email address or remove yourself from future tax notifications, please send an email to alerts@ghjadvisors.com.

The information presented is only of a general nature, intended simply as background material, is current only as of its indicated date, omits many details and special rules and accordingly cannot be regarded as legal or tax advice. This material is not intended to constitute a complete analysis of all tax considerations. Internal Revenue Service regulations generally provide that, for the purpose of avoiding United States federal tax penalties, a taxpayer may rely only on formal written opinions meeting specific regulatory requirements. This material does not meet those requirements. Accordingly, this material was not intended or written to be used, and a taxpayer cannot use it, for the purpose of avoiding United States federal or other penalties or of promoting, marketing or recommending to another party any tax-related matters.

This publication is issued periodically to keep GREEN HASSON & JANKS LLP clients and other interested parties informed on current tax developments that may affect or otherwise be of interest to them.

© 2010 GREEN HASSON & JANKS LLP. All rights reserved.