



# New Tax Law May Impact Estate Plans

The Economic Growth and Tax Relief Reconciliation Act of 2001 could have substantial ramifications on estate plans

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**T**he most welcome feature of the new law also creates the most uncertainty. Previously, an individual could pass up to \$675,000 (during lifetime or at death) to someone other than a spouse, and have that amount be exempt from estate and gift tax. With the new law, that amount jumps to \$1,000,000, in January 2002 and increases significantly prior to repeal in 2010.

The sudden jump in the applicable exclusion amount could result in more money than intended passing to the family trust and leave the surviving spouse — especially in second marriage situations — with much less than was expected or intended.

Under the new law, gifts during lifetime will be treated differently than bequests at death. The gift tax will remain in place, although each individual will have a \$1,000,000 lifetime gift tax exclusion. The gift tax rate will decrease in increments to 35% in 2010.

The highest estate and gift tax rates will be reduced next year from 55% to 50%. Each year thereafter will see another reduction of one percent until it reaches 45% in 2007, where it remains until repeal in 2010. After

2010, the gift tax rate will remain at the highest income tax rate.

Another major component of the new law is the return in 2010 to "carry-over" basis on inherited property. Previously, when an heir received an asset from an estate he or she received it with a "stepped-up" basis.

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Under the new law, when estate tax phase-out is complete in 2010, this will become a "carry-over" basis, which means that an heir will receive an asset with the same basis as the decedent. Therefore, if an heir receives a piece of property worth \$1,000,000 for which the decedent only paid

\$500,000, then upon sale, the heir will pay capital gain tax on the \$500,000 difference. Payment of taxes occurs only upon the heir's sale of the asset. Certain amounts are excluded from the carry-over basis rules, which will allow some estate property to enjoy a step-up in basis.

As if the phased-in changes are not difficult enough to plan for, the new law will disappear from the books in 2011 and the estate and generation-skipping tax will return to what it is today. It is unclear what the law will be 10 years from now, but realistically, you may need to at least review and possibly to update your estate plans several times before 2010 to make sure your estate planning goals are met.

We would recommend sitting down with your estate planning attorney to: review all estate planning documents, gifting strategies, titling of assets, generation skipping plans, and charitable planning strategies; and gather records verifying purchase prices paid for assets in anticipation of the new "carry-over" basis rules. If an individual cannot establish the basis of assets, it will be presumed to be zero. This will necessitate accurate record-keeping that may span generations.

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