



April 2010

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The Twilight Series: Part One

Are you aware that the estate tax has been repealed this year? Do you know how it happened and what it may mean for you? If not, read on.

In the popular *Twilight* series, Bella, the young heroine, finds the dashing Edward to be both attractive and dangerous, a common problem when dating a vampire. The year 2010 is the “twilight” year for estate planners: attractive and potentially dangerous. This is the year that the unexpected has happened – the complete repeal of the federal estate tax. But don’t jump for joy just yet. There are some catches and they don’t just affect the super-rich!



Catch #1: A complex tax on capital gains has replaced the estate tax this year, and these new rules will create pitfalls even for people with modest assets.

Catch #2: The estate tax repeal is only temporary. If Congress sits on its hands and does nothing, the estate tax will be back next year with a vengeance. Beginning January 1, 2011, the estate tax will return to its top rate of 55% (up from 45%) and the applicable exclusion amount for every person will decrease to \$1 million (down from \$3.5 million). In short, 55% of everything you own at death above \$1 million will be going to Uncle Sam in the form of estate taxes.

How did this strange turn of events happen? Believe it or not, nine years ago, there were federal surpluses! Because of those surpluses and the tragic events of 9/11, Congress decided in 2001 to give a little back to taxpayers by passing a law that gradually phased out the estate tax. Over the course of the next decade, the top estate tax rate gradually decreased and each taxpayer's applicable exclusion amount increased.

But almost no one seriously thought that one of the law's most important provisions would ever come to pass – the repeal of the estate tax in 2010. After all, we have had a federal estate tax since 1916! It was assumed that Congress would pass legislation to prevent repeal. What a rude awakening when 2010 arrived and Congress had still done nothing. My law school tax professor, Michael Graetz, has called this failure to act “congressional malpractice.” Why? What does all of this mean for you? In Part Two of this three-part series, you will learn about the traps for the unwary and how the law's potential pitfalls could affect your family.

Stay tuned for next month's newsletter . . .

Estate Tax Timeline: Summary

	2009	2010	2011 & beyond
Estate Tax	<ul style="list-style-type: none"> •45 % top tax rate •\$3.5mm exemption 	<ul style="list-style-type: none"> •Completely repealed •Carryover basis rules (instead of traditional step-up in basis rules) <p>Two Exceptions:</p> <ul style="list-style-type: none"> - \$1.3mm aggregate increase - \$3mm spousal increase 	<ul style="list-style-type: none"> •55 % top tax rate •\$1mm exemption
Generation Skipping Transfer Tax	<ul style="list-style-type: none"> •45% top tax rate •\$3.5mm exemption 	<ul style="list-style-type: none"> •Completely repealed 	<ul style="list-style-type: none"> •55 % top tax rate •\$1.34mm exemption (indexed for inflation)
Gift Tax	<ul style="list-style-type: none"> •45% top tax rate •\$1mm exemption 	<ul style="list-style-type: none"> •35 % top tax rate •\$1mm exemption 	<ul style="list-style-type: none"> •55 % top tax rate •\$1mm exemption

About Tali Klapach

Tali Klapach is a partner at Klapach & Klapach. She graduated from Princeton University and Yale Law School and clerked for the Chief Judge of the United States Second Circuit Court of Appeals. After practicing law for seven years at two prestigious law firms in San Francisco and Los Angeles, Tali started her own practice in trusts and estates. The goal of Klapach & Klapach is to combine the high quality service of a big law firm with the personal attention and affordability of a family lawyer. Tali is committed to building long-term relationships with clients and to serving as a source of ongoing assistance and advice. To schedule a free estate planning consultation or to subscribe to this free monthly e-Newsletter, please visit www.KlapachLaw.com or call (310) 424-3144. Estate Planning for a Lifetime.®

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