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The Twilight Series: Part Three

Are you aware that the estate tax has been repealed this year?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.

You know the adage: Nothing's certain except death and taxes. But this year's temporary lapse in the estate tax has turned even that adage upside down. Last month's newsletter discussed the complex carryover basis rules that apply this year, and only this year. This month's issue -- the final of our three-part "Twilight" series on the estate tax repeal -- discusses some of the ways that the 2010 repeal might work in your favor.



Time to Give?

Unlike the estate tax, the gift tax has not disappeared this year. But there is still a gift tax exemption of \$1 million and the top rate has been reduced from 45% to 35%. Barring any legislation to the contrary, the top gift tax rate will increase next year to 55%. So, with regard to lifetime gifting, there may be a limited window of opportunity to make gifts this year at

the reduced 35% rate. Assuming that the federal estate tax in effect at the time of one's death exceeds 35%, the tax benefit of making a taxable gift this year could be significant.

Let's take an example. If Parent knows that she wants to transfer \$500,000 to each of her two adult children, Parent could bequeath the money to her children upon her death, but might then face a top estate tax rate of 55%. If Parent can afford to part with the money this year, she might instead give the money to adult children now, and face a top gift tax rate of only 35%.

Taxpayers who can afford to make substantial gifts should carefully consider doing so this year.

Gifts to Grandkids

This year might also be an optimal time for making gifts to grandchildren. The generation-skipping transfer (GST) tax is a federal tax on transfers of assets made to grandchildren (or to other individuals who are more than one generation below you) and it is imposed in addition to the gift or estate tax. In 2010, the GST tax has also been temporarily repealed, making this year a banner year for generation-skipping transfers. The repeal of the GST tax in 2010 means the elimination (albeit temporarily) of one of the taxes on gifts made during life. Assuming that the GST tax is not reinstated retroactively, assets can be gifted this year, either outright or through a trust, to grandchildren and younger generations while accounting only for the gift tax.

Taxpayers might therefore consider making gifts or trust distributions to grandchildren this year to avoid the adverse tax consequences that typically accompany such transfers.

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

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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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