



No Estate Tax in 2010: An Unpleasant Estate Planning Surprise

The world of estate planning was turned upside down when the Federal Estate tax was unexpectedly repealed effective January 1, 2010. St. Louis, Missouri, estate planning attorney, Steven Spewak, guides professional advisors and clients through the surprising and unpleasant consequences repeal brings.

St. Louis, MO ([PRWEB](#)) February 3, 2010 -- When Congress failed to extend the Federal estate tax prior to the end of 2009, the tax was automatically repealed effective January 1, 2010. But what appears to be cause for celebration for many, may prove just the opposite.

“Congress instead substituted a new system of taxation that will potentially collect more taxes from many of our clients than the estate tax”, says Steven Spewak, principal attorney at Estate Plan Strategies, LLC, a St. Louis law firm concentrating its practice in estate planning.

Spewak offers the following observations, insights and recommendations for people to understand and favorably navigate what has transpired:

What Happened. The 2001 tax act, signed into law by President George W. Bush, gradually reduced the maximum Federal estate tax rate from 55% to 45% and increased the amount that could pass free of Federal estate tax from \$675,000 per person in 2001 to \$3.5 million per person in 2009. Then, in 2010 only, the 2001 tax act repeals the estate tax, only to bring it right back in 2011, but at a much reduced exemption of \$1 million per person and a maximum tax rate of 55%.

A New Tax Replaces the Estate Tax. Prior to 2010, when a person died, the income tax basis of the deceased person’s property was “stepped up” to its value at the date of death. Therefore, no matter how much the value of property appreciated during a person’s lifetime, his or her heirs could sell those assets following the person’s death without paying income tax on that appreciation. In 2010, when there is no estate tax, the 2001 tax act limits the amount of property for which income tax basis can be “stepped up”. Accordingly, while there may be no estate tax, property for which the income tax basis is not stepped up will instead be subject to income tax on all appreciation that occurred during the deceased person’s lifetime.

What Will Congress Do? That is the great unknown. Almost everyone assumed from the time the 2001 tax act was enacted that Congress would act before the end of 2009 to remedy the situation. Whether Congress addresses this issue before the estate tax is reinstated next year with its higher tax rate and significantly reduced exemption will undoubtedly be affected by numerous factors including the urgency of other legislative priorities and any perceived political value of raising the estate tax as an issue in 2010 election campaigns.

What Individuals Should Do? The repeal of the Federal estate tax can adversely affect individuals in several ways. For married couples, it is a common for estate planning documents to use a mathematical formula to divide assets upon the death of the first spouse to die in a manner designed to minimize Federal estate tax. For many, however, these formulas will not permit a surviving spouse to receive a limited “stepped up” tax basis otherwise permitted by the 2001 tax act, thereby causing income taxes to unnecessarily result. Likewise these formulas may



result in property being divided among beneficiaries in a much different manner than intended, or even unintentionally disinheriting a beneficiary. The expectation of the estate tax coming back in 2011, but at higher rates and a lower exemption amount, also places a premium on new planning to avoid additional estate taxes that would otherwise result. Individuals should meet with their estate planning professionals as soon as possible to promptly institute estate plan revisions necessary to counteract these adverse consequences.

Steven Spewak has practiced as an estate planning lawyer in the metropolitan St. Louis, Missouri, area for more than 25 years. He is a co-author of the authoritative book on estate planning, *Love, Money, Control; Reinventing Estate Planning*, published by Quantum Press, and a contributing author to the recently released book, *Estate Planning Strategies*, published by Wealth Builders Press, LLC. He will be recognized as a 2010 FIVE STAR wealth manager in the field of estate planning in the March 2010 issue of *St. Louis Magazine*.

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