



## Planning and Review Necessary to Transition from 2010 to 2011-2012 Estate Tax Structure

*Recent upheaval regarding the estate tax—including the repeal of the tax in 2010 and its return in 2011 with an entirely new set of rules—have many people confused about how to administer estates from 2010, or even how to prepare their plans for the future. Steven Spewak, St. Louis, Missouri estate planning attorney, explains what can be learned from looking back on 2010 and how to move forward in 2011-2012.*

Saint Louis, MO ([PRWEB](#)) March 23, 2011 -- 2010 was a very odd year for estate taxes: The much-celebrated repeal ended up being potentially more expensive for many middle class families, the possibility of a retroactive tax in 2010 kept many estates on hold, and the inability of lawmakers to pass legislation until the 11th hour left many taxpayers full of doubt and uncertainty. Even now, the new rules are scheduled to sunset in 2012, when we may have to go through all of this again.

But, according to estate planning attorney Steven Spewak, the worst thing you can do is stick your head in the sand and hope it all works out. According to Spewak “if you don’t create an estate plan, the IRS and the state of Missouri will simply make one for you. And, to put it delicately, the government is not exactly focused on minimizing taxes or looking out for the best interests of you and your loved ones.” Here is what you can learn from 2010, and how to move forward in 2011:

**New Estate Tax Exemptions and Rates:** 2009 estate tax exemption was \$3,500,000 with amounts over the exemption taxed at 45%, and in 2010 the tax was repealed altogether. In 2010 anyone with an estate plan that had a “formula clause” for a Bypass Trust to reduce estate taxes had to update their plan quick, or they were in danger of leaving everything to the Bypass Trust, while a spouse was left out in the cold. The 2011-2012 rules set the estate tax exemption at \$5 million per individual (\$10 million per married couple), with amounts over the exemption taxed at a 35% rate. If you aren’t sure your plan takes the new rules into consideration you’ll want to place a call to your estate planner.

**Tax Election Option for 2010 Estates:** This is one of the most important aspects of the new rules. There may have been no estate tax in 2010, but there was also no “step up in basis,” meaning that heirs selling inherited assets were taxed based on the original acquisition cost of the assets, not on their value as of the date of the taxpayer’s death, as is usually the case. This led to a higher tax paid on the assets if and when they were sold, in spite of the lack of estate tax. Tax election option now gives 2010 estates the choice of whether to use 2010 or 2011 tax rules—a very happy option for 2010 heirs.

**Unification of Estate, Gift, and Generation-Skipping Taxes in 2011:** In previous years these three levies have had varying exemption levels, making gift giving and succession planning a challenging exercise at best. The unification of all three makes tax planning and giving gifts to children and grandchildren much easier than it used to be.

**How Long Will It Last?** Unfortunately, the new rules are only effective through 2012, at which point the provisions will sunset. Taxpayers may have to revisit this issue in 2012-2013. Rather than being caught off-guard, plan ahead with your advisors to ensure that you’re prepared. Build flexibility into your plan, and schedule reviews at regular intervals.



What will happen if you don't do anything? Failure to create, update, or fund your estate plan can lead to lengthy and expensive probate proceedings at best, and family feuds and court battles at worst—and this applies whether or not there have been recent changes to tax rules.

The upheaval of 2010 and the new laws of 2011 provide the perfect opportunity to create a plan (or update your existing plan), and ensure that your family will be well protected now, and in the future.

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 was recently recognized as a 2011 FIVE STAR wealth manager in the field of estate planning for the third time in the last four years in the March 2011 issue of St. Louis Magazine.

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