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THE TAX LAWYER

Nov. 9 2010 — 8:44 am

Estate Tax Steps For This Year

Apart from trying to die this year to avoid estate tax in 2011—and there are some who aren't joking about [that](#)—you may think there's nothing to do but wait for Congress to decide what happens next. Not quite.

2010 Estate Tax Filing Requirement. If you had a relative die in 2010, don't assume there's no tax filing. True, the estate tax doesn't apply in 2010 unless Congress tries to retroactively impose one. That now seems unlikely.

There's no federal estate tax on 2010 deaths, but executors may still have an IRS filing requirement. Enacted as part of the [Economic Growth and Tax Relief Reconciliation Act of 2001](#), [Section 6018](#) requires executors of estates of 2010 decedents with assets in excess of \$1.3 million to file an IRS information return even though no tax is owed.

Gift Tax Moves. Although the estate tax does not apply in 2010, the gift tax still does. So if you were thinking about gifting property in 2010 before the estate tax returns in 2011, think again. The gift tax annual exclusion remains \$13,000 per person, and you can give that amount tax free to any number of people. If you're married your spouse can too, so that's \$26,000 per donee.

Gift tax in 2010 applies at rates up to 35%. That may seem like a lot to transfer money that presumably has already been subjected to income tax when you earned it. Still, the top gift tax rate is scheduled to climb to 55% starting in 2011!

Generation Skips. While the gift tax is still with us in 2010, the generation skipping tax is not. The generation skipping transfer (GST) tax is less well known than either the gift or estate tax, but has the same basic idea: to tax wealth transfers. But the GST tax targets parent to grandchild and great-grandchild transfers, plus other transfers leapfrogging generations. The GST tax is an add-on to either the gift or estate tax, so you still pay a gift tax if you made a large gift to your grandchild this year. But you would avoid the GST tax if you do it before 2011.

For that reason, many wealthy people are making generation skipping gifts before the end of 2010. When the GST tax returns January 1, each grandparent will be able to shield approximately \$1.34 million from the GST tax. But if you plan to give more, this year is the year to do it. Just remember that a gift in 2010 will incur up to 35% in gift tax. But gifts in 2011 will face gift tax (up to 55%) and GST tax (a flat 55%). The math works out to over 90% tax!

A Gift Before Dying. Here's a puzzler. Suppose you give \$3 million to your favorite grandchild in 2010 triggering gift tax, but then die in late December? With no estate tax and no GST in 2010, if you had just waited a bit, you could have given the \$3 million to your grandchild tax free upon your death. For that reason, some wealthy people making gifts to avoid the GST in 2010 are waiting until very late in December to make sure they don't pay gift tax and then die before New Years!

Get Some Advice. As this foray into the mess that estate planning has become demonstrates, this isn't an area for amateurs. Get some solid professional advice, and do it before this unique year is gone.

For more, see [Last Chance to Foil a Gift Tax](#).

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