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Subject: 1) NO ESTATE TAX FOR 2010
2) REPLACED WITH CARRYOVER BASIS LAW
3) JANUARY 1, 2011 – REVERSION BACK TO \$1.0 M ESTATE TAX
EXEMPTION AMOUNT

Let me first premise this informative letter to you with the following important Disclaimers:

- 1. This topic is very confusing, even for attorneys;**
- 2. I do not make the rules. Congress and the IRS do. Therefore do not blame me for this mess;**
- 3. This purpose of this letter is to awaken you to take immediate action and seek competent legal estate planning advice. This letter is not intended to give legal advice, nor is it a solicitation for our legal services;**

If you have a Living Trust, you may recall that this type of estate plan is designed so that when one spouse dies the estate can be divided into two portions as follows:

1. An amount equal to the Federal Estate Tax Exemption for the decedent;
2. The balance to be funded into the Survivor's Trust representing the surviving spouse's share of the estate
3. With this planning, the surviving spouse continues to have access to both portions during lifetime, but when they die only the share in the Survivor's Trust is part of their estate for purposes of determining whether this share exceeds the Federal Estate Tax Exemption.

This tax planning strategy of using a Living Trust is designed to ensure, as much as is possible, that neither portion will be subject to estate tax when the first spouse dies and later when the surviving spouse dies. Thus both husband and wife are able to take their respective lifetime exemptions from estate taxes. For decades this has been the most common way most married couples have disposed of their wealth because the Federal death tax laws remained unchanged except for the value, or dollar amount, of each person's lifetime exemption .

Estate Tax Repeal – Tax Year 2010
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As you may remember, that Federal Estate Tax Exemption used to be \$1.0 Million per person in 2000 and then increased to \$3.5 Million per person in 2009. As of January 1, 2010 all that has changed with there now being **no estate tax at all for tax year 2010**, but which is replaced with a more complicated “***carryover basis***” problem for everyone. However, even the law for tax year 2010 is subject to change as of January 2011 when the estate tax law returns with an exemption amount equal to only \$1.0 Million, and the carryover basis law is repealed. This is what Congress created when it passed EGGTRA back in 2001.

While we continue to believe that the use of married joint living trust is appropriate for you, we feel it necessary to plan for worst case scenarios rather than best case, especially since we are all depending on Congress to correct this problem; a very undependable source to say the least.

This year (2010) there will be no Federal estate tax (although some states will retain independent estate tax systems). California has no death tax, but if you were planning to move out of state, you could be moving into a state that still retains a death tax law.

It may be uncertain how the provisions of your current estate planning documents will be interpreted by the IRS if there is no estate tax. It may also be uncertain how your trust documents will work if you move to a state which retains the death tax. This is because several provisions of your documents are phrased in terms that deal specifically with the issue of a “***federal estate tax.***”

The problem is that if someone dies in 2010, there is no federal estate tax, so the current language in your trust is referring to something that no longer exists under tax law. Also, your documents do not currently contain the necessary updated language to deal with the new law regarding “***carryover basis***” that has replaced the death tax for 2010? This is where it gets confusing and I apologize for that but Congress created this mess back in 2001 with the passage of EGGTRA Tax Act.

Click on this link to learn more about EGGTRA. [Click Here](#)

In summary, your documents are designed to avoid Estate Tax. If a married person dies in 2010 there is no estate tax. However, all the assets will pass to the surviving spouse without a step up in basis unless you take affirmative action. What does all this mean? Here is an example:

ASSET TYPE	PURCHASE PRICE (AKA: COST BASIS)	CURRENT VALUE (AKA: DESIRED NEW COST BASIS)	CAPITAL GAIN IF SOLD	CAPITAL GAIN TAX DUE IF SOLD
Real Estate	200,000	400,000	200,000	APPROX. \$40K
Stock	100,000	200,000	100,000	APPROX. \$20K

Therefore under this new tax legislation in effect only for 2010 the burden is on every person to document their cost basis in all assets owned. If no action is taken the IRS will establish your cost basis at zero. Thus, in the example above, real estate valued at \$400K will have gain of \$400K and the tax will be approx. \$80K.

The new law allows a surviving spouse, or any heir to a decedent, to receive a new adjusted cost basis on assets in the hands of the decedent before death. This cost basis adjustment will be based on the value of assets at date of death, and allows up to \$1.3 Million of gain to disappear; gain that would otherwise be subject to capital gain tax if sold. However, in order to take advantage of this step up in basis existing trust documents must be amended as they are currently devoid of any language to take advantage of up to \$1.3 Million of carryover basis exemption, and an additional \$3.0 Million of carryover basis exemption for property passing solely to a surviving spouse.

Today, the current law is that an automatic change in basis will not occur at death. Rather, the deceased owner's income tax basis in assets will "carry over" to the persons who inherit the assets. This means that if a decedent purchased a stock for \$10.00 the heir receives the stock with the same cost basis of \$10.00. If they sell the stock for its current market price of say \$50.00, then the heir will have to pay capital gain tax on \$40.00 or realized gain.

Therefore, we cannot stress enough to all Americans the need to seek competent estate planning legal advice as quickly as possible in order to assess whether or not you wish to amend your existing documents, or in some cases to prepare new documents that can effectively deal with the tax issues presented for tax year 2010, and any potential tax issues that may result in January 2011 when the entire EGGTRA tax act that created this mess is revoked in its entirety, and the tax laws revert back to what they were in 2000. We do not wish to be overly melodramatic, but this is about as serious and complicated an issue as we have ever seen in the estate planning arena. One that will have dramatic and severe consequences for the heirs or surviving spouse of anyone who dies in 2010.

Again we encourage you to seek competent estate planning legal advice as quickly as possible. You may forward any questions to us via email at Help@eplanlaw.com and we will be happy to respond.

Sincerely yours,

William A. Massarweh, Esq.

PS: Would you like to receive future updates on this important topic?

We hope that this information will allow you to first understand where you stand in respect to these tax law changes, and second, to provide you the necessary knowledge to make a reasoned decision on what action to take. If you would like to receive future updates on this topic then click [here](#) to go to our website and fill in the form to add yourself to our Email Mailing List. Otherwise, due to privacy laws in place we will be unable to send you any information without your express direct consent.