



Federal Estate Tax Update

By Melisa M. W. Mysliwiec



Fast Facts:

Under current law, no federal estate tax will be imposed on estates of decedents who die in 2010.

The estate tax applicable exclusion amount will revert back to \$1,000,000 with a top marginal tax rate of 55 percent for 2011 and after.

There is active legislation before Congress that proposes to change this landscape; HR 4154 and similar legislation should be closely tracked in the coming months.

Although there is strong debate between Democrats and Republicans in Congress about what to do with the estate tax, there has been no shortage of proposed legislation.

Under current law, no federal estate tax will be imposed on estates of decedents who die in 2010. The Economic Growth and Tax Relief Reconciliation Act of 2001¹ (EGTRRA) repealed the estate tax effective December 31, 2009;² however, this repeal is scheduled to expire, or sunset, on December 31, 2010.³ Therefore, the estate tax is not gone for good. After the one-year repeal of the estate tax in 2010, the laws that governed before EGTRRA's 2001 changes will return on January 1, 2011, unless further action is taken by Congress.⁴

The estate tax applicable exclusion amount will revert back to \$1,000,000 for 2011 and after.⁵ Therefore, estates of decedents who die on or after January 1, 2011, with gross estates totaling more than \$1,000,000 after subtracting total allowable deductions will be subject to the estate tax. Additionally, the top marginal tax rate applicable to the estate tax will increase to 55 percent.⁶ See the chart below.

Year	Top Estate Tax Rate	Estate Tax Exemption
2009	45%	\$3,500,000
2010	Estate tax repealed	N/A
2011 and after	55% with a 5% additional tax for estates between \$10,000,000 and \$17,100,000	\$1,000,000

There is active legislation before Congress that proposes to change this landscape. On December 3, 2009, the House of Representatives passed HR 4154, which would amend the Internal Revenue Code to establish a permanent \$3,500,000 exclusion amount with a maximum tax rate of 45 percent for decedents dying after December 31, 2009. HR 4154 was read for the second time and placed on the Senate legislative calendar on January 20, 2010, but no further action has been taken.⁷ However, HR 4154 is still listed as "active legislation" on the Senate's website. Many experts anticipate that legislation will be passed by Congress eliminating EGTRRA's repeal of the estate tax sometime this year and that such legislation could be applied retroactively to January 1, 2010. Other experts question whether imposing an estate tax retroactively would be constitutional.

Although there is strong debate between Democrats and Republicans in Congress about what to do with the estate tax, there has been no shortage of proposed legislation. Such proposals range from making permanent a \$3,500,000 exemption with a maximum marginal tax rate of 45 percent to increasing the exemption amount to \$5,000,000 with a maximum marginal tax rate of 35 percent and allowing portability of unused exemption amounts between spouses. It is also possible that Congress will do nothing and simply allow the law to revert back to the pre-EGTRRA law. To keep current on the future of the federal estate tax, HR 4154 and similar legislation should be closely tracked in the coming months. ■

This article is limited to information that was available on March 31, 2010, and may no longer be an accurate statement of the law.



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FOOTNOTES

1. PL 107-16, 115 Stat 38.
2. 26 USC 2210(a), as amended by EGTRRA, PL 107-16, § 501(a), 115 Stat 38. The EGTRRA also repealed the generation-skipping transfer tax for generation-skipping transfers made in 2010 and replaced the stepped-up basis at death rules with modified carryover basis at death rules for decedents dying in 2010. See PL 107-16, §§ 501(b), 541, and 542, 115 Stat 38. The gift tax is retained in 2010 with a top marginal rate of 35 percent and a maximum exclusion amount of \$1,000,000. See PL 107-16, § 511(d), 115 Stat 38.
3. PL 107-16, § 901, 115 Stat 38. All provisions and amendments made by EGTRRA sunset on December 31, 2010.
4. PL 107-16, § 901(b), 115 Stat 38.
5. 26 USC 2010(c), before amendment by EGTRRA, PL 107-16, § 521(a), 115 Stat 38.
6. 26 USC 2001(c)(1), before amendment by EGTRRA, PL 107-16, § 511(a), 115 Stat 38.
7. THOMAS (Library of Congress) <<http://thomas.loc.gov>> (accessed April 2, 2010).