

Rosen Seymour Shapss Martin & Company LLP

Certified Public Accountants & Profitability Consultants

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LIFELINES BLAST

Greetings!

Welcome to the Fiduciary Services Group's Lifelines Blast! (a publication of Rosen Seymour Shapss Martin & Company). Here is where you will receive periodic updates on all your trust and estate needs.

We welcome your questions or comments about topics discussed or related ones. Please feel free to contact us at 212-303-1012 or e-mail us at awillinger@rssmcpa.com and let us know how we can be of assistance.

Sincerely,

Alan M. Willinger, CPA, JD
Partner-in-Charge of Fiduciary Services

One year repeal of the estate and generation-skipping taxes went into effect January 1, 2010

Surprisingly, Congress adjourned for 2009 without acting to extend the federal estate and generation-skipping transfer ("GST") taxes into 2010. Unless Congress takes action this year, the result is a one-year repeal of the estate and GST taxes effective January 1, 2010, only to be restored in 2011 at a rate of 55% on estates valued at \$1,000,000 (increased from the current 45% rate and reduced from the \$3,500,000 exemption per estate). The federal gift tax was not repealed and it remains in effect, with a \$1 million lifetime exemption (unchanged from 2009), a top gift tax rate of 35% (reduced from 45% in 2009), and an annual exclusion for 2010 of \$13,000 (as it was in 2009). Thus, the estate of a decedent who dies in 2010 will not be subject to estate or GST tax, and lifetime transfers made on or after January 1, 2010 will not be subject to GST

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tax.

In conjunction with the repeal of the estate and GST taxes on January 1, estate property will no longer be entitled to the "step-up" in basis that allowed an adjustment to fair market value for most assets in a decedent's estate. Instead, 2010 brings in a "carry-over" basis regime providing that estate property in the hands of an estate or a beneficiary will be "carried-over" from that which was held by the decedent in the property. No "step-up" will be allowed despite any appreciation in the property. To mitigate potential capital gains tax consequences incurred by the beneficiary in the event the beneficiary sells the estate property, however, the Executor of the decedent's estate may (i) allocate \$1.3 million to increase the basis of estate assets passing to *any beneficiary* and (ii) allocate an additional \$3 million to increase the basis of assets that pass to a *surviving spouse* outright or in certain marital trusts.

In light of the recent repeal and the uncertainty of Congressional action in the future, you may wish to review your estate plan. If your Will or other central estate planning document makes bequests by use of a formula clause that makes reference to the estate tax law and its exemptions in effect prior to the 2010 repeal, you may need to determine whether your testamentary intentions would be met if your death occurred in 2010 and current law applied to your estate.

Inflation-Adjusted 2010 Figures for Estate and Trust Tax Brackets and Other Transfer Tax Items

A number of tax figures are adjusted each year for inflation based on the average Consumer Price Index (CPI) for the 12-month period ending the previous August 31. The August 2009 CPI has been released by the Labor Department (U.S. Department of Labor, Consumer Price Index (for all-urban consumers), 9/16/2009). The IRS announced in Revenue Procedure 2009-50 adjustments for 2010 to the estate and trust tax rate schedule, and for other transfer tax items.

Because of the extremely low inflation over the past 12 months, for the first time ever, many key tax items will not increase next year or will increase only slightly.

Tax rate schedules

The tax rate schedules for 2010 will be as follows:

FOR ESTATES AND TRUSTS, THE 2010 RATE BRACKETS ARE:

If taxable income is:

The tax is:

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Not over \$2,300	15% of taxable income
Over \$2,300 but not Over \$5,350	\$345.00 plus 25% of the excess over \$2,300
Over \$5,350 but not Over \$8,200	\$1,107.50 plus 28% of the excess over \$5,350
Over \$8,200 but not Over \$11,200	\$1,905.50 plus 33% of the excess over \$8,200
Over \$11,200	\$2,895.50 plus 35% of the excess over \$11,200

Gift tax annual exclusion

For gifts made in 2010, the gift tax annual exclusion will be \$13,000 (same as for gifts made in 2009).

Special use valuation reduction limit

For estates of decedents dying in 2010, the limit on the decrease in value that can result from the use of special valuation will be \$1,000,000 (same as for 2009).

Determining 2% portion for interest on deferred estate tax

In determining the part of the estate tax that is deferred on a farm or closely-held business that is subject to interest at a rate of 2% a year, for decedents dying in 2010 the tentative tax will be computed on \$1,340,000 (up from \$1,330,000 for 2009) plus the applicable exclusion amount (assumed to remain at \$3.5 million for 2010).

The adjustments for the two preceding items assume that Congress undoes the scheduled repeal of estate tax for individuals dying in 2010 and retains the current estate tax rules, along with their corresponding inflation adjustments, at present levels.

Increased annual exclusion for gifts to noncitizen spouses

For gifts made in 2010, the annual exclusion for gifts to noncitizen spouses will be \$134,000 (up from \$133,000 for 2009).

Reporting foreign gifts

If the value of the aggregate "foreign gifts" received by a U.S. person (other than an exempt [Code Sec. 501\(c\)](#) organization) exceeds a threshold amount, the U.S. person must report each "foreign gift" to IRS. ([Code Sec. 6039F\(a\)](#)) Different reporting thresholds apply for gifts received from (a) nonresident alien individuals or foreign estates, and (b) foreign partnerships or foreign corporations. For gifts from a nonresident alien individual or foreign estate, reporting is required only if the aggregate amount of gifts from that person exceeds \$100,000 during the tax year. For gifts from foreign

corporations and foreign partnerships, the reporting threshold amount will be \$14,165 in 2010 (up from \$14,139 for 2009).

Welcome Carolyn Glynn, JD

Carolyn M. Glynn, JD has joined the firm as the Director of Fiduciary Services, whose primary responsibility is estate and fiduciary tax planning and reporting. Ms. Glynn has approximately 20 years of professional experience in all phases of trust and estate planning and administration, with particular emphasis on complex gift, estate, GST, and fiduciary income tax matters. Ms. Glynn works closely with our clients and their attorneys to effectuate a comprehensive wealth transfer plan that will achieve the personal goals of the client within the context of an optimal tax-saving strategy. Ms. Glynn supervises and assists in the preparation and filing of over 500 annual fiduciary income tax returns, along with a significant number of estate tax and annual gift tax returns for high net-worth individuals. Prior to joining the firm, Ms. Glynn was a partner of a New York law firm practicing in the area of trusts and estates.

FIDUCIARY SERVICES GROUP

Rosen Seymour Shapss Martin & Company LLP

RSSM's Fiduciary Services Group offers a wide range of fiduciary services. We assist and guide fiduciaries as they perform their duties and fulfill their obligations. In appropriate circumstances, we can also serve as trustee, and/or executor for you and your family. We will provide your family with protection and security by helping you plan for the future with incapacity protection, probate avoidance, planning for minor children, distribution planning and estate tax planning. Our team approach allows us to provide you with the most basic protection and our experience enables us to assist you with the most complex arrangements, including charitable giving and sophisticated estate tax strategies.

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