

ESTATE AND TAX PLANNING FOR 2010 AND 2011

By John L. Jenkins, AEP®, EA, CFP®

As you may have heard, the federal estate tax rules changed radically in 2010 and could change radically again in 2011 unless Congress passes new legislation. This article is intended to advise you of what has happened and encourage you to reevaluate your estate plan as soon as possible.

2001 Tax Act. In 2001, Congress passed the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) which provided for significant phased-in increases in the federal estate, gift and generation skipping tax (GST) exemptions and lower tax rates. EGTRRA provisions included:

- In 2009, the estate and GST exemptions increased to \$3.5 million per decedent, with a flat 45% estate and GST tax rate on any excess. The gift tax exemption was \$1.0 million, with tax rates from 41% to 45%.
- In 2010, the federal estate and GST taxes were repealed for one year. The gift tax \$1.0 million exemption remained, with a lower flat tax rate of 35%. Thus, you had to die or pay gift tax to get the benefit

of the change. The step up in basis rules (which gave a “fresh-start” fair market basis for most assets of a decedent) was replaced with an adjusted carry-over basis. These new basis rules permit a step up in basis of up to \$1.3 million, plus an additional \$3.0 million for certain spousal transfers at death.

- On January 1, 2011, EGTRRA was automatically repealed, resulting in an odd situation: A \$3.5 million estate and GST exemption and flat 45% tax rate in 2009, no estate and GST tax in 2010, and a \$1.0 million estate exemption and tax rate up to 60% in 2011.

What Happened in 2009? Estate planning practitioners universally expected Congress to carry the 2009 estate tax rules across 2010 (both Representative Rangel as Chair of the House Ways and Means and Senator Baucus as Chair of the Senate Finance Committee said it would happen earlier last fall). However, unexpectedly in December the House failed to act on a one year exten-

sion and instead sent the Senate a bill to make the 2009 rules permanent. Because the Senate was focused on health care and there was broad disagreement in the Senate on what to do with estate taxes, Congress enacted no changes to the EGTRRA’s 2010 rules. Thus, effective as of January 1, 2010, there is no federal estate or GST tax.

Planning in Chaos Congress’s failure to adopt estate tax legislation in 2009 and the possibility that changes will not be adopted during 2010, radically change the estate planning considerations of many clients. For example, Congress has indicated that in 2010 about 6,000 decedents will benefit from the elimination of estate taxes, but over 70,000 heirs will pay higher income taxes because of the change in the income tax basis rules for assets received from decedents.

2010 Changes The U.S. has an unpredictable planning environment in which any number of radically different changes may occur in 2010: Congress may do nothing in 2010, in which case there is an adjusted carryover basis, and no federal estate or generation skipping tax for people who die in 2010. While you probably will not die in 2010, you still need to consider planning for that possibility, because not planning for these changes,

if death occurs, can be disastrous. For example:

Formula clauses (e.g. terms that allocated your estate exemption to a “bypass trust”) in your planning documents could inadvertently disinherit some heirs and/or your surviving spouse and/or create conflicts among family members on how your documents should be properly interpreted.

Conflicts could arise among your heirs and fiduciaries on asset basis issues.

Inadvertent generation skipping taxes could be incurred after 2010.

Passing assets directly to your surviving spouse may result in higher estate taxes after 2010.

Inadvertent state taxes could be incurred from out of date terms in your documents.

- Congress may adopt legislation to carry the 2009 rules over 2010, retroactive to January 1, 2010. There is broad disagreement on whether a retroactive tax bill is constitutional. If a retroactive law is adopted, it will be challenged as unconstitutional and it could take years for the Supreme Court to rule on the issue. Until such a ruling, uncertainty will prevail. Those dying after the enactment

should not have that uncertainty. In any event, your estate plan should contemplate dying both before or after a potential retroactive enactment, which may or may not be constitutional.

- If Congress acts in 2010 to address the estate tax issues, it could:

Adopt permanent estate tax exemption, beginning in 2010 or 2011. If so, most commentators anticipate estate tax exemptions to fall between \$2-5.0 million and tax rates 35% to 45%.

Adopt a temporary higher estate exemption.

Adopt rules to limit or eliminate valuation discounts.

2011 Changes Unless Congress enacts new legislation in 2010, then on January 1, 2011, a number of automatic changes occur to the federal tax code, including:

- The estate tax exemption drops to \$1.0 million per decedent.
- The estate tax rate increases (e.g., 55% above \$3.0 million and 60% above \$10 million).
- States which remain coupled” to the federal estate tax will have their state death taxes restored. Thus, if you own property in one of these coupled states, you could have new exposure to a state estate tax.

- The fair market value step up in basis returns for assets passing from a decedent.
- The top income tax rates go up by at least 4.6%, capital gain tax rates go up by up to 5% and dividend tax rates go up by up to 24.6%.

Higher Taxes No matter what happens to the estate tax, substantial tax increases are looming. A \$12 trillion deficit is projected for the next decade. The Congressional Budget Office indicates that the social security trust fund will pay out more than it receives starting in 2011 or 2012. Taxes will have to increase across a broad range of Americans. Both the Washington Post and the New York Times have stated that the President will have to abandon his pledge to only increase taxes on taxpayers earning over \$250,000. Given slow economic recovery and the fact that we are in a mid-term election year, the federal government will probably not increase taxes until sometime in 2011. While substantial tax increases are likely, we just don’t know any details.

ROTH IRAs In 2010, taxpayers can convert traditional IRAs to ROTH IRAs and can pay the income taxes due on such conversion in 2010 or equally in 2011 and 2012. There are significant benefits and traps for the unwary in making these decisions. Effectively, unless Congress adopts new legislation, in 2010 the estate tax rules rotate 180 degrees from where they were in 2009, and then rotate 180 degrees again in 2011 – only the estate tax

and income tax rules could be even worse than what we had in 2009.

Uncertainty makes it difficult to plan, but waiting to see what happens next is not a good idea. The earlier you can implement flexible tax and estate planning to respond to these changes the better.

Please call us to schedule a time to go over your current estate plan and determine what changes need to be made to your current plan to minimize taxes and to reduce the possibility of future family conflicts in these chaotic times.

Provided by the National Association of Estate Planners & Councils, July 16, 2010
Tax services are offered through Asset Preservation Strategies, Inc. (APS). Neither APS or Securities America, Inc. provides legal advice. Legal Services are coordinated with third-party estate planning attorneys.

A Family Mission Statement Can Help Any Family Manage Assets, Philanthropy and Direction

A family doesn't need a surname like Vanderbilt to benefit from a family mission statement. A mission statement is a collaborative document created by one or more generations of family so standards and goals can be set for the handling of all family assets, including businesses and philanthropy in particular.

While mission statements aren't legal documents – in fact, many are done both in written form and on videotape as a companion to legal wills and directives -- their purpose

is to make a record of the family's values, goals and aspirations and how those sentiments should drive future decisions about family wealth management, business succession plans and charitable pursuits. Multi-national companies have mission statements. Non-profit corporations have mission statements. A mission statement for your family, helps identify and clarify specific values and goals, facilitates group decisions, instills confidence and encourages unity.

It should also identify family leadership who will work with other relatives in implementing those goals.

While the end product should produce a document built from discussion, argument and consensus, it's not so much about the piece of paper as the process. Many families start the process as a way to build consensus about long-term financial, business, estate and philanthropic goals, but the conversation can take twists and turns that don't directly involve the family money. In this process, a family can identify the strengths, weaknesses and unearthed priorities of all family members and might reveal leadership few had expected.

Trained financial advisors including financial planners, tax experts and estate attorneys, can help explain the process and set an agenda for families to follow in creating the mission statement. While some extended families may elect to bring in a facilitator to guide their process, there are generally four components to a family mission statement – estate issues, philanthropy, business planning and family dynamics in general.

It also helps to start with some

questions that can guide the discussion. Many experts start with questions that first get family members talking about their relationships and how their dynamics work, and then move into business and money matters.

- What's most important about our family?
- What do you think our goals should be?
- When do you feel most connected to the rest of us?
- How should we relate to one another?
- What are our strengths as a family?
- Where do you think we'll be as individuals in 5, 10 and 15 years?
- In order, what are the five things you value most in life?
- How should we behave toward each other?
- How should we take care of relatives who are or become sick or disabled?
- How should we resolve our disputes?
- How important is the family business to you?
- What should we be doing differently with our family money as well as our assets inside the business?
- What professionals or structures should we bring in to help us manage our wealth?
- What's the best way for us to be building our wealth?
- What do you think the role of our family should be in helping the community?
- What should we be doing individually and as a family with regard to philanthropy?

Structurally, the written mission statement can be whatever you agree it should be – most experts say it should be no more than a paragraph long, but that’s a guideline, not a rule. It is also very important to focus on the positive, meaning what you want to accomplish and achieve as a family, as opposed to what you want to avoid. And it needn’t be set in stone – a family should have a meeting every year or two to revise or approve its mission.

The family mission statement helps a family establish its identity and the variety of voices within and those voices may be subject to change over time. The family mission statement is a living, breathing document that can evolve over time. In today’s fast paced world, it is easy to get caught up in the here and now; a family mission statement can help you stay true to your family’s values. As a result, families may not feel the pressure to keep up with the Joneses because their mission statement helps achieve balance. It is also very important to focus on the positive, meaning what we want to accomplish and achieve as a family, as opposed to what we want to avoid.

The right mission statement can help reset goals and diffuse tensions later. It can also be used to moderate discussions that inevitably happen after major changes within the family – death, divorce or happily, an increase in the number of heirs and participants.

As for the age of the participants, it can start in very basic form with

younger children and the process can mature as they age. It’s actually a good idea to bring young members into a customized version of the process for youngsters so they can comfortably adjust to working as adults with the older members of the family.

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Announcing the Sporting Clays Invitational Shoot for Scouting

Saturday, October 16, 2010

First Teams on the Course @ 8:00 am. Last Teams Start the Course @ 2:30 pm. Catered Lunch 11:30



am – 1:30 pm. Lemon Grove Rod & Gun Club, Banquet & Auction – 6:00 pm., Sycuan Resort

The Sporting Clays Invitational is a fundraiser for the San Diego-Imperial Council, Boy Scouts of

America. Event participants include corporate sponsors and sporting clay shooters that share in the Boy Scouts’ belief in the importance of youth shooting education and our firearms heritage.

Your morning or afternoon shooting session (perhaps both!) will include 10 stations of sporting clays with lots to do before, after and in between. Special trap range games planned for additional shooting. There will also be special Scouting booths to remind you of the fun you had in Scouting as well as vendor booths with the latest in shooting equipment.

The event will conclude with a banquet and auction at the nearby Sycuan Resort. Top sponsorships include rooms at the resort or take advantage of the special rates that have been arranged.

Sign up today as space is limited to the first 200 shooters!

The beginning of knowledge is the discovery of something we do not understand. - Frank Herbert

Workshops

All workshops take place at the Southern California Institute, 3636 Nobel Drive, Suite 450, San Diego, CA 92122 *unless otherwise noted*. **Please RSVP to Janet Silva at (858) 455-1825 or janetsilva@asset-preservation.com.**

Strategies for the Large IRA

will be presented by John L. Jenkins, AEP®, EA, CFP® on Thursday, August 5, 2010 from 2:30—4:00 PM.

This workshop will provide a comprehensive set of strategies for the large IRA. Topics include leveraging the large IRA through life insurance, stretching the IRA over the life expectancies of younger beneficiaries and converting the IRA to a Roth IRA all while using Tax Bracket Maximization. John will discuss the “how to”, the “why” and “why not”, along with the most appropriate circumstances and the benefits available.

Seven Steps to a Successful Business Exit

with Gregory Banner, CFP® CLU®, CRPT, Asset Preservation Strategies, Inc., and Alejandro Matuk, Esq., Strazzeri Mancini LLP, will take place on Sept. 2, 2010 from 2:30—4:00 PM at the Southern CA Institute.

Every business owner needs to plan with the end in mind as to how they are going to transition out of their business. Exit planning is a customized process of setting goals and deciding how to best achieve them. Proper exit planning will help maximize a business owner’s return and minimize the tax liability when the business is transferred or sold.

Annual ADV Offer

Our firm is regulated and audited by a number of internal and external authorities to ensure that we are providing current and accurate information to our clients and that we maintain the appropriate records evidencing our compliance with the various rules and regulations applicable to our business and the protection of our clients.

These rules and regulations require that we provide certain documentation to you.

Form ADV - Part II and Schedule F:

We are required to offer a copy of our current Form ADV-Part II and Schedule F to our Investment Advisory Clients. This document is our disclosure document as a Registered Investment Adviser registered with the Securities and Exchange Commission. It discloses our background, professional training, experience, operations, services and potential conflicts of interest. This offer is being made pursuant to Securities and Exchange Commission Brochure Rule 204-3 of the Invest-

ment Advisers Act of 1940 that states that Registered Investment Advisers are required to offer the Form ADV Part II to every advisory customer on an annual basis.

If you are interested in receiving a copy of this document, please send a written request to us or email us at administration@asset-preservation.com within 30 days. Of course, you may also ask for a copy at your next office visit.

Fun in the Sun



John participated in the Scripps Ranch Old Pros 28 Mile Bike Ride on July 4th.



A T-shirt for success!

Referrals

Thank you for your Referrals

Most of our new clients come as a result of referrals from people like you. If you know a friend, family member or small business owner who might benefit from our services, please let us know. Be assured that anyone you refer to our firm will be treated with the same high standards of professionalism and confidentiality that we extend to you and all of our clients.

John Jenkins' Musical Performances: Featured Artist / Quartet

SAVE THE DATE!
SATURDAY, AUGUST 7th
8-10 pm

We are excited to announce an upcoming Featured Artist Night with three amazing artists, Karl Anthony, John Atkinson and John Jenkins. This event is sure to sell out. Tickets are \$7. To purchase yours in advance, contact Tricia at tltool@ix.netcom.com or visit the Hair Zone at 12845 Poway Road in Poway.

SAVE THE DATE!
FRIDAY, AUGUST 13th
8-10 pm

John will also perform as part of a Quartet comprised of guitarists in the Encinitas Guitar Orchestra under the direction of Peter Pupping. Musical styles will include Classical, Latin and Jazz.

Bethlehem Lutheran Church, 925 Balour Dr, Encinitas, CA.

Securities offered through Securities America, Inc., member FINRA, SIPC, John Jenkins, CA Insurance License #0647708 and Gregory Banner, CA Insurance License #0B64761, Registered Representatives. Advisory and tax services offered through Asset Preservation Strategies, Inc., a SEC Registered Investment Advisor. Asset Preservation Strategies, Inc., and the Securities America Companies are separate, unaffiliated entities.



3636 Nobel Drive, Suite 440
San Diego, CA 92122-1042

[http://www.franklincovey.com/
msb/](http://www.franklincovey.com/msb/)

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For additional resources on how to create a family mission statement, please consider utilizing any of these websites

[http://www.nightingale.com/
mission_select.aspx?
from=homepage&element=missiontitle](http://www.nightingale.com/mission_select.aspx?from=homepage&element=missiontitle)

[http://www.ehow.com/
how_2043790_write-family-mission-
statement.html](http://www.ehow.com/how_2043790_write-family-mission-statement.html)

Building Wealth, Wisdom & Well-Being

