

LEWIS RICE ESTATE PLANNING NEWS

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Current Factors Merit Estate Planning Review

You may be aware that the estate and generation-skipping transfer (GST) taxes were “repealed” in 2010, and that several pieces of legislation are now pending in Congress to deal with the “death taxes” and eliminate taxpayer-friendly techniques. You may also be aware that current low interest rates make certain tax planning techniques attractive. The combination of these factors merits a review of your estate planning. Please contact us if you wish to discuss these issues in more detail. (See contact information on the last page of this newsletter.) ♦

Effect of Looming Elections on Retroactive Tax Legislation

Congress could pass new tax legislation addressing the estate, gift and/or GST tax. (See page 3 for *Legislative Update*.) The new law could be retroactive to January 1, 2010, or it could be effective as of a later date – such as the date the bill was introduced or passed. A tax law passed in 2010 retroactive to January 1, 2010 would be challenged, but the prevailing sentiment is that the retroactivity would be upheld as constitutional. However, now that it’s fall, and midterm elections are on November 2, many commentators predict that no new law will be passed prior to the elections, and at that point it is reasonable to expect that Congress could fail to pass a new law at the end of the year, allowing the 2011 reinstatement of the estate and GST taxes as set forth in the chart below. ♦

Significant changes in the estate, gift and GST tax laws from 2009 – 2011

Repeal of estate and GST taxes in 2010, limitation of step up in basis, and the reinstatement of estate and GST taxes in 2011

Year	Estate Tax Exemption	GST Exemption	Gift Tax Exemption*	Top Estate, Gift and GST Tax Rates	Step Up in Income Tax Basis at Death
2009	\$3,500,000	\$3,500,000	\$1,000,000	45%	Unlimited step up in basis at death
2010	Estate Tax Repealed	GST Tax Repealed	\$1,000,000	35% Gift Tax Only	Step up limited to \$1,300,000 of appreciation**
2011 and thereafter	\$1,000,000	\$1,340,000	\$1,000,000	55%	Unlimited step up in basis at death

*Note that use of the gift tax exemption is counted towards the use of estate tax exemption.

**An additional \$3,000,000 of appreciation can be stepped up if assets are left to the surviving spouse or a marital trust.

Planning to Consider in 2010

The unusual state of the law in 2010, the expectation that there may be a change in the law, and present low interest rates make it worthwhile to consider the techniques described below.

Techniques	Brief Discussion
2010 annual exclusion gifts	Tax free annual gifts of \$13,000 per donee, or \$26,000 per donee from a married couple, may be made in 2010.
2010 GST gifts	Take advantage of the lack of GST tax in 2010 by making outright gifts to grandchildren or other younger descendants. Use caution in making gifts other than outright gifts to grandchildren, such as trusts or Uniform Transfer to Minor (UTMA) accounts, as the GST ramifications are unclear.
Large taxable gift in 2010 Maximum gift tax rate: 35% in 2010 55% in 2011	The comparatively low gift tax rate in 2010 may make it appropriate to consider a large taxable gift, or other large scale estate tax planning techniques (remaining cognizant that the law could be retroactively changed).
Effect of 2010 estate tax Repeal and 2011 sunset on your estate plan	Examine whether the tax-based formulas in your current trusts result in an unanticipated and undesirable disposition of your assets among different family members or charity.
Family limited partnerships	Discount planning with family limited partnerships may be eliminated. Consider implementing a family limited partnership and making a gift or other transfer of the partnership interest now, before the law changes.
Grantor retained annuity trust (GRAT)	Currently GRATs may be for terms as short as 2 years, with no use of gift tax exemption. A proposed law may force a longer term and larger taxable gift for GRATs. Consider implementing a GRAT now, before the law changes and the benefits of the technique are more limited.
GST exempt trusts	Review all 2010 transfers to GST exempt trusts (including premium payments for Insurance Trusts) to keep the trust GST exempt. Consider loaning funds to GST exempt trusts in 2010 instead of other transfers.
Low interest rate transactions IRS approved interest rates for September 2010: Loan term < 3 years is 0.46% Loan term > 3 but < 9 years is 1.94% Loan term > 9 years is 3.66%	Consider the following transactions which produce more favorable results when interest rates are low: <ul style="list-style-type: none"> • Loans to children or grandchildren evidenced by a promissory note. Secure loan by a deed of trust or mortgage if the loan is for a residence. • Charitable Lead Annuity Trust (CLAT) • Sale of discounted assets (such as FLP) to Grantor Trust • Gift to GRAT.

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Techniques	Brief Discussion
Charitable giving	If a proposed law is enacted to limit charitable contribution deductions so that contributions are deductible at a maximum rate of 28%, it may make sense to make a greater amount of charitable gifts before the end of 2010. However, income tax rates are set to increase in 2011 unless Congress acts. If income tax rates increase and the 28% cap on charitable deductions does not become law, it may be preferable to delay charitable gifts until 2011.
Avoiding a 2010 step down in tax basis	Sell assets with a capital loss in 2010 if death is likely to occur in 2010.
Effect of 2010 limited basis step up on your estate plan	Examine the planning necessary to maximize the step up in basis by \$3,000,000 of appreciation for assets passing to a surviving spouse, outright or in a marital trust.

In conclusion, despite the uncertainty in the law, there are many planning opportunities for 2010. ♦

Legislative Update

There are several bills pending in Congress addressing the estate, gift and GST taxes which would attempt to:

- Reinstate the estate and GST taxes in 2010, or allow taxpayers to choose between paying estate tax or capital gains tax
- Increase the estate and GST exemptions for 2011 and the future from \$1,000,000 to a higher amount, such as \$3,500,000 to \$5,000,000
- Reduce the top tax rate in 2011 from 55% to a lower rate such as 45% or 35%
- Permit portability of unused estate tax exemption between spouses
- Eliminate the opportunity to use Grantor Retained Annuity Trusts (GRATs) with terms of less than 10 years or without using gift tax exemption
- Eliminate valuation discounts for family limited partnerships. ♦

About Lewis Rice Estate Planning

Lewis Rice has long been in the forefront of sophisticated estate planning. Our practice includes advising clients concerning individual tax and estate planning, prenuptial agreements, charitable giving and intra-family wealth transfers. In addition to serving individual clients, we have also been engaged by major corporations, other law firms and trust companies to render tax and estate planning services.

We offer basic estate planning and administration services, including the preparation of wills, revocable trusts, irrevocable insurance trusts, estate and trust administration, tax return preparation and estate, trust and tax litigation.

We have also been a leader in offering creative tax and estate planning techniques to our clients, including personal residence trusts, irrevocable grantor trusts, charitable trusts, intra-family sales, valuation freezes and family limited partnerships.

With ten attorneys focusing on estate planning, the Lewis Rice Estate Planning department is one of the largest estate planning practices in St. Louis. If you are an existing client, we appreciate the opportunity to represent you. If you are interested in seeking our legal services, we would welcome the opportunity to discuss our services in more detail with you. ♦

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About Lewis Rice

Throughout our Firm's history, Lewis, Rice & Fingersh, L.C. attorneys have made excellence the foundation of our practice. Founded in 1909, a century of service has given us the experience, resources and tools to serve your dynamic needs. Our diverse team of over 150 lawyers provides counsel and solutions for the challenges facing local, regional and national businesses, as well as individuals and families.

Additional copies of this newsletter may be obtained by calling any of our attorneys.

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