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TOUGH DECISIONS AWAIT EXECUTORS OF 2010 ESTATES



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If you are the executor of the estate of a decedent who died in 2010 you may think you're in the clear. After all, there was no estate tax in 2010; making distributions should be a piece of cake... right?

Wrong.

Because of the estate tax election available on the estates of 2010 decedents, administering those estates will actually be more work than you may think.

The repeal of the estate tax in 2010 also brought with it a repeal of the "step up in basis," using instead a modified carryover basis, meaning that heirs selling inherited assets were taxed based on the original acquisition cost of the assets, not on their value as of the date of the taxpayer's death. This generally resulted in a higher tax paid on assets than the normal estate tax rate—not good for taxpayers. But 2010 estates don't have to go by these rules. The legislation passed in December of 2010 gave 2010 estates the opportunity to elect whether they wanted to use the 2010 estate tax laws or the new laws for 2011.

Here is how it works: The 2010 Tax Relief Act restored the estate tax for individuals dying in 2010 with a \$5 million per person exemption and a maximum rate of 35%. The act also repealed the modified carryover basis rules for property acquired from a decedent who died in 2010. However, estates of individuals dying in 2010 can still elect to use the zero estate tax and the modified carryover basis rules that would have applied before they were repealed. That means the basis of assets acquired from the decedent would be the lesser of the decedent's adjusted basis (carryover basis) or the fair market value of the property on the date of the decedent's death.

In general this tax election is a good thing, it allows executors to choose which tax formula will cost the beneficiaries the least in taxes; but it does mean a lot more paperwork and a lot more attention to detail. If you are the executor of an estate of a decedent who died in 2010, please do not hesitate to call us. We can answer your questions and help you explore your options for administration of 2010 estates.



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FIVE ESSENTIAL TIPS FOR EXECUTORS OR TRUSTEES

Serving as executor or trustee of a will or a trust is an honor... but it's also a job—a BIG job—and not one to be taken lightly. The role of executor or trustee can be one of great financial power, but it carries with it a heavy fiduciary obligation. Fiduciary obligation means that an executor or trustee must act in the best interests of the beneficiaries; it means that although the executor or trustee may be doing all the work, he or she may see very little return on that work, which is all for the benefit of the named beneficiaries.

If you have been nominated (or are currently serving) as an executor or trustee, here are a few things you'll want to remember as you go about your duties; alternatively, if you are creating (or have already created) an estate plan, you may want to pass the following tips on to your executor or trustee:



1. **The will or trust is your guide, the mission statement by which you should operate.** Read and understand the document completely, and have an attorney help you, if necessary.
2. **You need to be pro-active—to an extent.** If you are managing a large amount of money or assets over a period of time it is probably not in the best interests of the beneficiary to let those funds sit in a savings account. Create (with an advisor, if necessary) a financial plan for the trust assets.
3. **Although you may be handling the estate assets, you should not have any personal financial dealings with the trust.** You should under no circumstances borrow from or lend money to the trust. Keep your finances separate!
4. **Communication and transparency is key!** Keep detailed records of all of your actions and transactions regarding the will or trust, and send regular reports to the beneficiaries. Regular communication prevents unhappy surprises or angry lawsuits in the future.
5. **You don't have to do it alone.** If you were picked as a trustee because of your financial knowledge and experience—great! But if you were picked because you are the oldest, or the most responsible, or the favorite you may feel overwhelmed by the job ahead of you. Don't try to muddle through alone, get the help and support of an experienced attorney or advisor.

TIME TO PLAN YOUR ESTATE



The dust surrounding all the estate tax law “remodeling” is finally settling, and it’s time now for families to give their old (or future) estate plans some serious scrutiny. For all of you who were waiting until Congress made some firm decisions on the estate tax laws—there are no more excuses. Now that the estate tax is no longer in flux it is more important than ever to move quickly on your estate plan. Following are some of the reasons why.

Many first time planners will be ready to take advantage of the new laws. Now that we have a nice \$5 million exemption, as well as a new portability provision, many affluent couples should be able to simplify their planning. Couples with estate plans already in place will be able to take advantage of the new laws as well. But the motivation to update their existing plans may have more to do with the need to undo outdated formulas in wills and trusts that, with the new laws in place, may now do more harm than good.

Many couples have old wills which were designed primarily to preserve the estate tax exemption of the first spouse to die. This strategy is not as necessary as it once was, as this is something the law now does. Under these old “formula” wills, when the first spouse dies assets equal to his or her federal estate exemption go into a bypass trust for their kids. The surviving spouse has access to the trust’s earnings—as well as the principal, if necessary—but what’s in the trust will essentially bypass the survivor’s estate. The problem with these old formulas now is that with the exemption jumping to \$5 million (it was only \$2 million in 2008) the survivor could be left with nothing outside the trust.

The new estate tax laws are much friendlier to middle-income families, but don’t let that fool you into thinking you don’t need to plan at all. Whatever your age, marital status or net worth, you need, at the very least, a will to define how your assets should be distributed; a living will (or healthcare directive) stating your wishes about end-of-life care; a health care proxy naming someone to make medical decisions for you if you can’t; and a durable power of attorney designating someone to act on your behalf in financial and legal matters if you can’t. And in addition to all this you will also want to ensure that you don’t have state taxes to contend with in your estate plan.

After all the estate tax upheaval we’ve seen in the past few months, now is definitely the time to give us a call and talk about your new or existing estate plan. There is no more reason to procrastinate, and it’s your family’s legacy that’s on the line.