

**CONGRESS FAILS TO ACT, RESULTING IN
FEDERAL ESTATE TAX REPEAL FOR 2010
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This year, with the uncertainty surrounding current Federal Estate Tax laws, we discuss below several of the most important questions about the laws affecting estate and gift taxes at both the Federal and state levels, as they stand right now.

Is there a Federal Estate Tax in 2010? No. In 2009 the Federal Estate Tax applied to the value of a decedent's estate in excess of \$3.5 million at a 45% tax rate. Existing tax laws provide that the Federal Estate Tax is repealed in 2010. Since Congress failed to enact new legislation, as of January 1, 2010, there is no longer a Federal Estate Tax for 2010.

Is there a Federal Generation Skipping Tax in 2010? For the same reasons noted above, as of January 1, 2010, there is also no longer a Federal GST for 2010.

Is there still a Federal Gift Tax in 2010? Yes. Even though the Federal Estate and GST are gone in 2010, there is still a tax on lifetime gifts. A gift tax is imposed on lifetime gifts that exceed the annual exclusion amount (\$13,000 per donee, per year) and the lifetime gift exclusion amount (\$1 million). However, the 2010 gift tax rate is reduced from 45% in 2009 to 35% in 2010.

Is there still a Minnesota Estate Tax in 2010? Yes. Minnesota has not adopted the Federal Tax law changes in the past and has typically followed its own course. No changes to the Minnesota tax laws are currently on the books.

Because of budgetary concerns, it seems unlikely that Minnesota will eliminate its estate tax in 2010. There is still a Minnesota Estate Tax levied on decedent's estates exceeding \$1 million in value at rates ranging up to 38% on the excess (Minnesota estate tax rates on amounts over the exemption are much higher for the first \$1 million, and then around 10% on estate assets over that amount). Minnesota has no gift tax on lifetime transfers.

Will Congress bring back the Federal Estate Tax and GST in 2010? Maybe. Just because Congress failed to act to keep the Federal Estate Tax and GST does not mean that Congress will not try to pass legislation in 2010 to bring these taxes back. There are some suggestions that Congress may try to make the tax retroactive to January 1, 2010. Whether or not they can constitutionally do this is a good question. Many predict that Congress will bring back the Federal Estate Tax and GST similar to its 2009 form, and make the tax retroactive to January 1, 2010. Down the road, if Congress does not act during 2010, the Federal Estate Tax and GST will automatically come back beginning on January 1, 2011, with a much lower exemption level of \$1 million (versus \$3.5 million in 2009) and an estate and gift tax rate as high as 55%.

How might this impact my estate plan? Most estate planning documents (e.g. wills and revocable trusts) contain provisions for those affected by such taxes designed to minimize estate tax and GST tax. Some of these documents, depending how they are set up, may need to be reviewed and changed because there is no longer a Federal Estate Tax or GST tax in 2010.