



Pathfinders in Elder Law



Financial Downturn Coupled with Changing Estate Tax Rules Mean It's Time to Review Your Estate Plan

The financial crisis, coupled with possible changes in the estate tax law, make now a good time to review your estate plan. The future of the estate tax will likely be up for debate in Congress soon because one of the priorities of the Obama administration is making the estate tax permanent. Given the uncertain climate, it is important to make sure your estate plan does what you want it to do.

Under current law, the estate tax rate is 45 percent for 2009, but the estate tax will be eliminated in 2010. The tax is scheduled to return in 2011 at a rate of 55 percent. The amount of an estate that is exempt from taxes also changes under current law. It is now \$3.5 million, but will drop to \$1 million when the law is reinstated in 2011. The Obama administration would like to eliminate the one-year repeal of the estate tax. It isn't clear what the permanent rate would be, but according to an article in The New York Times, most tax experts believe the exemption will be kept at \$3.5 million and the rate will stay at 45 percent.

The Times article identifies several things


to consider when reviewing your estate plan:

Formula clauses in wills. Wills that give specific amounts to trusts can be problematic given the change in the estate tax. Instead of naming a specific sum to go into a trust, your will could name a percentage of whatever limit is currently in place.

Bypass or credit shelter trusts. Bypass trusts allow you to put any money up to the exemption amount into a trust. Your spouse would receive income from the trust and the remainder would go to other family members after your spouse dies. The problem with this is that with the exemption being so large, most of your estate could go into a trust, thereby limiting your spouse's inheritance. You may need to make sure the trust is structured in a way that allows your spouse access to the funds.

State estate tax. States have different exemption amounts that may be less than the federal amount. You may put more money in the bypass trust to avoid paying federal estate taxes, but end up still having to pay state estate taxes. Consult with a lawyer to determine a way to provide your executor with flexibility to deal with this issue.

Grantor retained annuity trust (GRAT). A GRAT is a way to avoid gift tax for lifetime gifts of more than \$1 million. You put appreciating



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assets in a short-term (two-year) trust and keep the right to an income stream for the life of the trust. If assets appreciate above a rate set by the IRS, your family members will receive the appreciation. Current law allows you to set up a GRAT that will result in little or no gift tax, but Congress is considering changing the law, so setting up a GRAT now may be especially appealing.

Family limited partnerships. Family limited partnerships are another giving technique. You can put assets like securities, real estate, or businesses into a such a partnership. Then you can give away shares of the partnership to family members. Because these shares can't be sold to non-family members, the price is discounted. Congress is considering ending the discount, so if you want to establish one of these partnerships, you should act soon.

Beneficiary designation forms. Money from a retirement account usually passes outside an estate to the person you designate on your beneficiary designation form. With all the consolidation in the financial industry, you should make sure your 401(k) or other retirement account has the correct beneficiary designation form.

To read the entire New York Times article, click [here](#). For a related Times article, click [here](#). ▲

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