

Poof Planning

2010: The one year repeal of the Federal Estate and Generation Skipping Tax and the one year reinstatement of the ill fated '76 carryover basis rules.

It's magic: Now you see an unlimited Federal exemption. Now you don't. Now you see possible carryover basis and large capital gains on assets sold after death. Now you don't. Now you see relief from the Generation Skipping Transfer Tax. Now you don't. Poof! Now you see it. Now you don't.

If they pass a law to reinstate the Federal Estate Tax, they may make it retroactive to January 1, 2010. They may do the same with the Generation Skipping Tax. If they don't, then on January 1, 2011 both taxes will be reinstated and the exemption will drop to 1 million* for both, with a maximum rate of 55% unless Congress settles on a higher exemption, which most planners expect will happen before year-end. But then again we were wrong in 2009 when many of us expected a permanent exemption between \$3.5 and \$ 5 million.

We've never had to deal with Poof Planning before. What do you do? If you are a Vermont resident, married, and you possess a combined net estate in excess of two million, then you might want to check with your lawyer if you have not already done so. Some of the techniques now being used to save Vermont estate taxes, such as Disclaimer Trusts and Single Fund

QTIP trusts, function extraordinarily well during poof periods. But they may not be appropriate for some married couples.

Another good reason to check in with your lawyer is that the widely used formula clauses may, in some instances, now unintentionally alter the share passing to or for the benefit of the surviving spouse. This is of particular concern in plans designed for second marriages.

You may also want to give your executor the ability to allocate cost basis to probate and non-probate assets without fear of liability. The income tax basis of inherited property is no longer "stepped up" to the property's date of death value. Instead, new "carry over" basis rules mean that appreciated property acquired from a decedent will continue to have the decedent's adjusted basis. The law permits an executor to allocate up to \$1.3 million to increase the basis of any estate assets, and an additional \$3 million to increase the basis of assets passing outright or in trust to a surviving spouse.

Although we still have a gift tax and exemption of one million, the maximum rate drops to 35%. In addition, Vermont does not impose a gift tax. Perhaps gifts should be considered during 2010 while the rate stays low. Better yet, gifts to grandchildren will now be free from Generation Skipping Tax, unless, poof, a change is made retroactive.



**the GST exemption will be indexed for inflation*