

LESSON 15

**ESTATE AND GIFT TAX -
LAW CHANGES
Study Guide**

NOTE:

Prometric has posted on their webpage that "Estate Tax" questions will apply to the tax law in place prior to January 1, 2010. Therefore the new law will not be tested.

Background

Most gifts are not subject to the gift tax and most estates are not subject to the estate tax. Only about **2% of all estates** are subject to the estate tax. Even if tax applies to your gifts or your estate, it may be eliminated by the Unified Credit.

The Economic Growth and Tax Relief Reconciliation Act of 2001, phased out and repealed the Estate and Generation-Skipping Transfer tax, but not the Gift Tax. Beginning in **2010 the estate and generation skipping transfer taxes (GST tax) are repealed**, but not the gift tax. Beginning with gifts made in 2002, the applicable exclusion amount for lifetime gifts will be fixed at \$1 million.

The gift tax remains in effect after December 31, 2009. Beginning in 2010, the gift tax will not follow the estate tax rate. Instead, the top gift tax rate will be the same as the top individual rate or 35%.

Sunset provision

Unless Congress and the President acts between now and 2011, the tax law will revert in 2011 back to what it was prior to the enactment of the Estate Tax repeal.

Congress acts

Congress acted on December 17, 2010 and passed The Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010, P.L. 111-312. Know as the **2010 Tax Relief Act** it reinstates the estate tax for decedents dying after December 31, 2009 and before January 1, 2013.

The Act allows decedents who die after December 31, 2009 and before January 1, 2011 an option to elect:

1. To apply the estate tax based on the new 35% tax rate and \$5 million exclusion amount, or
2. No estate tax and a modified carryover basis rules under EGTRRA.

Unified credit

A credit is an amount that eliminates or reduces tax. A unified credit applies to both the gift tax and the estate tax. You must subtract the unified credit from any gift tax that you owe. Any unified credit you use against your gift tax in one year reduces the amount of credit that you can use against your gift tax in a later year. The total amount used against your gift tax reduces the credit available to use against your estate tax.

Under this system, a unified credit of **\$330,800** is allowed in 2010 against gift tax. The credit effectively exempts the first **\$1,000,000** of transfers.

A unified credit of **\$1,455,800** is allowed in 2009 against estate tax. The credit effectively exempts the first **\$3,500,000** of transfers.

The following table shows the unified credit and the applicable exclusion amount for the calendar year in which a gift is made or a decedent dies.

Year	For Gift Tax Purposes:		For Estate Tax Purposes:	
	Unified Credit	Applicable Exclusion Amount	Unified Credit	Applicable Exclusion Amount
2002 and 2003	\$345,800	\$1,000,000	\$345,800	\$1,000,000
2004 and 2005	345,800	1,000,000	555,800	1,500,000
2006, 2007, and 2008	345,800	1,000,000	780,800	2,000,000
2009	345,800	1,000,000	1,455,800	3,500,000
2010*	330,800	1,000,000	1,730,800	5,000,000

* Subject to estate tax election