

## Post Mortem Estate Planning Class 1

Christopher M. Harvey, Esquire  
Harvey & Mortensen  
800 Lancaster Ave. Suite T-2  
Berwyn, PA 19312  
www.harveymortensen.com  
(610) 408-8388 (610) 408-8378 fax

## Unified Credit Exemption Amount & GST Exemption

- Section 2010: the unified credit for estate tax purposes is increasing according to the table on the next slide.
- Section 2505: the unified credit for gift tax purposes remains at \$1,000,000.
- Section 2631: after 1/1/04: GST exemption is \$1,500,000.

## Unified Credit Exemption Amount

Calendar year	Estate and GST tax transfer exemption	Gift tax transfer exemption
2001	\$675,000	\$675,000
2002	\$1 million	\$1 million
2003	\$1 million	\$1 million
2004	\$1.5 million	\$1 million
2005	\$1.5 million	\$1 million
2006	\$2 million	\$1 million
2007	\$2 million	\$1 million
2008	\$2 million	\$1 million
2009	\$3.5 million	\$1 million
2010	N/A (tax repealed)	\$1 million
2011	?	?

## Estate and Gift Tax Rates

- Estate Tax Rates: Section 2001(c)(2): sets a maximum rate for years 2002 and before 2010.
- Gift Tax Rates: 2502(a) references the calculation of the gift tax to the tax calculated under Section 2001. After 12/31/09, the gift tax is calculated pursuant to a graduated rate structure with the top rate being the highest income tax rate.

## Estate and Gift Tax Rates

Calendar year	Highest Estate and Gift Tax Rates
2001	55%
2002	50%
2003	49%
2004	48%
2005	47%
2006	46%
2007	45%
2008	45%
2009	45%
2010	Top Individual Tax Rate (Gift tax only)
2011	?

## State Death Tax Credit

- Reduction: Section 2011(b)(2)
  - 2002: Reduced 25% from present amounts
  - 2003: Reduced 50% from present amounts
  - 2004: Reduced 75% from present amounts
- Section 2058: for decedent's dying after December 31, 2004, the State Death Tax Credit is Eliminated and Replaced with a Deduction for Death Taxes Actually Paid

### Basis of Property Acquired by a Decedent

- Stepped up basis remains for assets received from a decedent dying before 1/1/2010.
- General Rule 1014(f) & 1022(a)(2): For decedents dying after 12/31/2009, while estate tax is repealed, basis of assets received is the lesser of the decedent's carryover basis or the FMV at the date of the decedent's death (gift tax basis).

### Basis of Property Acquired by a Decedent (Cont)

- A decedent's estate is permitted to increase the basis of appreciated assets up to a total of \$1.3 million. See 1022(b)(2).
- See adjustments in 1022(b)(2)(C) relating to built-in losses, net operating losses and capital loss carryovers.

### Basis of Property Acquired by a Decedent (Cont)

- **Surviving Spouse: 1022(c)**: Basis of assets transferred to a surviving spouse can be stepped up an additional \$3 million (\$4.3 million total).
- **Spousal basis step-up rules** apply to outright transfer property and QTIP. See 1022(c)(3).

### Basis of Property Acquired by a Decedent (Cont)

#### Requirements for Basis Step Up:

- Decedent must have owned or have been treated as owning the property. See 1022(d)(1)
  - Own property outright
  - Own property in revocable trust that pays all of its income during the decedent's life to the decedent or at the direction of the decedent
  - Own jointly
    - If owned jointly with spouse then ½ of the property's basis may be stepped up.
    - If owned jointly with someone other than spouse then the portion attributed to the decedent's consideration for the property.

### Basis of Property Acquired by a Decedent (Cont)

- **Property Acquired by Gift: 1022(d)(1)(C)**:
  - If acquired within 3 years of death by gift, then no basis step-up, unless the property was gifted from a spouse and that spouse did not receive it as a gift within 3 years.
- **Executor Makes All Allocations: 1022(d)(3)**
- **IRD: 1022(f)**: no basis increase for IRD under Section 691.

### Sale of Principal Residence

- **Section 121(d)(9)**: the exclusion of \$250,000 on the sale of the decedent's principal residence is allowed to the estate of a decedent for decedent's dying after 12/31/09, any individual who acquired the property from the decedent, or a qualified revocable trust.

### Qualified Family-Owned Business Deduction

- Qualified Family-Owned Business Deduction repealed for estates on or after 1/1/04. See 2057(j).
  - If deduction is taken before 2004 and the property ceases to qualify within 10 years of the decedent's death, then the estate tax benefit is recaptured even after the repeal of the estate tax.

### Section 6166: Extension of Payments for Closely-held Business Interests

- After 12/31/09, there are no estate taxes, however every estate that has a loan in existence must continue to carry the loan or a recapture tax is due.

### Sunset Provision

- This Act shall not apply to decedents dying or gifts made after 12/31/2010.
- After 12/31/2010, we return to the law as it existed prior to June 7, 2001.