

# EstateTaxFocus

By Allan D. Gersten

## Preparing for coming estate tax law changes



There seems little doubt that the federal estate tax rules will fade away into the sunset at the end the decade.

Through 2009, the current law allows for a \$3.5 million personal exemption or \$7 million in combined exemptions for both spouses, if

they have taken the necessary steps to capture both exemptions.

The federal estate tax disappears totally for estates having to file for deaths in 2010, making it a unique occasion in the history of federal "death tax" avoidance.

To clarify what is expected to occur, a client with a \$3.5 million estate is an example. If the federal estate tax falls back to its 2001 level when there was a \$1 million personal exemption and a marginal 55% tax rate and dies in 2011, the estate taxes would be \$1.375 million.

Based on that illustration, what planning will be appropriate as far as new estate tax rules going forward from 2011?

**1. There's indication** that the 2010 death tax "holiday" may never occur. The Administration and Congress will find a way to agree that it would be too costly to give up 2010 for collecting the federal taxes for deaths that occur that year given the incredible deficits that we are facing and the political climate that we have.

Let's assume federal estate taxes will not disappear. That said, we can expect personal federal estate tax exemptions to drop from the current \$3.5 million per person level. Although this may take place in 2011, it may be legislated at \$3.5 million for 2010 only and it is also possible that future estate tax exemptions will be indexed for inflation beyond 2010.

We can look for the marginal federal estate tax rates to run from 45% to 55%. It's likely that rates will be maintained at the 45% marginal rate, while possibly setting an additional 55% marginal rate for very large estates.

**2. Advisors need** to be proactive with clients starting now. If this sounds as if

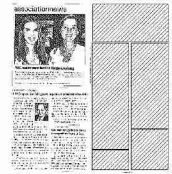
there's urgency, there is. Since this issue is being widely discussed in the press, clients are aware that changes are pending and wonder what the impact might be if they should die in the next couple of years. By having conversations with clients now, they know you're working on this issue. This also mitigates the impact of someone else asking to meet with them about estate tax changes.

**3. Producers should** sit with all their clients to review their life insurance plans. Quite candidly, periodic reviews are obligatory today for serving clients properly. This is what it takes to make certain plans are current, especially when there is a confluence of changes involving economic, political and tax issues, as well as family needs and dynamics.

**4. Have a** contingency plan for clients. The Wall Street meltdown is a lesson no advisor dare forget: clients were not prepared. They deserve to know that regardless of what happens, that you will assist them in protecting their family. This is what will set you apart from others more than anything else.

**5. Clients should** solve liquidity needs. These include paying administrative costs and anticipated tax liabilities, as well as any indebtedness and funding for business needs such as deferred compensation arrangements, death benefits for a key person/employees' families, financing of the replacement of a key employee, replacement of lost revenues due to loss of a key employee and provisions financing the purchase of the business.

**6. Clients should** take steps to reduce or even eliminate estate taxes. Depending on the particular situation, there are numerous planning techniques that can help reach this



objective: gifts, Qualified Personal Residence Trusts, Grantor Retained Annuity Trusts, a Family Limited Partnership, selling depreciated assets and gifting net proceeds, making installment sales to an intentionally defective Grantor Trusts, private financing and intra-family market loans (often coupled with the purchase of life insurance), private annuities and annuity maximization as well as other strategies.

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**about the author:**

**Allan D. Gersten** is chairman of First American Insurance Underwriters, a Needham, Mass-based insurance brokerage firm specializing in coaching producers. He has been in life insurance sales since 1969. He can be reached at 800-444-8715 or [agersten@faiu.com](mailto:agersten@faiu.com).