

**ESTATE AND GIFT TAX IN 2010**

Members of Congress are very unlikely to arrive at a compromise and enact legislation addressing the repeal of the federal estate tax in 2010 before the end of this year. If legislation is not enacted, the federal estate tax will be temporarily repealed in 2010, only to be restored in 2011 at a rate of 55% on estates valued at \$1 million or more (as opposed to the current 45% rate and \$3.5 million exemption per person). The federal gift tax will remain in effect in 2010 but at a maximum rate of 35%. As a result of the temporary repeal of the federal estate tax in 2010, the automatic “step-up” in basis for property received from a decedent will not be available, and the beneficiaries will instead receive a “carry-over” basis in the property. The existing law does, however, allow an increase in the basis of appreciated assets by \$1.3 million for transfers to individuals other than a spouse and by \$3 million for certain transfers to surviving spouses. If inherited property is later sold, it will be subject to capital gains taxes on any amount in excess of these exemption amounts.

The debate over the federal estate tax is expected to continue when Congress returns from recess. It has been suggested that any legislation passed in the new year may be made retroactive as of January 1, 2010. Our research indicates that retroactive legislation will likely be upheld as constitutional. We are closely monitoring the developments in Congress.

\* \* \* \* \*

Please do not hesitate to contact the partners in our Private Clients Group, David J. McCabe (212-728-8723, dmccabe@willkie.com) or Loretta A. Ippolito (212-728-8680, lippolito@willkie.com), should you need additional information.

Willkie Farr & Gallagher LLP is headquartered at 787 Seventh Avenue, New York, NY 10019-6099. Our telephone number is (212) 728-8000 and our facsimile number is (212) 728-8111. Our website is located at [www.willkie.com](http://www.willkie.com).

December 23, 2009

IRS Circular 230 disclosure:

To ensure compliance with requirements imposed by the Internal Revenue Service, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Copyright © 2009 by Willkie Farr & Gallagher LLP.

All Rights Reserved. This memorandum may not be reproduced or disseminated in any form without the express permission of Willkie Farr & Gallagher LLP. This memorandum is provided for news and information purposes only and does not constitute legal advice or an invitation to an attorney-client relationship. While every effort has been made to ensure the accuracy of the information contained herein, Willkie Farr & Gallagher LLP does not guarantee such accuracy and cannot be held liable for any errors in or any reliance upon this information. Under New York’s Code of Professional Responsibility, this material may constitute attorney advertising. Prior results do not guarantee a similar outcome.