



Jeff Brown P.C.

A Full Service Certified Public Accounting Firm

Sunset of the 2001 & 2003 Tax Relief Acts: ESTATE, GIFT, AND GENERATION-SKIPPING TAXES

Estate and Generation-Skipping Transfer Taxes. The one-year repeal of federal estate and generation-skipping transfer (GST) taxes is scheduled to expire, so that federal estate and GST taxes will again apply to the estates of decedents dying and GSTs made after 2010.

Transfer Tax Rates. Lower transfer tax rates are scheduled to expire with respect to the estates of decedents dying and gifts and GSTs made after 2010, so that the maximum rate will again be 55 percent, and a five-percent surtax will apply to many estates and gifts that exceed \$10 million (Code Sec. 2001).

Transfer Tax Exclusion and Exemption Amounts. The increases in the estate tax applicable exclusion amount and the GST tax exemption amount are scheduled to expire, so that the estate tax applicable exclusion amount for decedents dying and GSTs made after 2010 will be \$1 million (as adjusted for inflation) (Code Secs. 2010 and 2505).

Qualified Family-Owned Business Interest Deduction. The qualified family-owned business interest (QFOBI) deduction is scheduled to be restored for estates of decedents dying after 2010, so up to \$675,000 of the adjusted value of QFOBIs will be excludable by an electing estate (Code Sec. 2057).

State Death Taxes. For the estates of decedents dying after 2010, the tax credit for estate, inheritance, legacy, or succession taxes paid to any state or the District of Columbia is scheduled to be restored, and the state death tax deduction is scheduled to expire (Code Secs. 2011 and 2058).

Estate Tax Exclusion for Qualified Conservation Easements. The easing of location requirements for an estate's excludable qualified conservation easements is scheduled to expire for decedent's dying after 2010 (Code Sec. 2031(c)).



Jeff Brown P.C.

A Full Service Certified Public Accounting Firm

Basis for Property Acquired from a Decedent. The modified carryover basis rules applicable to property acquired from a decedent are scheduled to expire for persons dying after 2010, so that the income tax basis of property acquired from a decedent at death generally will be stepped-up (or down) to its value as of the date of the decedent's death. Executor reporting requirements and penalty provisions relating to the carryover-basis regime are also scheduled to expire (Code Secs. 1014 and 1022).

Income Tax Exclusion for Sale of Principal Residence. The exclusion from gross income for gain realized on the sale of a decedent's principal residence by the estate, heir or qualified revocable trust is scheduled to expire for decedent's dying after 2010 (Code Sec. 121(d)(11)).

Gain on Distributions of Appreciated Property. The limitation on the recognition of gain on appreciated carryover basis property in satisfaction of a pecuniary bequest (or an equivalent distribution from a trust) is scheduled to expire for estates of decedents dying (or trust distributions made) after 2010, so the limitation will again apply only to transfers of appreciated farm or closely held business real estate (Code Sec. 1040).

Miscellaneous Amendments to Incorporate Carryover Basis Rules. Several amendments to the Internal Revenue Code that incorporated the modified carryover basis rules are scheduled to expire with respect to decedents dying after 2010, including: the recognition of gain on transfers of assets by a U.S. person to a nonresident alien by bequest (Code Sec. 684); the capital gains treatment of the sale of certain inherited creative works (Code Sec. 1221(a)(3)(C)); the imposition of private foundation rules on split-interest trusts (Code Sec. 4947(a)(2)(A)); and the definition of the term "executor" (Code Sec. 7701(a)(47)).

Deemed and Retroactive Allocations of GST Exemption. For purposes of the GST tax, the deemed allocation and retroactive allocation provisions are scheduled to expire for GSTs made after 2010 (Code Sec. 2632).

Severing a Trust. The provision allowing for a qualified severance of a trust for purposes of the GST tax is scheduled to expire for GSTs made after 2010 (Code Sec. 2642).



Jeff Brown P.C.

A Full Service Certified Public Accounting Firm

Modification of Valuation Rules. The clarification of the valuation rules with respect to the determination of the inclusion ratio for GST tax purposes is scheduled to expire for transfers made after December 31, 2010 (Code Sec. 2642).

Late Elections and Substantial Compliance. The provisions providing relief from late GST allocations and elections are scheduled to expire for GSTs made after 2010 (Code Sec. 2642).

Deferred Estate Tax Payments. The expansion of eligibility for deferred estate tax payments is scheduled to expire for estates of decedents dying after 2010, so deferred payments will not be allowed if the decedent's closely held business had more than 15 partners or shareholders (Code Sec. 6166(b)).

Estate Tax Installment Payments and Stock in Lending and Finance Businesses. The rule permitting stock in qualifying lending and financing entities to be treated as stock in an active trade or business for purposes of the election to pay estate tax in installments is scheduled to expire for decedents dying after 2010 (Code Sec. 6166(b)).

Estate Tax Installment Payments and Holding Company Stock. Special rules regarding holding company stock are scheduled to expire for decedents dying after 2010,, so the rule requiring that stock in a holding company must be non-readily tradable in order to qualify for purposes of the installment payment rules will apply to operating subsidiaries, as well as the holding company (Code Sec. 6166(b)).