# THE ECONOMIC GROWTH AND TAX RELIEF RECONCILIATION ACT OF 2001

## TAX REVISIONS

The Economic Growth and Tax Relief Reconciliation Act of 2001 (the "2001 Act") modified the rules governing taxes on the transfer of assets.

In 2001, each taxpayer was entitled to a unified gift and estate tax credit which permitted the lifetime transfer or transfer at death of up to $675,000 (the exemption equivalent or applicable exclusion amount).

Under the 2001 Act, lifetime transfers are treated differently than bequests at death. The following is a recap of the 2001 Act rules.

### ESTATE TAX

The Federal Estate Tax is imposed on the transfer of assets at death; the Unified Credit offsets a portion of the tax.

- For **2009**, the Unified Credit will shelter up to **$3,500,000**.
- Starting in 2007, the highest Federal Estate Tax rate was reduced to 45% (down from 55% in 2001).
- In 2010, the estate tax will be repealed for one year unless Congress acts to prevent this (which it likely will). (See the "Sunset Provision" discussion that follows.)

*The following table details the exemption equivalent amount and the maximum tax rate for transfers at death.*

**TRANSFERS AT DEATH**

| Year | Maximum Tax Rate | Exemption Equivalent |
|---|---|---|
| 2001 | 55% | $ 675,000 |
| 2002 | 50% | $1,000,000 |
| 2003 | 49% | $1,000,000 |
| 2004 | 48% | $1,500,000 |
| 2005 | 47% | $1,500,000 |
| 2006 | 46% | $2,000,000 |
| 2007 | 45% | $2,000,000 |
| 2008 | 45% | $2,000,000 |
| **2009** | **45%** | **$3,500,000** |
| 2010* | N/A | N/A |
| 2011 | 55% | $1,000,000 |

**The 2001 law repeals Federal Estate Taxes for the year 2010.*

**GENERATION SKIPPING TAX**

The generation skipping tax (GST) is imposed on assets transferred at death to heirs two or more generations younger than the decedent.

- ✤ The GST rate is currently 45% (down from 55% in 2001).
- ✤ The GST exemption each year is equal to the applicable exclusion amount for the Federal Estate Tax.
- ✤ In 2010, the GST will also be repealed. (See the "Sunset Provision" discussion that follows.)

**GIFT TAX**

The federal "gift tax" law (covering lifetime transfers of assets) changed in 2002 and is treated differently than the estate tax.

- ✤ In 2002, the lifetime gifts exemption increased to $1,000,000 and remains at that level.
- ✤ The maximum gift tax rate was reduced in 2007 to 45%.
- ✤ In 2010, the gift tax rate will be 35% (the top individual income tax rate scheduled for that year).

**STEPPED-UP BASIS**

The rules governing the tax basis of inherited property have also been modified.

- ✤ Currently, assets transferred at death generally receive a step-up in cost basis. The heir's cost basis is equal to the value of the property used for the estate tax calculation (the value on the date of death or the alternate valuation date).
- ✤ This stepped-up basis is then used for income tax purposes to determine capital gain/loss if the heir were to subsequently dispose of the property.
- ✤ Starting in 2010, this step-up in basis will be repealed and a modified basis increase rule will become effective, as follows:
    - ♦ $1,300,000 in aggregate basis increase (step-up) can be applied to the decedent's transfers to any beneficiary.
    - ♦ An additional $3,000,000 of aggregate basis increase (step-up) can be transferred to a surviving spouse.
    - ♦ The cost basis for all other inherited property is the lesser of the:
        - ● adjusted basis of the decedent;
        - ● fair-market value of the property on the date of the decedent's death.

**SUNSET PROVISION**

Unless Congress passes additional legislation to extend these provisions beyond 2010, or to otherwise amend the law, the law will revert to the 2001 estate and gift tax rates with a $1,000,000 applicable exclusion amount for lifetime transfers and transfers at death.

Therefore, periodic reviews of your estate plan with your estate planning attorney are important because:

- ✤ The new tax law may cause certain estate planning techniques to adjust over time.
- ✤ Other changes in estate and gift tax law are likely.