

## **Special Estate Planning Needs for Married Couples**

The federal estate tax and the generation-skipping transfer (GST) taxes are temporarily repealed in 2010. They are scheduled to revive on January 1, 2011. This one-year repeal, however, does not affect potential Oregon inheritance taxes imposed at death.

Married couples with taxable estates typically divide their estate into separate shares in order to minimize federal and state estate taxes. These divisions are made by formulas in their Wills or revocable trusts that use terms defined by the federal tax laws. The absence of a federal estate tax may therefore render unclear some of the formula language used in these documents. Married couples should review and possibly update their estate planning documents to remove any ambiguities as soon as practicable. Other changes may need to be made to these documents to take advantage of certain tax planning opportunities that exist in 2010.

Because of the temporary repeal of these taxes, another important change in the law which can have effects beyond 2010, is that property received from a decedent's estate will now take a basis for purposes of determining gain on the future sale of the property equal to the decedent's basis. Previously (and again starting next year for decedent's dying after 2010), these assets received an adjusted basis equal to the fair market value of the property on the date of the decedent's death.

This change in the law is quite complex, and each estate has a right to increase the decedent's adjusted basis by up to \$1.3 million, which increase can help reduce or eliminate future capital gains taxes payable by the estate or beneficiary. Additionally, where the decedent is survived by a spouse, an additional increase of up to \$3 million may be given to property received by such surviving spouse, further reducing future capital gains taxes payable by such spouse. Wills and revocable trusts should include special provisions regarding such allocations.

Please call The Thompson Law Firm to schedule an appointment to review your estate planning documents. In some cases, no changes will be required. In others, we will recommend changes. We cannot know, in advance, whether your documents will require changes to best take advantage of the current state of the federal estate tax law until we have a chance to review your documents with you.