

▲ **Estate Planning in 2010**

Congress's failure to enact new legislation prior to December 31, 2009 triggered repeal of the federal estate tax and the federal generation-skipping tax (GST) as of January 1, 2010, under terms of the Economic Growth and Tax Relief Act of 2001. The federal tax on lifetime gifts remains and is imposed on lifetime gifts that exceed the annual exclusion amount (\$13,000 per donee per year) and the lifetime gift exclusion amount (\$1 million). However, the 2010 gift tax rate is 35 percent, down from 45 percent in 2009.

Even though there is no federal estate or GST tax in 2010, there is still a Minnesota estate tax on decedent's estates exceeding \$1 million in value at rates ranging from about 10 percent to 16 percent (Minnesota estate tax rates are much higher for the first \$1 million, and then graduate from about 10% to 16% after \$2 million). Minnesota has no gift tax on lifetime transfers.

Congress may yet pass legislation to bring back the estate tax and the GST, and may attempt to make the law retroactive to January 1, 2010. Whether



they can do that constitutionally remains an open question. If Congress does not act in 2010, the estate tax and GST tax will automatically come back on January 1, 2011, but with a lower exemption level of \$1 million and an estate and gift tax rate as high as 55 percent. Whatever the outcome, it would be prudent to review and perhaps change some estate plan provisions, taking into account that there is no longer a federal estate or GST tax in 2010.

**William S. Forsberg**

*Leonard, Street and Deinard  
Minneapolis  
William.Forsberg@leonard.com*

▼ **Students & Unemployment**

With the onset of the second semester of the school year, students in Minnesota seeking unemployment compensation benefits (and their former employers) should be mindful of a statute enacted by the Minnesota Legislature in 2009. The statute addresses when a student is "available for suitable employment" so as to qualify for unemployment compensation benefits under Minn. Stat. §268.085, subd. 1(4).



The new measure states that to be "available for suitable employment," which is necessary to be eligible for unemployment benefits, a student must be willing to discontinue classes that restrict accepting a job. A student would have to be willing to change classes or make other schedule modifications in order to be available for "suitable employment" and, thus, be eligible for unemployment benefits. Students who seek unemployment compensation benefits must emphasize their flexibility and willingness to switch classes in order to be available for employment opportunities in order to be eligible for unemployment compensation. Employers withholding unemployment compensation benefits for former employees who are now students should try to show that the former employees have not indicated their willingness to change their school schedules in order to be eligible for unemployment.

**Marshall H. Tanick**

*Mansfield Tanick & Cohen, PA  
Minneapolis  
mtanick@mansfieldtanick.com*

▼ **Federal Tax Debt & Bankruptcy**

When a bankruptcy is filed, all collection activity within the IRS will halt until the completion of the bankruptcy. At that point, some—but not all—tax debt will be dischargeable.

Nondischargeable taxes include: trust fund taxes (including employment withholding taxes); taxes for which no return was filed or was filed late within two years prior to the bankruptcy; taxes connected to a fraudulent return or tax evasion; taxes assessed within eight months before the bankruptcy was filed (assessment can take place at several junctures during the life of a tax debt, and the actual and last assessment date must be confirmed); and taxes for a year ending

before the bankruptcy where the return for the year was due within the three years before the bankruptcy filing. Tax liens attaching before a bankruptcy is filed will not be reversed by the bankruptcy and are enforceable even if the debt concerning the lien is discharged.

The timing of a bankruptcy filing as it pertains to tax debt is a technical issue that should be well-versed by the bankruptcy attorney before filing; when the bankruptcy is filed can determine whether the client's tax debt is or is not purged.

**Tony Dennison**

*Schleck & Associates PA  
Minneapolis  
TDennison@SchleckPA.com*



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