

# The New Estate Planning Landscape: Guiding Clients Through Estate Planning Purgatory

Presented by

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# Bush Tax Act (EGTRRA)

- Gradually Increased Exemption Amounts (from \$675,000 to \$3.5 Million)
- Decreased Estate Tax Rates (Down to Top Rate of 45%)
- Eliminated Estate & GST Taxes in 2010
- “Sunset” Provision (“Byrd Rule”) Reinstates Previous System in 2011 Unless Congress Acts

# Extension of EGTRRA?

- H.R. 4154 Passed December 3, 2009 (with NO Republican Votes)—Extended
- Republicans Wanted \$5 Million Exemption and Top Rate of 35%
- Senate Failed to Pass Any Law and Denied Two Month Extension (Same Republican Proposal, but Including “Portability” )
- “Byrd Rule” Requires 60 Vote Majority & There’s No Consensus!

**Indeed, Senate Finance  
Committee Chairman  
Max Baucus says there's  
“Massive, Massive  
Confusion”!**

# What Happens In 2011 If No Change?

- \$1 Million Federal Estate Tax Exemption
- Estate and Gift Tax Unified Again
- GST Exemption Will Be Inflation Adjusted \$1 Million (approximately \$1,340,000)
- Top Rates Revert to 55% (With 60% “Bump” for Estates Over \$10 Million)

# Three Potential Planning Scenarios

- Congress Acts This Year and Law Applies Retroactively
- Congress Acts and Law Does NOT apply Retroactively (or Retroactivity is held Unconstitutional)
- Congress Does Not Act

# Three Possible Results

- 2009 Provisions Extended (\$3.5 Million Exemption and 45% Rate)
- \$5 Million Exemption and 35% Rate Passes
- \$1 Million Exemption and 55% Rate Reinstated

# So What's the Law Now?

- NO Federal Estate Tax
- NO Generation Skipping Tax (GST)
- Gift Tax at 35% Rate
- Carryover Basis Regime Becomes Effective
- \$1.3 Million Step-up Allocation
- Additional Step-up Allocation for \$3 Million for Assets Transferred to Spouse, Either Outright or to a Q-TIP Trust

# And, Planning Uncertainty “Rules!”

- **Constitutionality of Retroactive Provision?**
- Interpretation of Legal Documents
- Interpretation of “Repeal” Language

# Constitutionality of Retroactive Application of Tax Legislation

- Good Arguments on Each Side
- Retroactive Application Has Been Upheld, but Rulings Can Be Distinguished
- Very Difficult to Predict Result

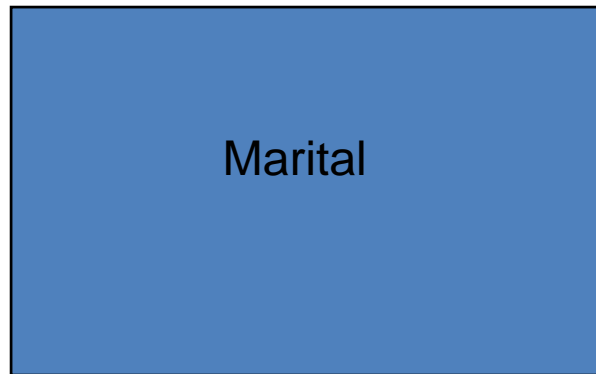
# And, Planning Uncertainty “Rules!”

- Constitutionality of Retroactive Provision?
- **Interpretation of Legal Documents**
- Interpretation of “Repeal” Language

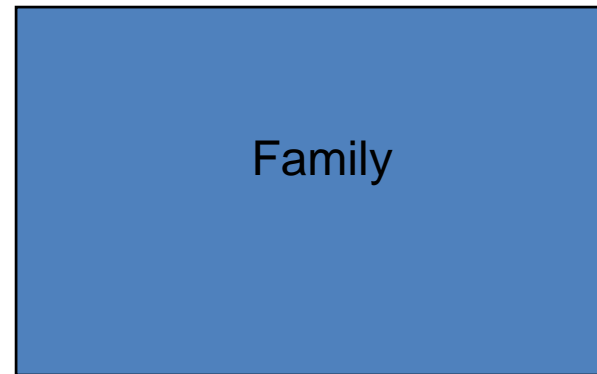
# Federal Estate Tax Reduction

## Trustee Instructions:

**Transfer up to Exemption Equivalent to Family Trust,  
Put Any Excess in Marital Trust**



Excess

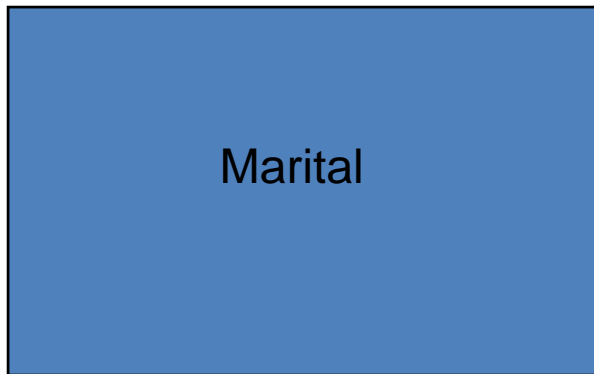


1st \$3,500,000  
(2009)

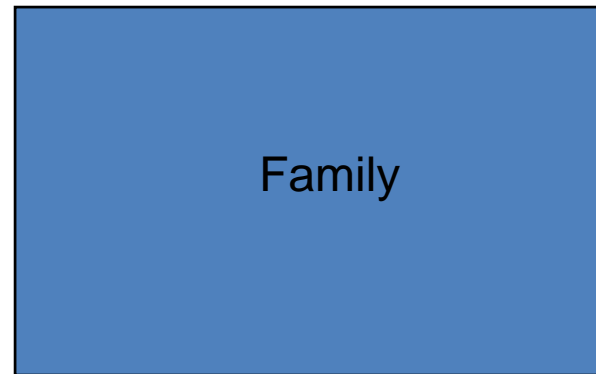
# Federal Income Tax Reduction

## Trustee Instructions:

Transfer all Property to Family Trust, Put Excess Appreciated Assets in Marital Trust



Up to \$3,000,00  
of Appreciated Assets

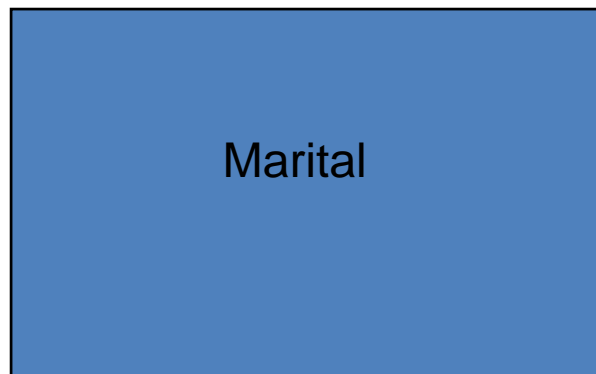


All Property  
(1st \$1,300,000  
Stepped Up-2010)

# Federal Estate Tax Reduction

## Trustee Instructions:

**Transfer up to Exemption Equivalent to Family Trust,  
Put Any Excess in Marital Trust**



Excess



1st \$1,000,000  
(2011)

# And, Planning Uncertainty “Rules!”

- Constitutionality of Retroactive Provision
- Interpretation of Legal Documents
- **Interpretation of “Repeal” Language**

***“As If Never Enacted”***  
***(And Not “Repealed”)***

# Prioritizing Client Situations for Review

- “Blended Families”
- Charitable Bequests
- Generation-Skipping Trusts
- “De-Coupled” State Death Taxes
- Note: These Involve Percentages and Formula Wording

# What Can Financial Advisors Do?

- Proactively Identify Clients with Estate Planning Documents Executed Prior to 2001
- Proactively Verify Estate Planning Document Language For More Recent Plans
- Proactively Identify Clients Who Have Pursued Generation-Skipping Planning

# What Can Financial Advisors Do?

- Proactively Identify Clients With Appreciated Assets and Assess Basis Information Situation With Them—Begin with Clients Who Have Known Health Issues
- Proactively Identify Clients Affected By Potential Reduction to \$1 Million Exemption
- Encourage Clients to Document Their Intent to Help Courts Interpret Them Appropriately

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