



ATTORNEYS AT LAW

Marvin E. Blum* • Gary V. Post* • John R. Hunter° • Daniel H. McCarthy° •
Steven W. Novak* • Len Woodard • Catherine R. Moon* • Amanda L. Holliday* •
Laurel Stephenson* • Laura L. Bower-Haley* • Amy E. Ott • Rachel W. Saltsman
Christine S. Wakeman • Kandice R. Killion • Kent H. McMahan,* Senior Counsel

THINGS TO CONSIDER AS 2010 DRAWS TO A CLOSE

By Marvin E. Blum

1. What is the impact of the election on tax laws? Deadlock, unless the Democrats, Republicans, Congress, and President Obama can reach a compromise.
2. Should I wait to act until the law is clear? No. Almost everyone agrees that there will be a federal estate tax in the future. We are now in a “perfect storm” of low interest rates, low asset values, and valuation discounts, which makes this the perfect time to do estate planning.
3. What planning should I be doing to minimize estate taxes? Options range from the simple to complex – \$13,000 annual exclusion gifts, \$1,000,000 lifetime gifts, taxable gifts, gifts/sales to “defective grantor trusts,” sales to “678 trusts,” charitable techniques, etc.
4. Is there any way to completely avoid paying estate taxes? The estate tax is a “voluntary” tax that is paid by those who fail to plan. For example, you can substantially reduce, or even completely avoid, estate taxes by prefunding your children’s inheritance and leaving the bulk of your estate to a charitable vehicle.
5. Should I consider converting my traditional IRA into a Roth IRA? Note that the conversion can be done this year and you can elect to recognize all of the income in 2010 (or ½ in 2011 and ½ in 2012). At the same time, if you make a gift to a donor-advised fund equal to the income generated by the conversion, then there will be no income tax hit on the Roth conversion. Since there is no itemized deduction “cut-back” in 2010, the charitable deduction for the amount contributed to the donor-advised fund can fully offset the income triggered by the Roth conversion.
6. Should I trigger capital gains in 2010? The capital gains rate is currently 15% and is scheduled to increase to 20% in 2011.
7. Should I make charitable contributions in 2010? There is no “cut-back” for itemized deductions (including charitable contribution deductions) in 2010, but the “cut-back” is scheduled to return in 2011.
8. Consider “bunching” income tax deductions to maximize the amount of income taxes avoided. For example, pay property taxes and make charitable contributions in odd years, which would be itemized deductions. In even years, take the standard deduction. When grouping deductions in this way, charitable contributions can be made in odd years to a donor-advised fund. In even years, distributions can be made out of the donor-advised fund to charities to satisfy annual giving obligations.

9. Should I make taxable gifts in 2010? The gift tax rate for taxable gifts made in 2010 is historically low at only 35%. The gift tax rate was 45% in 2009 and is scheduled to increase to 55% in 2011.

10. Have I fully utilized my annual exclusion amount for my children, grandchildren, and others? An individual may make gifts of \$13,000 to as many different individuals as he or she wishes each year without eating into his or her \$1,000,000 lifetime gift tax exemption.