



## Implications of the 2010 Tax Law

As a financial planner who believes strongly in the value of smart estate planning, I must say that the 2010 tax law terrifies me.

To me, it has created perhaps as many problems as it was meant to solve, including:

- The provisions of the new law change every year for the next decade. That means that every year, you need to make sure your planning is up to date with those changes.
- People have another excuse to avoid estate planning because they think the “repeal” of the estate tax means you don’t have to worry about anything.
- Millions of people who would never owe estate taxes under the old tax laws may see their heirs get less because of capital-gains taxes.

To cope with the law, you should start planning intelligently now. Take advantage of those provisions in the new law that help you, and protect yourself from the features that can hurt you. To help guide you through the estate-planning minefields, here’s a list of do’s and don’ts

### The planning do’s

**See a lawyer now to create or update your estate plan.** You need one, regardless of any tax law changes. And, yes, I know, the estate tax is repealed in 2010 (and afterward, assuming the law is renewed). But what you have to go through in the next five to 10 years is torturous. So you REALLY need a good estate-planning lawyer now -- regardless of how big your estate is.

**Give more to charities now.** If you know you will have more money than you will ever need, give more to charities now. That’s because the repeal of the estate tax in 2010 gives people with substantial estates (the ones most likely to make big gifts) much less incentive to give money away.

**Give away assets that have made you a bundle.** If you own assets that cost you only a little but are worth a lot now, give some of them away to charity. That way, you will avoid capital-gains taxes should you or your heirs sell the assets. One of the oddities of the estate-tax repeal is that you lose the so-called step-up basis that lets your heirs inherit assets at their market value on the day you die. Let’s say you bought 1,000 shares of Intel at \$5, and the stock is worth \$35 per share when you die. Under the old law, your heirs would inherit the shares with a value of \$35 and face no capital-gains problems. Under the new law, your heirs’ cost basis for capital-gains purposes would be \$5, and they could be liable for capital-gains taxes. (There are provisions to exclude \$1.3 million assets from capital-gains taxes if you die without a spouse. If you’re married and will your estate to your spouse, another \$3 million is added to the exclusion, bringing the total to \$4.3 million.)

**Use section 529 education plans for children or grandchildren.** These are the special investment programs that let you save for college on a tax-deferred basis. The income-tax breaks for these programs get bigger under the new law. You can also still give \$50,000 this year and have it count for the next five years of annual gifts.

**Give away land that cost you little to charities as “conservation land.”** Under the old tax laws, you could give away land that achieves various conservation goals. The donations would produce income-tax deductions and could be used to cut estate taxes. Most restrictions on what the government defined as conservation land have been lifted. Thus almost any land now qualifies for the charitable deductions.



**Keep meticulous records of everything you buy and sell.** Keep complete and accurate transaction records will let you or your heirs figure out the cost basis on every asset in your Estate. That way, they won't have to pay any more capital-gains taxes than necessary if you pass away in 2010 or later.

**Create an estate plan that's flexible.** An estate plan involves writing a will, choosing executors, making sure beneficiaries are properly named and the like. What you want now is an estate plan that is easy to adjust because you have to assume, or at least prepare for the possibility, that the new estate laws will be modified substantially. It has happened in the past.

## The planning don'ts

**Don't assume you are better off financially under the new law.** Federal estate taxes might go away for good, but even small estates might owe state estate taxes. Have your lawyer research these questions carefully.

**Don't assume you'll get special tax benefits if you own a small business or farm.** Under the new law, those tax breaks are eliminated in 2004.

**Don't count on estate taxes actually disappearing, even for one year.** What is passed into law in one congressional session can be repealed by the next. The 1981 Reagan Administration tax law was going to cut the top estate tax rate to 50%; budget considerations forced Congress in 1984 to freeze the rate at 55%. And, remember, the entire law "sunset" in 2011 anyway.

**Don't change your estate plan without consulting an estate-planning lawyer.** As examples, don't cancel life insurance, or transfer assets out of any trusts without talking to your lawyer. You could create legal and tax headaches. Let's say you concluded you faced estate taxes and bought life insurance to cover the expected tax bill. If you cancel the policy now anticipating estate-tax repeal, you could be very vulnerable if the tax is reinstated.

**Don't assume you are in an estate-tax-free zone and therefore don't need an estate plan.** You still need to decide who gets what, who the executor and guardian for your children will be and who will make medical and legal decisions for you if you are still living but unable to do so on your own.

**To be completely cynical.** If you are extremely wealthy and your heirs are better off if you died in 2009 (with estate taxes) versus dying in 2010 (with capital-gains taxes), then hire a bodyguard. And if estate taxes are re-imposed in 2011, you'll REALLY need one in 2010.

**Be pro active with your Estate Plan you will have considerably more options when doing advance planning than when doing reactive planning after the fact! Call 602 499-8188 and ask for a no cost evaluation of your Estate Plan.**