

\$109,560 in countable assets. A person who has no spouse can only retain \$2,000 in countable assets if his or her income exceeds \$767 per month in the year 2010. A person who has no spouse can only retain \$5,000 in countable assets if his or her income is \$767 or less per month in the year 2010. There is also a maximum amount of monthly income that the institutionalized spouse can receive and still be eligible for nursing home assistance. The monthly gross income available to the institutionalized spouse cannot exceed the state monthly income cap of \$2,022 in 2010. However, a nursing home patient with a gross monthly income in excess of \$2,022 for 2010 can still qualify for the institutional care program by establishing an irrevocable qualified income trust. This trust is often referred to as a Miller Trust, after the name of the Colorado case that originally approved this concept. The nursing home patient's income in excess of \$2,022 is irrevocably assigned to the irrevocable qualified income trust that is used to pay the patient's medical and nursing home expenses. In determining the institutionalized spouse's income available to pay the cost of the nursing home, a community spouse is first permitted to retain a minimum monthly maintenance income needs allowance that is sometimes referred to as a MMMINA. This means that the community spouse may retain his or her income plus the portion of the institutionalized spouse's income necessary to allow the community spouse \$1,821.25 in income per month. There may be an additional amount of income diverted from the institutionalized spouse if the community spouse can demonstrate excess shelter expenses. However, the maximum monthly maintenance income needs allowance is \$2,739 per month in 2010. This amount will increase on July 1, 2010.

All assets owned by the institutionalized spouse or by the non-institutionalized spouse are considered countable assets unless exempted by state regulation. An individual with an equity interest in his or her home in excess of \$500,000 is not eligible for long-term care. Home equity is calculated using the current market value of the home minus any debt. The current market value is the amount for which it can be reasonably expected to sell on the open market in the geographic area. If the home is held in any form of shared ownership, only the fractional interest of the person requesting long-term care assistance should be considered. The home equity policy does not apply if the residence is being occupied by the nursing home resident's spouse, a child under age 21, or a blind or disabled child is living in the residence. The home equity must be revalued each year that the applicant remains on Medicaid nursing home assistance. This home equity limitation may be waived when a denial of long-term care eligibility will result in demonstrated hardship to the individual. One vehicle is excluded in computing countable assets regardless of its age or value. A second vehicle is generally excluded if it is more than seven years old. If the total face value of the patient's whole life insurance policies is \$2,500 or less, the cash value of the policies is excluded as an asset. The full value of an irrevocable burial

contract is excluded as an asset. Likewise, there is a \$2,500 exclusion for bank accounts that have been designated for burial expenses. The total value of an individual retirement account (IRA) owned by an institutionalized spouse is not counted as an available asset if it is placed into payment status over the life expectancy of the institutionalized spouse. Likewise, the total value of an individual retirement account (IRA) owned by a community spouse is not counted as an available asset if it is placed into payment status over the life expectancy of the community spouse. Most Districts of the Department of Children and Families require the IRA payments to be paid over Social Security's life expectancy tables.

Roth IRA Conversion

The income cap that prohibited a person earning more than \$101,000 from converting a traditional IRA to a Roth IRA is now removed. Unless a taxpayer elects otherwise, none of the taxable income resulting from the conversion will be included in taxable income in 2010. One-half of the income resulting from the conversion is includible in gross income in 2011 and the other half in 2012. Thereafter, there will be no taxation on future income if the five year holding period for a Roth IRA is satisfied. Also, there will be no requirement that distributions begin at age 70 1/2.

DEGREE AWARDED



Gregory G. Gay, Esq. was awarded a Master of Divinity Degree from Southeastern Baptist Theological Seminary on December 18, 2009. This degree was earned for the completion of 90 credit hours of study in theology, hermeneutics and biblical exposition, among several other disciplines. Mr. Gay uses this specialized education in estate and planned giving presentations for charities and religious organizations.

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Estate Tax and Carryover Basis

The U.S. Senate adjourned for the holidays without extending the 2009 estate tax law into 2010. This means there will be no tax on estates of those dying residents of Florida during 2010 unless Congress subsequently reinstates the estate tax retroactively in 2010, which is not guaranteed. However, in 2011 the estate tax is to be restored at a rate of 55 percent on estates of \$1 million or more.

In 2009, the federal income tax laws assigned to inherited property a tax basis equal to the fair market value of that property on the date of the decedent's death or six months later, if the alternate valuation date is selected. This step-up or step-down in the basis eliminated the recognition of income tax on the increase in the value of the property that occurred before the death of the deceased person devising the property, and eliminated the tax benefit from any unrealized loss. This exclusion of the gain from income taxation was due to a concern that a double tax existed when a beneficiary was subject to an estate tax and an income tax on inherited property. Since beneficiaries receiving property due to inheritance will not be subject to a federal estate tax in 2010, the current law's step-up in basis rule is replaced with a modified carryover basis rule.

Beginning in 2010, inherited property will have a basis equal to the lesser of its fair market value on the date of death or the decedent's adjusted cost basis in the property. However, a modified carryover basis rule will apply to these assets. The first modification to the adjusted cost basis rule is that the basis in each inherited asset will be increased proportionately so that the basis of all the estate's property will be increased to an aggregate basis of \$1,300,000. In addition, the basis in property left to a spouse outright or in a qualified terminal interest trust for a surviving spouse will increase to an additional aggregate

of \$3,000,000. This means that the basis of property transferred to a surviving spouse can be increased by as much as \$4,300,000 in 2010 if it is devised to a spouse.

Necessary Revisions to Estate Plans

Since there is presently no Federal estate tax in 2010, there is uncertainty as to how the provisions in a married couple's estate planning documents signed in a prior year will be interpreted. This is because several provisions of a married couple's estate planning documents are phrased in terms of tax concepts, such as the estate tax exemption amount and the marital deduction amount. Because those tax concepts are not in the law this year, there may be some question as to what a married person's documents mean and how his or her property is to be distributed.

In addition, a married person may need to revise his or her will or trust at this time to allocate all property to the surviving spouse or to a qualified terminal interest trust where only the spouse receives all the net income at least annually. This trust could provide for the surviving spouse to have a right to disclaim to the children any assets having a carryover basis in excess of \$3,000,000. In the alternative, the will or trust could be revised to create a trust for the benefit of the children after first providing for a distribution to the spouse or his or her qualified terminal interest trust property having a carryover basis of \$3,000,000. These provisions may ensure the full use of the \$4,300,000 carryover basis adjustment for a spouse and the children.

While this change in the tax law that has just become effective will last only for this year or until Congress retroactively changes

(continues on page 2)

the law, we recommend that married couples set an appointment with us to determine if their estate planning documents should be modified in view of these new laws. In addition, consideration should be given to gathering at this time the information regarding the adjusted cost basis of property. This will be of great benefit to the surviving spouse or personal representative who must file a carryover basis return within nine months of a spouse's death.

Social Security Update

Since the consumer price index did not appreciably increase this past year, the Social Security and Supplemental Security Income benefits for more than 57 million Americans did not automatically increase in 2010. This is the first year without an automatic Cost-of-Living Adjustment (COLA) since this COLA provision became effective in 1975.

The percentage of the Social Security tax that will be deducted from a worker's pay in 2010 will remain at 6.2 percent of earnings. The maximum amount of wages on which this tax will be imposed for the year 2010 will remain at \$106,800. This is the same maximum amount of taxable earnings as the year 2009. The percentage of Social Security tax and the maximum amount of earnings on which this tax is imposed may increase each year. A Medicare tax is also deducted from a worker's paycheck. Presently, this is an additional 1.45 percent of earnings. There is no maximum amount of earnings on which the Medicare tax is imposed.

The maximum amount that a worker under age 66 can earn without a reduction in Social Security benefits in the year 2010 remains at \$14,600. For every \$2 earned over this limit, \$1 is withheld from Social Security benefits of a retiree who is under age 66. However, during the calendar year in which a worker attains age 66, the amount that can be earned prior to his or her birth month without a reduction in Social Security benefits in the year 2010 is \$37,680. Thereafter, there is a \$1 reduction in Social Security benefits for every \$3 earned in excess of \$37,680 earned in 2010 before attaining age 66 in this year. Only wages and net self-employment income count toward the Social Security earnings limit. Income from savings, investments, interest, pensions, annuities, capital gains or insurance will not affect a retired worker's benefits. Failure to inform the Social Security Administration of any excess earnings by April 15th of the year following the excess earnings may result in the imposition of an additional penalty. A person can earn an unlimited amount of income without any penalty after attaining age 66.

Regular Retirement

A wage earner today may take normal retirement and begin receiving monthly Social Security checks at age 66 if born in 1944 (see chart on Page 4). At least 40 quarters of credit

for contributing to Social Security (ten years of work) are needed to qualify for Social Security benefits. The amount of earnings upon which Social Security is paid in order to earn a quarter of coverage from wages or net income in the year 2010 is \$1,120. A credit is earned by reporting at least \$1,120 in 2010 of wages or net income from self-employment at any time in a year. Thus, a worker can receive credit for four quarters in a year by earning the \$4,480 ($\$1,120 \times 4 = \$4,480$) at any time during a year. This minimum amount of earnings for credit for a quarter of coverage increases each year.

Early Retirement

A person may elect to start receiving Social Security benefits as early as age 62 but at a reduced rate. Since the minimum retirement age remains at 62 but the regular retirement age has increased, a person electing early retirement must understand there will be a reduced monthly benefit. For example, a person who has a full retirement age of 66 and retires at age 62 will have his or her benefit reduced 5/9 of 1 percent for each of the 36 months between age 63 and age 66 plus 5/12 of 1 percent for each month in excess of 12 months before normal retirement age. Thus, if this person whose normal retirement would have been 66 retires early at 62, he or she will only receive 75 percent of his or her full retirement benefit. The disadvantage to taking early retirement is that it will permanently reduce a worker's monthly benefit. In addition, a surviving spouse may receive less social security benefits for the rest of his or her lifetime. This is because the survivor can receive his or her own benefit or the deceased spouse's benefit, whichever is more. If the deceased spouse had a larger benefit than the surviving spouse, the surviving spouse will be limited to his or her smaller benefit or the reduced benefit paid the worker who took early retirement.

Late Retirement

A worker may find it advantageous in two ways to delay normal retirement. First, the extra income earned after full retirement age usually increases a Social Security recipient's average earnings because the later year's earnings may be higher and will replace a previous lower year of earnings. The higher the earnings, the higher the monthly Social Security benefits will be. Secondly, a special credit is given to a worker who delays retirement. This credit is a percentage added on to the worker's Social Security benefit that varies depending on his or her full retirement age.

A delayed retirement credit is given for retirement after the normal retirement age. To receive full credit, a person must be working at his or her normal retirement age. No additional credit is presently given after age 69. The following table shows the delayed retirement credit by year of birth:

Delay Retirement Credit

Year of Birth	Credit Per Year
1937-38	6.5%
1930-40	7.0%
1941-42	7.5%
1943 and later	8.0%

A person born in 1944 who intends to retire at age 70 would first determine his or her normal retirement age. This person's normal retirement age is 66. The delayed retirement percentage for a person born in 1944 which is 8% would be multiplied by 4 for the additional years worked beyond normal retirement. Thus, the worker's benefit at age 70 would be 32% higher than his or her primary insurance amount at age 66.

Medicare Update

Medicare Part A covers acute hospital care, a limited number of skilled nursing facility days, home health care and hospice care. However, the patient must pay the following deductibles:

Maximum Medicare Coverage for Hospital Care (2010)

Days in Hospital	How Much You Pay	How Much Medicare Pays
First 60 days	\$1,100 for first day	Balance
61-90 days	\$275/day	Balance
91-150 days	\$550/day	Balance
After 150 days	All costs	Nothing

Medicare Part A will pay all the costs for a covered skilled nursing home stay for the first 20 days and all but \$137.50 per day in 2010 for up to an additional 80 days. Medicare Part B will have an annual deductible requirement of \$155 in 2010. Each year, before Medicare pays anything, the patient must incur medical expenses equal to the deductible, based on Medicare's approved reasonable charge, not on the provider's actual charge. In addition, there is a coinsurance amount which the patient must pay. This is equal to 20 percent of the Medicare approved amount. Most Medicare Beneficiaries will continue to pay the same \$96.40 Part B premium amount in 2010. Beneficiaries who currently have the Social Security Administration withhold their Part B premium and have incomes of \$85,000 or less (or \$170,000 for joint filers) will not have an increase in their Part B premium. New Part B beneficiaries will pay \$110.50 per month because they were not having their premium deducted from their Social Security. Individuals with annual incomes greater than \$85,000 and less than \$107,000 and married couples with annual incomes greater than \$170,000 and less than \$214,000 in 2010 will pay a monthly premium of \$154.70 each. Individuals with annual incomes greater than \$107,000 and less than \$160,000 and married couples with annual incomes greater than \$214,000 and less than \$320,000 in 2010, will pay a monthly premium of \$221.00 each. Individuals with annual incomes greater than \$160,000 and less than \$214,000 and married couples with annual incomes greater than \$320,000 and \$428,000 in 2010 will pay a monthly premium of \$287.50 each. Individuals with annual incomes greater than \$214,000 and married couples

with annual incomes greater than \$428,000 in 2010 will pay a monthly premium of \$353.60. The income test is determined from the gross income reported by the Medicare beneficiary on his or her income tax return filed 3 years ago.

Medicare Part D provides limited financial assistance with drug expenses to persons enrolled under Medicare Part A or Part B who pay the additional Part D premium to a private company. These prescription drug plans offered pursuant to Medicare Part D is provided by private companies. Thus, a person eligible for Medicare must affirmatively enroll in a voluntary prescription drug coverage program under Medicare Part D for one year at a time. Medicare Advantage Plans normally provide prescription coverage. The monthly premium that a Medicare beneficiary will have to pay monthly for Part D drug benefit varies from company to company and depends on the formulary being provided by that company. A Medicare beneficiary who elects to pay this premium will then pay an annual deductible for prescriptions. The annual deductible for 2010 is the first \$310 of prescription drug expenses incurred during 2010 for drugs on the plans list of covered drugs or formulary. This annual deductible will increase each ensuing year. The enrolled Medicare beneficiary then pays a coinsurance amount equal to 25 percent of his or her prescription costs, for formulary drugs, in excess of the annual deductible up to the initial coverage limit in 2010 of \$2,830. The Medicare beneficiary's prescription drug plan sponsor is to pay the remaining 75 percent until total drug expenses paid for by the plan and the beneficiary reach \$2,830. The enrolled Medicare beneficiary then pays the next \$3,610.00, in prescription drug expenses in 2010 before receiving any additional financial assistance. This additional prescription drug expense to the Medicare beneficiary is referred to as the doughnut hole since the plan pays nothing toward this additional prescription drug expense. There is no additional prescription drug assistance until an enrolled Medicare beneficiary's annual prescription drug expense for formulary drugs and monthly expenses exceeds \$4,550 in 2010 plus his or her monthly premiums. A person with total prescription drug expenses for formulary drugs exceeding \$6,550.00 in a year then pays a co-payment of \$2.50 for each generic drug and \$6.30 for any other drug prescription, or 5 percent of the cost of the prescription drug, whichever is greater.

Medicaid Update

A nursing home patient may be eligible for assistance in paying a portion of his or her skilled or custodial nursing home cost through the state of Florida's institutional care program. However, there is a maximum amount of countable assets that a person applying for assistance and his or her spouse can own and still receive assistance. The institutionalized spouse entering a nursing home cannot own more than \$2,000 in countable assets. The community spouse who is not residing in the nursing home cannot own in the year 2010 more than