

Estate Planning Alert

Estate Tax Law Update – February 2010

You may have heard that there is currently no federal estate tax in 2010, and, if the law remains unchanged, the estate tax will come back in 2011 with a \$1M exemption. The failure of Congress to act to change this estate tax system, combined with the fact that Connecticut has its own estate tax with a \$3.5M exemption, has created uncertainty in the law. Most practitioners thought Congress would never allow the estate tax laws to be repealed, thereby resulting in no Federal estate tax in 2010.

At this point, Congress may do one of three things to deal with the existing uncertainty that families face in attempting to plan for the passing of their family assets to future generations and the loss of revenue for the federal government:

1. **Congress may do nothing.** This would mean that the current structure in which there is no estate or generation skipping tax during 2010 will remain in place. Since there is no estate tax during 2010 all of a decedent's assets will not

receive a step up in basis to their fair market value on the date of death; rather, there would only be a limited step up in basis. This glitch in the law would be followed by a sunset provision which takes effect on January 1, 2011 and brings the estate tax exemption back into play at the 2001 rate of \$1M.

2. **Congress may change the law at some point during 2010 with a \$3.5M exemption retroactive to January 1, 2010.** Although this is the anticipated result (it was also anticipated that Congress would deal with the issue last year), there is a question as to whether the retroactive application of the tax is constitutional.

3. **Congress may change the law during 2010 to bring back the estate tax effective as of the date of the new legislation.** This would be extremely complicated for a number of reasons, not the least of which is the fact that different and complicated rules would apply to different estates depending on the date of death during 2010.

Please call one of our Estate Planning Partners if you would like additional information.

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We believe that it is important to review all estate plans to be certain that estate and income tax savings options are maximized, family goals are still met and the plan will help to protect family assets regardless of what Congress ultimately does.

Although Congress has indicated an intention to pass an estate tax bill that is retroactive so that there is no repeal of the estate tax system for any part of 2010, no one knows what that bill would look like, if one is passed at all. The idea of Congress passing agreed upon legislation seems even more unlikely after the recent election of a Republican senator from Massachusetts.

Steps That You Can Take Going Forward

In light of the uncertainty regarding what Congress may do regarding the estate tax system, an estate plan which incorporates flexible provisions will ultimately provide the best solution.

We think that it is important to review all estate plans to be certain that estate and income tax savings options are maximized, family goals are still met and the plan will help to protect family assets regardless of what Congress ultimately does. This is especially important because the tax planning language in most estate planning documents is based on the presumption that there is a federal estate tax. If there continues to be no federal estate tax, it may cause an unintended result on your estate plan.

Please contact a Levy & Droney estate planning partner to determine how to best protect your family and your assets in this time of uncertainty.



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