

Estate Tax Update

What is the status of the federal estate tax? This is an update which is really a confirmation that there is nothing to update, yet.

Past. In 2001, Congress enacted legislation which accelerated an increase in the unified credit which offsets federal estate tax, commonly referred to as the exemption. In 2002, the exemption for each decedent increased to \$1,000,000. The exemption equivalent was increased to \$1,500,000 in 2004, to \$2,000,000 in 2006 and \$3,500,000 in 2009. The legislation provided that the federal estate tax would be abolished in 2010, and reinstated in 2011 to the 2002 level of \$1,000,000 exemption. In 2009, if the total estate of a decedent had a value of less than \$3,500,000, no tax was owed and no return was required.

Present. At this writing, June 16, 2010, there is no tax. No federal estate tax return is required. It does not matter how wealthy the decedent is. There are some cost basis changes which became effective January 1, 2010, but they are beyond the scope of this update. Congress has several proposals which are under consideration. One is a return to the 2009 exemption of \$3,500,000 with assets in excess of the exemption taxed at 45%. Another is an exemption of \$5,000,000 with a tax rate on the excess of 35%. Both might be made retroactive to January 1, 2010. However, now that June is almost history, retroactivity seems less likely. Congress has not made resolution of the estate tax a priority item. No date to consider the estate tax has been set.

Future. Most estate planning attorneys believe that the estate tax dilemma will be resolved. However, politics may play an important role. The resolution may be that nothing is done and the tax will be reinstated on January 1, 2011, with a \$1,000,000 exemption. President Obama and several Senators are on record as favoring extension of the \$3,500,000 exemption and the 45% rate on the excess. Senator Kyl is urging a \$5,000,000 exemption with a 35% rate on the excess. Trying to predict what Congress will do has proven fruitless to this point. Stay tuned for further developments.

(Article by Jim Marvel, Attorney at Law)

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