

2010 ESTATE PLANNING IN LIMBO

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News media have recently reported that the Federal Estate Tax is in a state of chaos because it has been allowed to temporarily expire for 2010. In 2011 the law will revert to the pre-2001 estate law that reduces the estate tax exemption to \$1 million and raises the estate tax rate to 55%.

NO ESTATE TAX IN 2010

Surprisingly, if you were to pass away in 2010, under current law there would not be a federal estate tax (nor an state estate tax in Illinois or Texas). This result was unexpected, since President Obama wanted to permanently extend the law to allow for a \$3.5 million exemption to pass estate-tax-free, as well as reduce the estate tax rate to 45%. Because of this surprise inaction by Congress, your present estate plan could work in unexpected ways during 2010.

There are at least 8 bills in Congress addressing the problem. Any of them would be retroactive to January 1, 2010. There is no assurance that any will pass, but we anticipate that some version may pass, extending the 2009 tax-free amount of \$3.5 million per person. It is believed a new law would be retroactive to January 1,

but that possibility becomes less likely as the year progresses.

POTENTIAL FOR PROBLEMS

Meanwhile, if you or your spouse were to pass away this year, common estate planning structures may not execute as originally intended. As an example, consider a married couple that has utilized the Marital Trust/Family Trust arrangement. In this case under the rules in effect prior to 2010 and again in 2011, the estate tax exemption amount (previously \$3.5M) would flow to the Family Trust and the rest would be passed to the surviving spouse via the Marital Trust. Without a resolution for 2010, some estate documents could allow for the entire amount to be distributed to the Family Trust with nothing passing to the Marital Trust. As long as the Family Trust provided for the needs of the surviving spouse before benefitting the children, the primary impact could be that the surviving spouse might have less control of the assets and possibly more restrictions, depending upon the Family Trust structure.

CARRYOVER TAX BASIS

Another major change due to inaction by Congress involves the carryover basis rule for inherited property. Previously, when a person died most assets received by heirs stepped up to the fair market value for capital gain purposes. However, under the current rule heirs receive property free of estate tax, but they take it on a carryover basis as the quid pro quo. In other words, if a

person dies in 2010 leaving a stock account with a cost basis of \$200,000 and a fair-market value at date of death of \$325,000, the current rule would provide for the heir to take the stock at a tax basis of \$200,000.

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Yet, if the death occurs next year when the law reverts back, the estate could be subject to estate tax, but the heir's tax basis would be \$325,000. There are two exceptions to note. The first is an exemption amount of \$1.3 million that can be stepped up for assets inherited by children and other heirs. The second is a \$3 million exemption for spouses (and certain trusts for spouses). Until a resolution is put in place, or until next year arrives, these changes create a big administrative headache for estate executors.

REVIEW YOUR DOCUMENTS NOW

At this time, these issues only apply to the year 2010. Starting in 2011 the old Federal Estate Tax Law comes back into force. In light of this fact, you may

want to consult with your estate-planning attorney and review your current situation to explore your options. If you do not have an estate-planning attorney we would be glad to recommend one for you.

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VANTAGE NEWS

Mike headed to the southwest this month for both business and pleasure. The LPL Financial Masters Conference brought him to Scottsdale, Arizona where the latest developments LPL has for 2010 and beyond were unveiled. Some of the new tools include online rebalancing and turnkey software solutions. Staying in tune with upcoming innovations allows us the opportunity to implement new features when they first become available.

While in Arizona, Mike was able to enjoy some fun when he met up with his family in Mesa. They were able to spend a few days together which included a trip to the Cub's training camp and a quick round of golf. Although the weather was far from ideal, time with the family and a chance to enjoy the great American pastime made for a wonderful trip.

Glad to have you back, Mike!

