
Estate Tax Repeal – Practical Implications

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Under legislation passed in 2001, the federal estate tax was repealed for one year, effective January 1, 2010 and ending December 31, 2010.

It is widely expected that Congress will reinstate the estate tax for tax year 2010, perhaps even retroactively. Needless to say, this may present problems for the heirs of people dying during 2010.

CREDIT SHELTER BEQUESTS

Many wills and revocable trusts contain credit shelter bequests. These generally allow each individual to maximize the amount of property he or she can transfer free of the federal estate tax.

Some experts believe that courts may interpret such a bequest as covering the entire estate if an individual dies while there is no estate tax. In this case, all of an estate would go into the credit shelter trust and nothing would be left outright to a spouse.

Other experts believe that courts might interpret the bequest as void if an individual dies during the year with no estate tax.

UNCERTAINTY ABOUT A RETROACTIVE TAX

Another area of uncertainty is how the courts will view legislation that makes the estate tax retroactive to January 1, 2010. In some cases, courts have upheld such laws, while in others they have been struck down as violating the *ex post facto* provision of the U.S. Constitution. Any court action will likely take years to resolve, tying up estates that are party to it.

A STEEPER CURVE FOR 2011

In 2009, the amount of an estate exempt from the federal estate tax was \$3.5 million. However, Congress needed to offset the anticipated revenue loss from 2010. They did this by reducing the federal estate tax exemption to \$1 million for 2011. This may be addressed in the new legislation – or it may not. Individuals who may fall under this lower threshold should plan for the worst.

ACT NOW

It's a good idea to review your will and estate documents with your CPA and attorney at least every other year. The uncertainty surrounding the federal estate tax for 2010 makes it virtually imperative that you be proactive. We will be glad to discuss the implications with you and to recommend actions you can take to remove this uncertainty and protect as much of your estate as legally possible.



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