



Bailey Cavalieri LLC
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CLIENT ALERT

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Estate Tax Repeal? March 2010

As you may have heard, the federal estate tax rules changed radically in 2010, and could change radically again in 2011 unless Congress passes new legislation. This client alert is intended to advise you of what has happened and encourage you to re-examine your estate plan.

Under federal estate tax law passed in 2001, the amount of assets allowed to pass free of federal estate tax at death increased to \$3.5 million in 2009. That same law provides for an unlimited exclusion of assets from federal estate tax in 2010, which effectively temporarily repeals the federal estate tax and is our current state of affairs. Prior to the end of 2009, it was anticipated (and still is possible) that Congress would pass legislation to prevent this temporary repeal from occurring. However, that did not occur and we will notify you when (and if) it does. It is fairly clear, but not certain, that Congress could pass legislation anytime in 2010 with a retroactive effective date of January 1, 2010 and pass constitutional muster. If no change to the law is made in 2010, then the amount of assets allowed to pass free of federal estate tax for those dying on or after January 1, 2011 will fall to \$1,000,000 and a higher estate tax rate than existed in 2009 would be imposed on assets above this threshold.

There is also an important income tax component to this development. As you may know, assets owned at death generally receive an increase to their income tax basis equal to date of death value (i.e., a “stepped-up basis”). Again, because Congress did not pass legislation to extend the 2009 rules into 2010, this is not currently true. Now the law provides for no stepped-up basis, except for certain assets: The income tax basis of assets may be increased by up to \$1.3 million for assets passing to non-spouses and up to \$3 million for assets passing to a surviving spouse. This is what is known as a “modified carryover basis.” Whether the modified carryover basis will be altered as part of a future change in the law is unknown.

Planning in Chaos. Congress's failure to adopt estate tax legislation in 2009 and the possibility that changes will not be adopted during 2010, radically change the estate planning considerations of many clients. For example, Congress has indicated that in 2010 about 6,000 decedents will benefit from the elimination of estate taxes, but over 70,000 heirs will pay higher income taxes because of the change in the income tax basis rules for assets received from decedents.

What to do now? It is not our recommendation to completely revise the structure of your estate plan at this time as a result of these developments. There are, however, some minor revisions to your estate planning documents that we suggest be made to preserve the integrity of your estate plan and to provide your named executor and/or trustee with the requisite authority to fulfill your intentions from an estate and income tax planning standpoint.

Our attorneys are available to discuss any questions you may have on the issues discussed above. As this Alert illustrates, now is an important time, especially for those who have not updated their documents over the past few years, to have an estate planning review.

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