

Estate Tax System in Limbo

The federal estate tax system is currently in a state of uncertainty due to the unanticipated repeal of the federal estate tax effective January 1, 2010, and Congress's failure to enact replacement provisions in 2009.

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) modified the federal estate tax system to gradually increase the dollar amount of the exemption from federal estate tax for property passing to nonmarital or noncharitable beneficiaries after death. The amount or value of property that could be transferred by each U.S. citizen at death was \$1,000,000 in 2001, which increased under EGTRRA to \$3,500,000 in 2009. EGTRRA completely eliminated the so-called "death tax" for deaths occurring in 2010.

To offset the revenue loss, EGTRRA substituted a new carryover tax basis regime in lieu of the fresh-start date-of-death tax basis adjustment under prior law. EGTRRA also provided that the exemption amount would revert to \$1,000,000 for deaths occurring after December 31, 2010. The plan in 2001 was that Congress would revisit this subject prior to December 31, 2009, and would adopt a more permanent "fix" to the system. In short, most estate planners assumed that the federal estate tax repeal and new carryover basis provisions would never take effect.

Although several proposed bills to revamp the federal estate tax system were introduced in 2009, none were enacted prior to December 31, 2009, with the result that the one-year repeal of the federal estate tax took effect on January 1, 2010. Most estate planning lawyers believe that Congress will act in the first half of 2010 to address the repeal, although no one knows what provisions will ultimately be enacted and whether Congress will make the changes retroactive to January 1, 2010.

Attorneys should caution their clients that estate plans prepared during this period of uncertainty may need to be reviewed again if Congress acts before the return of the \$1,000,000 exemption in 2011. In addition, clients who signed estate planning documents before 2010 that included exemption planning may also need to review their estate plans. Finally, even though the federal estate tax is theoretically not a factor during 2010, or at least until Congress reinstates it, practitioners should remember that the Oregon inheritance tax is no longer connected to the federal estate tax system, and an Oregon inheritance tax return is due for Oregon resident decedents with assets exceeding \$1,000,000 in value as of the date of death.

STEVEN A. NICHOLS
DUFFY KEKEL LLP

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