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2010 PROPOSED TAX LAW CHANGES

CHANGES IN THE FEDERAL EXTATE TAX?

By **Burton M. Romanoff**

Though Congress has been distracted by pressing issues such as the economy, health care and head injuries sustained by NFL football players, the Obama Administration has proposed and, based on the conventional wisdom in Washington, Congress is prepared to accept a number of changes to the federal estate tax, including an effort to indefinitely retain the current \$3.5 Million federal estate tax exemption.

In 2010, the estate tax is scheduled to be repealed for one year. This means that the federal government will not enjoy the receipt of estate tax revenue in a time when all revenue is needed. A loss of revenue of this sort is certainly undesirable from the government's perspective, especially when considering the projected budget shortfalls faced by Congress. Though the federal estate tax collected by the government is estimated to be \$20 Billion for calendar year 2009 (a paltry sum by today's standards), the need to maintain at least some level of taxation on larger estates seems to be the conventional wisdom in Washington.

According to the information that we have been able to glean, including the opinion of a Washington attorney many consider to be "the" insider for federal estate tax matters, the Obama Administration and Congress have been consistent in their message that their goal is to retain the federal estate tax exemption at \$3.5 Million per person. As January 1, 2010, is quickly approaching, some have suggested that Congress may fix the problem by keeping the federal estate tax at 2009 levels (\$3.5 Million per person) and deal with a permanent solution next year in conjunction with an anticipated tax overhaul.

In addition to retaining the federal estate tax exemption, the following proposed changes, if enacted, will affect taxpayers and their estates:

- Limitations on valuation discounts for family-controlled entities such as Family Limited Partnerships. Taxpayers that make



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Featured Article

gifts of minority or restricted interests to family members typically take advantage of discounts on such gifts based on minority interest and lack of marketability. Discounts of 33% to 50% have been upheld by the courts based on individual circumstances. The result in any case can vary widely based on individual circumstances and the decisions of different courts. An effort is afoot to harmonize the use of discounts across the country through an act of Congress (and one can only assume that Congress will limit discounts as opposed to expanding their use).



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to wish you and your
family a very Happy
Thanksgiving!

· Portability of estate tax exemptions between spouses. Currently, federal estate tax exemptions are limited to individuals, meaning that spouses must engage in proper estate planning to take advantage of the exemption available to both spouses. Typically, spouses set up testamentary trusts that break into a "family trust" (utilizing the full exemption of the first spouse to die) and a "marital trust" (holding any portion of the estate of the first spouse to die in excess of the exemption). With portability, spouses will be able to utilize the unused exemption of the first spouse. That said, taxpayers will continue to benefit from proper planning, including the use of "family" and "marital" trusts, so that the portion of the estate directed to the "family trust" will continue to appreciate in value outside of the estates of both spouses.

· Other Proposals.

- Varying the federal estate tax rates (for estates exceeding \$3.5 Million) on a scale ranging from 35% to 55% (the current rate is 45%).
- Unifying the federal estate and gift tax exemptions.
- Imposing a minimum term of 10 years on grantor retained annuity trusts (GRATs) (a common estate planning tool used to remove assets from one's estate provided that the grantor outlives the term of the trust).

The proposals identified above are presented solely for information purposes. For advice on estate planning and tax matters, one should consult his or her tax professional.

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