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LAW OFFICES OF GARY R. WAITZMAN, L.L.C.

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The Return of the Estate Tax Is Certain (well, maybe, kind of, almost)

As we near the close of the year, the Federal Estate Tax is scheduled to return on January 1, 2011.

Most advisors have been watching this issue closely over the last year so as to keep their clients informed and prepared for all possibilities.

We have advised clients to include flexibility language in updated estate plans so that their estates receive the maximum tax protection possible.

We’ve also asked clients to be patient as we all wait for lawmakers to make a decision on what to do with the return of the tax in 2011.

The one thing we can say for certain is that nobody really knows what will happen. The mid-term elections are history, but there is still a chance that Congress may finally take action in the coming weeks as lawmakers return for a lame-duck session.

Will a Lame-Duck Congress resolve the issue?

Remember, it is still a lame-duck congress. We cannot rule out the possibility that Congress will continue to do nothing on this issue.

This year, the estate tax is zero. If Congress takes no action, the tax will automatically return on Jan. 1, 2011, with an exemption of \$1 million per person (\$2 million per couple) and a top rate of 55% on the largest estates.

This would capture far more people than the estate tax did in 2009, when the exemption was \$3.5 million per person (\$7 million per couple) with a top rate of 45 percent.

Compromise on a Bush tax cut?

We hope that the Obama administration and Congress will come to a compromise on extending the Bush era tax cuts for at least another year or more. It would be jarring to have zero estate tax this year followed by a very high estate tax next year.

The common sense option for a lame-duck session compromise seems to be restoration of the 2009 exemption. However, some members of Congress would like to provide even more estate-tax relief.

Much of the speculation focuses on setting the basic estate-tax exemption level somewhere between \$3.5 million and \$5 million per person and cutting the top rate to somewhere between 35 and 45 percent.

Add to the confusion a Retroactive Tax?

There are congressional rumblings for providing estates of people who died this year with a retroactive choice of which tax rules to use.

If your client is the heir or executor to someone who died in 2010, an estate planning attorney can help determine whether using 2010 rules is best. It may not be for those with assets between about \$1.3 million and \$4 million, because of complex rules that levy taxes on heirs when assets are sold.

As always, I hope this article has helped you and your clients. If you have a specific concern or case you’d like to discuss, please contact our office.

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