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Legislative Update: Estate Tax Provisions

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There has been a flurry of activity in the estate tax arena in the past few days and we wanted to keep readers updated. The first item was Senator Baucus's (D-Montana) new estate tax proposal introduced on December 2, which, in summary, would have reinstated the estate tax at 2009 levels, meaning a \$3.5 million exemption amount (\$7 million per couple) and a 45% estate tax rate. This piece of his proposed legislation provided for an effective date of January 1, 2010, but would have allowed 2010 estates to elect to choose the no estate tax and modified carry-over basis regime that is currently in place for 2010. Other interesting items from Senator Baucus's proposal included the lifetime gift exemption increasing to \$3.5 million (effective on the date of the introduction of his bill, or December 2, 2010) and a minimum 10 year term for GRATs, with the GRAT remainder interest required to have a value greater than zero (effective on the date of enactment of the legislation). This legislation was voted down in the Senate on December 4.

Senator Baucus's proposal was overshadowed on Monday by President Obama announcing his compromise with Republicans on the extension of the Bush tax cuts. Along with an agreement to keep the top income tax rate at 35% for all taxpayers for an additional two years, with regard to the estate tax, President Obama announced for two years, beginning in 2011, the estate tax rate would be 35% and the exemption per taxpayer would be \$5 million.

Yesterday, House Democrats voted not to introduce President Obama's tax plan for debate, in a move to negotiate some of the components of his plan. Thus, at this time, it is unclear what the components of new tax legislation (if any) will be. If no law is enacted, beginning January 1, 2011, the estate tax rate would be 55% with a \$1 million exemption per taxpayer.

We will keep you updated as developments occur.

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