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C O U N S E L L O R S A T L A W

## **Estate Tax Update - A Choice of Tax Law to apply for deaths in 2010**

December 8, 2010 by Deirdre Wheatley-Liss



The Wall Street Journal reports that the Senate is sending out legislation to allow estates of people who died in 2010 to choose EITHER the 2010 1022 basis election OR the 2011 estate tax laws, which are currently proposed to be a \$5 million exemption per person and 35% estate tax.

Legislation taking shape in the U.S. Senate to extend expiring tax cuts would give heirs of wealthy people who died this year a choice of which estate-tax policy to apply, according to an aide close to the discussions.

Estate executors could choose to apply the rules in place this year, in which there is no federal estate tax, or the rules that would take effect next year imposing a 35% tax rate on estate wealth over \$5 million.

The ability to elect either 2010 or 2011 rules would help certain heirs of those who died this year. Even though there is no estate tax, some assets inherited in 2010 face capital gains or other taxes because of a change in the way the value of those assets is calculated.

This would be a whole new issue for estates of people who died in 2010, creating both opportunities to save tax, and potential pitfalls if timely elections and filings are made (and of course, no word on what would be timely).

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