

## Alerts and Updates

### UPDATE ON PROPOSED CHANGES TO FEDERAL ESTATE TAX LAW

September 16, 2009

#### Current Federal Estate Tax Law

Summer has given way to fall, and Congress has returned from its August recess. In addition to facing other substantial initiatives, it has less than three months to address federal estate tax law. Current federal estate tax law provides each individual dying in 2009 with a \$3.5 million federal estate tax exemption and establishes a maximum federal estate tax rate of 45 percent. If Congress does not act prior to January 1, 2010, the federal estate tax temporarily would expire for 2010—each individual dying in 2010 would have an unlimited federal estate tax exemption for that year. However, this expiration would be short-lived—after 2010, the maximum federal estate tax exemption is scheduled to return to \$1 million, and the maximum federal estate tax rate will return to 55 percent.

#### Proposed Changes to Current Federal Estate Tax Law

Through numerous pieces of proposed legislation and budget resolutions and proposals, the Obama administration and members of Congress have expressed their desire to avoid the expiration of the federal estate tax in 2010, to avert the imposition of a lower estate tax exemption, and to vary the maximum estate tax rate during and after 2010. In addition, some of the proposed legislation and budget resolutions and proposals contain modifications to current gift tax law. Below is a summary of the proposed modifications to federal estate (and gift) tax law that Congress is currently considering:

- Decrease the federal estate tax exemption to \$2 million for 2010 and index the exemption for inflation beyond 2010;
- Continue the current \$3.5 million federal estate tax exemption for 2010 with or without indexing the exemption for inflation beyond 2010;
- Increase the federal estate tax exemption to \$4 million or \$5 million for 2010 with or without indexing the exemption for inflation beyond 2010;
- Increase the federal estate tax exemption to \$3.75 million for 2010 and increase the exemption incrementally each year thereafter, culminating with an exemption of \$5 million for 2015, and index the exemption for inflation beyond 2015;

- Vary the maximum federal estate tax rate from as low as 35 percent to as high as 55 percent;
- Permit a surviving spouse to utilize the unused federal estate tax exemption of a predeceased spouse;
- Unify the federal estate and federal gift tax exemptions;
- Impose stricter rules for valuing interests in family-controlled entities;
- Impose a surcharge on estates whose values falls between certain thresholds; and
- Increase the minimum term imposed on grantor retained annuity trusts (GRATs) to 10 years.

## Outlook for Federal Estate Tax Law

As discussed above, Congress has not yet reached a consensus on which revisions should be made to federal estate tax law. The proposed legislation as well as budget resolutions and proposals signal that both the Obama administration and Congress seek to make permanent changes. However, as January 1, 2010 approaches, the likelihood that Congress will extend 2009 federal estate tax law increases. With changes in federal estate tax law on the horizon, interested parties contemplating action for their estate plans may want to seek legal counsel to determine what steps should be taken before legislation becomes effective. We will continue to inform you of further developments.

## About Duane Morris

The attorneys in the Duane Morris Estates and Asset Planning Group assist clients with creating and updating their estate plans and lifetime gift programs to take advantage of current planning opportunities, working with them to make more extensive adjustments in changing economic times such as these. Individuals may want to review their estate plans every few years—or sooner for certain life events, such as the birth or adoption of a child or a change in marital status—to ensure that their plans are up-to-date with both their objectives and current law.

## For Further Information

If you have any questions regarding this Alert or would like more information, please contact any of the [attorneys](#) in the [Estates and Asset Planning Practice Group](#), or the attorney in the firm with whom you are regularly in contact.

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