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Estate Tax: To Be Or Not To Be In 2010?

Victoria Z. Sulerzyski

410-347-7304

vzsulerzyski@ober.com

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Estate Tax: To Be Or Not To Be In 2010?

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The end of 2009 came to a close with many estate planners scratching their heads. Did Congress really start the New Year with no estate and generation-skipping transfer (GST) tax? As hard as it is to believe, the answer is a resounding YES!

What does this mean, really? It means that the law that Congress enacted in 2001 will continue, resulting in no estate tax for individuals who die in 2010 and no GST tax for generation-skipping transfers occurring in 2010. If Congress fails to act on these taxes during 2010, then in 2011, the estate tax and the GST tax are reinstated with a \$1 million exemption and a top rate of 55 percent (plus a five percent surtax for certain large estates).

The repeal also affects the basis "step-up" rules. Prior to the repeal, all estates received an unlimited step-up in basis of assets to the value at the time of death, which meant that their heirs could sell inherited assets without incurring any capital gain taxes. In 2010, spousal beneficiaries will only be able to avoid up to \$4.3 million in capital gains, whereas non-spouse beneficiaries will be limited to \$1.3 million. As a result of these new rules, beneficiaries may have to pay capital gains taxes on inherited property that they would not have paid prior to repeal of the estate tax.

While repeal affects the federal estate tax and the GST tax, it does not affect the gift tax or the Maryland estate tax. The annual gift tax exclusion remains unchanged at \$13,000 per donee (\$26,000 if spouses split the gift). The gift tax lifetime exemption remains at \$1 million, but the gift tax rate drops from 45% to 35%. However, Congress may enact legislation this year to change the gift tax rate retroactively. The Maryland estate tax remains unchanged with a \$1 million exemption.

Finally, the biggest question on everyone's minds is whether Congress will enact legislation to reinstate the estate tax and the GST tax this year. And, if so, will Congress make it retroactive to January 1, 2010? With this uncertainty, all eyes are on Congress.

What should you do? We recommend that your estate plan be reviewed.

Please call us if you would like to discuss this article or if you would like to set up an appointment to review your estate plan.

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