

Avoiding the Stealth Estate Tax

In my last blog post, I explained the stealth estate tax created by the so-called “carry-over” basis that will apply to administration of estates in 2010, due to the U.S. Senate’s failure to act to continue the law in effect in 2009.

Pursuant to this carry-over basis, those who inherit assets in 2010 can expect to pay more taxes upon the sale of those assets because the tax basis of the assets will now be set at the price at which they were acquired by the benefactor (instead of the fair market price on date of inheritance).

Now, I want to share my crystal-ball look into the future and explain how clients can do flexible estate planning to avoid getting trapped by this stealth tax or other issues that could arise from further legislative tinkering.

The best-known national experts in taxation believe that the current election year environment is too politically charged to support any active legislative effort at estate tax reform. They also note that President Obama, since his election, has been silent about the estate tax issue, making it clear that he intends to let “the Bush tax cuts” expire.

So what could happen? Many experts believe nothing will happen in 2010, which would result in a 2011 return to estate tax provisions that existed in 2001. This would allow an exemption from federal tax for the first \$1 million of estate value per decedent, but it is hard to predict with certainty against a shifting political landscape.

That is why I tell almost every client that the most important element of an estate plan is *always* flexibility. Often, this is overlooked by inexperienced estate planners. But in the long term, this is an essential feature of any well-crafted estate plan that will stand the test of time.

In volatile times, it is easy to put off a review of one’s will, trusts or estate plan. “I’ll wait until the dust settles and we know what the law is,” many clients say. But this approach is not the wisest. There are steps you can and should take today to respond to the stealth tax and to give your estate the flexibility necessary to adapt to future legislative changes. We can use flexible formulas in your estate direction that fit the current environment, but adjust in relation to future changes. The present circumstances suggest now is a good time to do that.

At the end of the month, I’ll be attending the [Heckerling Estate Planning Institute](#) sponsored by the University of Miami Law School. It is the largest convocation of estate planning professionals of its kind. They have scheduled several sessions just to deal with the “stealth estate tax” problem, so I will have more to report upon my return.

Meanwhile, check out the [estate planning section](#) of our newly revised and updated website, on estate planning, and call us if you have any questions.