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## Estate Tax Legislation Update

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We wanted to continue to update you on new developments over the past few months in matters related to the estate tax.

- Despite reports stating that an estate tax deal was imminent, on May 18, Senate negotiators said that an agreement regarding estate taxes was on the verge of collapse after a majority of the Democratic caucus expressed concerns about voting for an expensive tax cut for wealthy families. Senate Finance Commissioner Max Baucus (D-Mont.) said “there is no agreement on the estate tax in either substance or process. None whatsoever.” Lobbyists said they believed the deal would have resulted in a top tax rate of 35 percent with a \$5 million exemption level for individuals (\$10 million for couples), with both figures indexed for inflation. They also believed it would have eliminated the chances of a retroactive estate tax increase.
- We previously wrote about bills being filed in both the Florida House and Senate in February, 2010 to impose a Florida estate tax on non-residents who own real or personal property in Florida and who reside in states that tax Florida residents who own property in those states. If enacted, the law would have been effective July 1, 2010. Both bills died in committee on April 30.
- In New York, an amended version of a bill was recently introduced to amend the estates, powers and trusts law to deal with certain formula clauses in Wills and trusts for estates of decedents dying

in 2010. The amended bill provides, in essence, that for decedents dying in 2010, a formula clause in a dispositive instrument providing for a bequest of the maximum amount that can pass free of federal estate or GST taxes, shall be construed with respect to the law in effect for decedents dying on December 31, 2009. While we encourage all clients to review their planning documents in light of repeal, this bill could serve as a backstop for those clients who have documents drafted with formula clauses that are not applicable as a result of the estate tax repeal.

- A similar bill was introduced in the New Jersey Senate on May 20 to clarify the interpretation of certain formula clauses in Wills and trusts executed before 2010.

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