

What Is Happening With The Federal Estate Tax?

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George Steinbrenner, owner of the New York Yankees, recently died leaving an estate worth \$1.15 billion. How much in the way of death taxes is Mr. Steinbrenner's estate going to pay? In all likelihood, his estate will pass to his heirs free of any death taxes, which otherwise could have approached \$500,000,000. This is because during 2010 there is no federal estate tax, and his state of residence, Florida, has no inheritance taxes. 2010 is proving to be a good year to die for very wealthy people who want to minimize their death taxes.

At this point, it is unlikely that Congress is going to impose any federal estate tax during 2010. In part this is because of constitutional issues relating to retroactive application of taxes, but also because Congress seems to be unable to take any action, and with elections approaching, the situation is only likely to get worse. The downside of Congressional inaction is that the federal estate tax returns on January 1, 2011, at the 55% rate, and a \$1 million exemption. Thus, it is somewhat premature to be eliminating the unified credit trust planning that many of you have in your estate planning documents.

The lack of a federal estate tax in 2010 is not entirely a good thing for some estates, because this comes at the price of a limited date of death basis increase with a single person entitled to a \$1,300,000 basis increase and married people entitled to another \$3 million basis increase at the first death. However, there are some estates that will have insufficient basis increase to allocate among the estate assets, and there is a complicated process for allocation of the basis increase, particularly if there are non-probate assets. Further, in some cases, the lack of the basis increase will cause an estate to pay more in the way of capital gains tax than it would have paid in the way of federal estate tax.

Notwithstanding the lack of a federal estate tax in 2010, there is still a \$1 million limit on the amount of gifts that can be made during one's lifetime. Nevertheless, with the virtually certain return of the federal estate tax, lifetime gifting in excess of \$1 million may prove to be advantageous because of the current relatively low 35% gift tax rate, and because the payment of gift tax further reduces the amount of the taxable estate (unlike the case with respect to the federal estate tax, which does not reduce the taxable estate) And, of course, it is always prudent to make full use of the annual \$13,000 per person gift tax exclusion.

The current federal estate tax situation makes death tax planning very difficult. Nevertheless, it is important to review periodically the status of your executors, trustees, agents and guardians, to make sure that the persons designated for those tasks are still appropriate. In addition, Pennsylvania has recently updated its laws concerning health care powers of attorney and living wills, and everyone should consider bringing those documents up to date. Once Congress has

made up its mind about the federal estate tax, we encourage you to have your documents reviewed, particularly if they are more than five or six years old.

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