PRESIDENT BUSH SIGNS INTO LAW THE ECONOMIC GROWTH & TAX RELIEF RECONCILIATION ACT OF 2001

On June 7, 2001, President Bush signed into law the Economic Growth & Tax Relief Reconciliation Act of 2001, which may affect your estate plan. This update summarizes briefly the most significant estate, gift and generation-skipping tax changes, as well as several income tax changes. It also highlights a few of the most important planning issues that you should consider as a result of the Act.

Does the Act Really Repeal the Estate Tax?

The Act slowly phases out the estate tax, then completely repeals the estate and generation-skipping tax in 2010. However, the Act also includes a sunset provision, so that, on January 1, 2011, the Act disappears. In other words, without additional tax legislation, the estate tax will come back into effect at its current rates, and with a tax exemption amount of $1 million. Thus, the estate tax is effectively repealed for deaths that occur in 2010 only. The gift tax is not repealed.

Changes in Rate and Exemption Amount

Two of the most significant changes made by the Act are the decrease in the estate, gift and generation-skipping tax rates, and the increase in the amount that can pass free of those taxes. These changes are summarized as follows:

Calendar Year	Estate & GST Tax Exemption	Gift tax Exemption	Top Estate and GST Tax Rates	Top Gift Tax Rates
2002	1 million	1 million	50%	50%
2003	1 million	1 million	49%	49%
2004	1.5 million	1 million	48%	48%
2005	1.5 million	1 million	47%	47%
2006	2 million	1 million	46%	46%
2007 & 2008	2 million	1 million	45%	45%
2009	3.5 million	1 million	45%	45%
2010	Repealed	1 million	0%	35%
2011	1 million	1 million	55%	55%

Elimination of Stepped-Up Basis in 2010

Under current law, property owned by a person at his or her death receives a new basis equal to the fair market value of that property on the date of death. In 2010, when the estate tax is repealed, the basis step-up will be limited to $1.3 million of assets, and an additional $3 million on property transferred to a surviving spouse (or a trust for a surviving spouse). In 2011, as a result of the sunset provision, the step-up in basis will return.

State Death Taxes

The Act reduces the credit the federal government allows for death taxes paid to various states. How states will react to this potential loss of revenue and the effect of this upon estate plans are not yet known; however, the combined federal and state estate taxes could be greater than the current combined estate tax.

Planning Issues

1. None of the estate, gift or generation-skipping tax amendments become effective before January 1, 2002, so there is no need to make immediate changes to your estate plans. Because the Act changes the amount of the estate tax credit and the generation-skipping tax exemption after that date, we should review your estate planning documents with you at that time and discuss the impact of the Act on your plan, if we have not already done so.

2. Because the Act does not effectively repeal the estate tax, you should not cancel existing life insurance policies purchased to pay estate tax liabilities.

3. You should continue with any existing annual exclusion gift plans. You may want to consider making gifts after January 1, 2002, that will consume any unused gift tax exemption. You may make tax-free gifts in 2002 of $325,000 (the increase in the amount of property that can pass free of estate and gift tax as a result of the Act), or more if you have not already used all of your current $675,000 exclusion.

4. Some advisors are suggesting that clients create irrevocable trusts to hold ten-year term insurance to cover the possibility that the clients might die while the estate tax is still in effect. If a client lives until 2010, the policy terminates along with the tax. Whether such a plan is right for you depends on whether you think that Congress and the President will, before 2011, pass a law that allows the estate tax to "stay repealed."

Conclusion

The Act creates a federal estate tax system that will cause your estate to owe varying amounts of estate tax, depending solely upon the year in which you die. Further, the estate tax may or may not ultimately be repealed. Whether these changes should make you consider changing your estate planning documents depends upon your particular situation and family goals. If you have any questions, please call any of our attorneys listed below.

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