

Virginia Business Lawyers

Tax Law Change May Reinstate Estate Rules

By: David Carroll. *This was posted Wednesday, January 13th, 2010*

From time-to-time, articles by our colleagues who practice other types of law that may not directly affect business and transactions, have information on topics that are so important and timely for all of our readers that we post them here. The comments below from [Bruce L. Mertens](#), an experienced [trust and estate](#) attorney at Sands Anderson Marks & Miller, include estate tax information that is so relevant and timely that we thought our readers should have it to help them plan for the tax uncertainties that lie ahead. We trust you'll find it very thorough and quite helpful. If it makes sense to you (or even if it doesn't), we'd love to get your comments.

Estate Tax and Possible Changes in 2010

Congress has done the unthinkable and now we are in a year with no [estate tax](#). Everyone expects Congress will "patch" the current law by extending last year's rules – taxing estates exceeding \$3,500,000 – through the end of this year and making that change apply retroactively to January 1. But then, everyone expected Congress to extend last year's rules before last year ended.

So, what does this mean for you?

If you are single, it will probably make no difference to the way you have made your will and other estate documents unless you have a plan where you gave the exempt amount to your beneficiaries and the amount above the exempt amount to charities. In that case, you should review and may need to change your documents.

If you are married and you had a plan that would create, on the first death, a "Family Trust" for the surviving spouse, under the current rules (no estate tax) it is likely that your documents will give everything to your spouse. If your children are not children of your spouse and you had a "Family Trust" to provide for your spouse and then pass back to your children, you will need to review and may need to change your documents.

If your children are all children of your spouse, you have a choice:

a. Do nothing and hope your survivor will get prompt advice about whether he or she should disclaim any of your assets passing to the survivor so they will instead pass to the "Family Trust" for the survivor and not be taxed as part of the survivor's estate (see "looming danger" below).

<http://vabizlawyers.com>

[Richmond](#) • [Blacksburg](#) • [Fredericksburg](#) • [Research Triangle](#) • [Mclean](#)

Copyright Sands Anderson Marks & Miller, PC.

b. Consider amending your documents to provide a trust for the survivor even if you die in 2010 and there is no tax. (Such an amendment could be as simple as providing that if you die in a year when there is no estate tax, that the document will be interpreted as though the 2009 tax rules applied for the purpose of setting up the Family Trust for the survivor).

Why is this important? — The “Looming Danger.”

If Congress does nothing at all (or just extends last year’s rules through 2010 as a “patch” and then does nothing further) starting in 2011 (less than one year), the exemption from estate tax will automatically drop to \$1,000,000.

That will mean that if you die this year and you and your spouse have \$2,000,000 (for example) and your spouse inherits everything, there will be no tax. But if your spouse then dies with a \$2,000,000 estate in 2011, the children will pay over \$400,000 in estate taxes.

Everyone expects (yes, that crowd of everyone again) Congress will pass a more permanent extension of the estate tax law setting the tax-free amount at a higher level, but Congress is full of surprises and, with an election coming up, Congress could easily do nothing about further estate taxes (just as happened this year) and let the exemption drop back to \$1,000,000.

Whether single or married, it may benefit you to start planning now for that possibility and to review your plan with an trust and estate lawyer to make sure that your documents will send your assets to the beneficiaries and in the way you expected.

<http://vabizlawyers.com>

[Richmond](#) • [Blacksburg](#) • [Fredericksburg](#) • [Research Triangle](#) • [McLean](#)

Copyright Sands Anderson Marks & Miller, PC.

THE INFORMATION CONTAINED IN OUR WEB SITE DESCRIBES LEGAL MATTERS HANDLED IN THE PAST BY OUR ATTORNEYS. OF COURSE, THE RESULTS WE HAVE ACHIEVED DEPEND UPON A VARIETY OF FACTORS UNIQUE TO EACH MATTER. BECAUSE EACH MATTER IS DIFFERENT, OUR PAST RESULTS CANNOT PREDICT OR GUARANTEE A SIMILAR RESULT IN THE FUTURE.