

Is Congress Moving Toward Estate Tax Reform?

Although Congress has finally dealt with one small aspect of potential revisions to estate planning laws, it is still unclear whether Congress will make any substantive changes to estate planning laws before the November 2010 election or the end of the year. Currently, for a decedent who died during 2010 (e.g., George Steinbrenner), there is no estate tax. For a decedent who dies during 2011 (unless Congress quickly changes the laws), only \$1 million of the estate will pass to beneficiaries with no estate taxes, and any amounts above the \$1 million will be subject to a 55% estate tax (substantially worse than the 2009 estate tax laws which had no estate tax below \$3.5 million).

On July 29, 2010, President Obama signed the Supplemental Appropriations Bill that most news organizations summarized as continuing to fund the war in Afghanistan. Originally, the House-passed version of this Bill also contained provisions concerning Estate Tax reform that would place restrictions on Grantor Retained Annuity Trusts (“GRATs”), an estate planning tool for affluent individuals. A GRAT involves an irrevocable trust where the Grantor gifts a particular asset to specified individuals in the future, but the Grantor retains the right to an annuity for a fixed period of time. The benefit of a GRAT is to allow the value of the property identified in the GRAT to be reduced by the value of the retained interest by the Grantor. If the Grantor survives the GRAT’s term, the gift to the beneficiaries results in a larger transfer of wealth from the Grantor and the avoidance of additional estate taxes.

The House-version of the Supplemental Appropriations Bill, also supported by the Obama administration, would have extended the time that a Grantor would have to survive in order to reap the benefits of estate tax savings (a change that would place more hurdles for a Grantor to remove assets from the Trust Estate without being subjected to estate taxes, having the effect of the government receiving more estate taxes). At the end of the day, the version that was acceptable to both the House and Senate, and ultimately signed by President Obama, removed the issue of changing tax laws relating to GRATs, in effect failing to increase the time period that a Grantor would have to survive in order to exclude the discount from the decedent’s estate.

Does this issue give any signal to what Congress might do with the controversial outstanding issues concerning estate taxes for deaths occurring during 2010 or beyond? No! Many Americans are concerned that, with the elections approaching, Congress will fail to tackle a retroactive estate tax for 2010 to duplicate the \$3.5 million level of 2009. A bigger issue for a larger group of Americans concerns the fast-approaching reduction of the portion of estates that will pass estate tax free (reduced from \$3.5 million to \$1 million) unless Congress restores the 2009 estate tax limits for the years 2011 and beyond.

Although the issue of further restrictions on GRATs has been temporarily avoided by the failure of the House and Senate to agree on what to do, clients should not assume that this “failure to change estate tax laws concerning GRATs” is an indication, one way or another, that Congress will tackle estate tax issues before the end of the year. It is also not unreasonable to assume that if Congress passes estate tax reform legislation, it could include further restrictions on the tax benefits for GRATs as a way to offset government estate tax losses by increasing the exclusion amount to 2009 levels.

As a result, you should look at your existing estate plan and determine if creative suggestions might

help your estate avoid additional estate taxes in the future. GRATs are an established method to remove large portions of an estate from potential estate tax. This tool, along with many others, should be investigated as means of addressing the ever-changing issues related to estate planning and Federal taxation.

If you feel it is appropriate, you are invited to contact our firm to discuss your unique estate plan.