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## NEWSLETTER

2010 has become an interesting year, given the estate tax legislation mess that we are in, as well as the bad economy.

The Economic Growth and Tax Relief Reconciliation Act was signed into law in 2001 and has created estate tax planning problems ever since. That 2001 law gradually increased the amount that could pass estate tax free from the \$1 Million estate tax exemption amount in 2002 to the \$3.5 Million estate tax exemption available for decedents dying in 2009. It further reduced the maximum estate tax rate from 55% to 45%.

The 2001 Act was designed to culminate in the complete repeal of all estate taxes in the current year, 2010, and beyond. However, without more legislation, the estate tax will return with a vengeance after this year. There will only be a \$1 Million estate tax exemption after this year, and the maximum estate tax rate will go back to 55%.

There is a lot of discussion about Congress possibly retroactively enacting changes to the estate tax laws effective January 1, 2010. The expectation, because of the need for tax revenues, is that the government would like to install an estate tax exemption of some amount in excess of \$1 Million and also make it retroactive to the first of this year, so that decedents dying in 2010 would be subject to these laws. In December, 2009 the House of Representatives passed a bill making a \$3.5 Million estate tax exemption applicable in 2010 and beyond (just like in 2009), but the Senate did not pass that same legislation.

Therefore, we are in a very interesting time period for decedents dying this year. We do not know if the current laws on the books, which repeal all estate taxes for 2010, will actually be applicable or whether there will be estate taxes applied beyond a certain exemption for this year. Further, we do not know whether any attempt to make such laws retroactive would actually be successful. We also do not know whether laws will be passed to increase the amount exempt from estate taxes after this year. Without such legislation, only \$1 Million is exempt from estate taxes in 2011 and beyond.

For these reasons, the purpose of this Newsletter is basically to inform you of this mess and to also let you know what the laws are for 2010 since there is no longer an estate tax (unless they enact one retroactively) until the first of the year. The current laws do not have an estate tax for decedent's dying in 2010. Instead, their estate would file a return with the Internal Revenue Service by April 15, 2011 indicating the tax basis of all the assets of the decedent at the time of death. The estate will be permitted to increase the tax basis of the decedent's assets (which would reduce the gain upon later sale of those assets) by an amount equal to \$3 Million for assets passing to the surviving spouse and another \$1.3 Million for assets passing to other beneficiaries of the estate. In addition, it appears that there will be a \$250,000 exclusion for the sale of the primary residence of the decedent.

I suggest you stay tuned for changes in the estate tax laws, because the situation is really quite a quagmire, and combining it with 2010 being an election year does not make it any easier to predict ultimately what will happen with estate taxes.

Regarding other matters, let me mention that I do see business transactions not involving real estate increasing somewhat, but even those transactions appear to be relatively slow compared to prior years because of the lack of available financing. The non-real estate transactions involving my clients are increasingly funded by the Seller, not a financial institution. Needless to say real estate transactions, other than sales involving distressed sellers, continue to be very infrequent.

I have noticed that the legal work pertaining to the structuring of a client's assets and business operations to reduce potential liability has markedly increased. With the economy still down, it appears that litigation is up, so clients are more aware of the potential damage litigation could do to their assets and business operations. So, clients are making a greater effort to properly segregate their assets from potential liabilities.

If I can assist you with any of these issues, please do not hesitate to contact me.

Sincerely,



Charles H. Stark

CHS/db