Alerts and Updates

U.S. HOUSE PASSES LEGISLATION FOR PERMANENT FEDERAL ESTATE AND GIFT TAX RELIEF

December 4, 2009

On December 3, 2009, the U.S. House of Representatives passed H.R. 4154—known as the Permanent Estate Tax Relief for Families, Farmers, and Small Businesses Act of 2009—which was introduced in November by Rep. Earl Pomeroy (D-N.D.). H.R. 4154 applies to estates of those dying after December 31, 2009, as well as for gifts made after December 31, 2009. In essence, the act permanently extends existing federal estate and gift tax law. It provides for a $3.5 million estate tax exemption, a $1 million gift tax exemption, a maximum estate and gift tax rate of 45 percent, and continuation of the current rules concerning "step-up in basis" for property that a taxpayer receives from the estates of those dying after 2009.

H.R. 4154 is quite basic. It does not provide for portability of exemption, indexing of exemption for inflation, unification of estate and gift tax exemptions, valuation of family controlled entities, or minimum terms imposed on grantor-retained annuity trusts (GRATs). Since the U.S. Senate is currently focused on debating an overhaul of the U.S. healthcare system and is considering its own version of a tax-extension bill, analysts anticipate the likely compromise—one that has been contemplated for months—would be a one-year extension of current estate and gift tax law.

Representative Pomeroy previously introduced H.R. 436, which generally would have eliminated minority and marketability discounts for family controlled entities holding "non-business assets"—defined as any asset not used in the active conduct of one or more trades or businesses—and would also have imposed a surcharge on estates whose values exceeded certain thresholds. Neither concept is contained in H.R. 4154.

For Further Information

If you have any questions about this *Alert* or would like more information, please contact Michael D. Grohman, any of the attorneys in the Estates and Asset Planning Practice Group or the attorney in the firm with whom you are regularly in contact.