Law Offices of Janet Brewer

(650) 325-8276

What to Expect of the Estate Tax Law in 2011

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Uncertainty due to Congress's delays

As an estate planning attorney, one of my primary objectives is to ensure that my clients are comfortable with the estate plan they have formulated. However, the current state of the estate tax law makes achieving that objective very difficult. Clients are becoming more and more skittish about making estate planning decisions because of the uncertainty caused by Congress's delays in addressing the federal estate tax issue.

Presently (in 2010), there is no federal estate tax. However, speculation abounds that Congress may enact an estate tax for 2010 and impose it retroactively. Moreover, the federal estate tax that is scheduled to become effective on January 1, 2011 (unless Congress acts before then), carries an exemption of only $1 million and a top tax rate of 55%, substantially less than the exemption of $3.5 million and 45% top tax rate of 2009.

Don't do nothing

Despite the uncertainty that many of my clients feel as a result of the current federal estate tax situation, I encourage them to take affirmative steps rather than doing nothing. Following are a few basic estate planning tips for anyone who is leery about putting together a comprehensive estate plan.

- **Make a Will** – At the very least, everyone should have a will. A will allows you to set forth how you want your property distributed upon your death. Having a will insulates your estate from being conveyed according to the laws of intestate (death without a will) succession.

- **Take Advantage of Available Exemptions** – Each spouse may legally claim up to $1 million dollars of property as exempt beginning in 2011. This may change depending on what Congress does. Regardless, you should use every penny of the available exemption to your advantage.

- **Maximize Your Exemptions** – Creating a credit shelter trust (an "A-B Trust") is one of the best ways to maximize the available estate tax exemption. A credit shelter trust allows you to fund the trust with assets equal in value to the available federal estate tax exemption. Any other assets you have may be left to your spouse free of estate taxes. Your spouse can draw from the trust's assets while s/he is alive. Upon his or her death, the trust assets will be disbursed to your heirs or other beneficiaries, claiming your estate tax exemption. Your spouse's estate will also be able to reduce or avoid estate taxes at the time of distribution to his or her beneficiaries.

- **Purchase Life Insurance in an Irrevocable Trust** – If your irrevocable trust purchases a life insurance policy, the life insurance proceeds will be distributed to the named beneficiaries estate-tax free upon your death. On the other hand, if you purchase a life insurance policy and hold it yourself as the "owner", the proceeds will be part of your estate and subject to estate tax at up to the 55% tax rate.

- **Give, Give, Give** – My grandmother always told me that it is better to give than to receive. For purposes of avoiding or reducing estate taxes, this is especially true. You can give up to $13,000 per year to as many people as you like without paying gift taxes. By giving more during your lifetime, you lower your heirs' and beneficiaries' exposure to estate taxes.

Whether you have few assets or a multi-million dollar estate, you must have an effective estate plan. As a board certified estate planning, trusts, and probate lawyer, I have the skills and knowledge to handle complex estate planning matters (certified as a specialist by the California State Bar Board of Legal Specialization). To schedule a consultation to discuss your estate planning goals and needs, please contact us.

Learn more

The right move now can save you money in 2011 and beyond. Download our free *Year-End Asset Protection Update for Bay Area Families* to learn about options to consider before Dec. 31st.