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At Long Last: What to Expect from Estate Taxes in 2011

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It has been a long and uncertain year for anybody interested in the future of the estate tax, filled with a few ups, a few downs, and a lot of speculation. But after the recent passage of the new bipartisan tax bill all of the confusion and speculation is finally at an end, and it's very close to what we anticipated early last week. The bill is good news for most taxpayers; the Wall Street Journal says there are "many winners, a few losers," and according to the New York Times "Almost no one will have to worry about paying the estate tax under the tax legislation just approved by Congress."

Here is a brief overview of what you can expect in 2011:

New Estate Tax Exemptions and Rates: The new bill sets the estate tax exemption at $5 million per individual ($10 million per married couple), with amounts over the exemption taxed at a 35% rate. This is opposed to the $3.5 million exemption and 45% rate some lawmakers were hoping for.

Tax Election Option for 2010 Estates: As mentioned in a previous post, this is one of the biggest parts of the new bill. There may have been no estate tax in 2010, but there was also no "step up in basis," meaning that heirs selling inherited assets were taxed based on the original acquisition cost of the assets, not on their value as of the date of the taxpayer's death, as is usually the case. This led to a higher tax paid on the assets if and when they were sold, in spite of the lack of estate tax. Tax election gives 2010 estates the choice of whether to use 2010 or 2011 tax rules—a happy option for 2010 heirs.

Estate, Gift, and Generation-Skipping Taxes: In recent years these three levies have had varying exemption levels, making gift giving and succession planning and challenging exercise at best. The unification of all three makes tax planning and giving gifts to grandchildren much easier than it used to be.

Individual Income and Payroll Taxes: The new bill wasn't just about estate taxes; it also extends the Bush-era income tax rates; this is good news as it prevents a rise for nearly all taxpayers.

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How Long Will It Last? We're all glad that the waiting is over and we finally know what to expect, but the new law is only effective through 2012, at which point the provisions will "sunset." This new tax package sets our minds at ease now, but the estate tax issue is far from over. It looks as if we may have to revisit the issue in 2012-2013.

With the threat of high estate taxes out of the way does any reason remain to create (or update) your estate plan? Absolutely!

Estate planning is about more than just planning for taxes, it's about taking control of your assets and choosing how your estate will be distributed. Divorce, second marriages, planning for college, charitable gifts—these are just a few of the reasons why estate planning is essential regardless of the state of the estate tax.

At the very least, the recent fluctuation of the law means that you'll want to call our office and make an appointment to have your existing plan reviewed and updated to ensure you don't have any outdated clauses that could negatively affect your heirs.

About Matthew Crider, J.D.

Matthew Crider formed **Crider Law PC** in 1999 so he could help individuals by providing creative solutions and be their trusted advisor and legal counselor. He serves his clients by listening closely to their goals, dreams and concerns and working with them to develop superior and comprehensive estate and asset protection plans. His family law and divorce focuses on assisting families in a dissolution matters, including divorce, child custody and visitation, child and spousal support, spousal support and alimony, and parental rights.

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