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Estate Planning Alert!

In an absolutely stunning development, it appears the U.S. Senate will **not** get to a vote this year on an estate tax reform bill. Earlier this month, the House of Representatives passed such a bill extending current law into 2010 so that the drastic changes which would otherwise have occurred under the Tax Reform Act of 2001 could be avoided. It was widely expected the Senate would do the same, but now it appears that is not going to happen. This means the provisions of the 2001 Act **will** go into effect, so that:

1. There will be no federal estate tax on the estate of any person dying during calendar year 2010, regardless of the size of that estate.
2. **But** the unlimited basis adjustment at death rules will also not apply to 2010 estates. Instead, those estates will have to deal with a rather complicated carryover basis regime permitting an aggregate basis increase of \$1.3 million for all estates, and an additional basis increase of up to \$3 million for property passing to a surviving spouse.
3. In the case of persons dying **after** 2010, the above changes will not apply; the current 2009 provisions will also not apply; and instead, the pre-2001 estate tax and basis rules will come back into effect, including an exemption level of only \$1 million (it is currently \$3.5 million) and a top estate tax rate of 55% plus a 5% surtax on estates over \$10 million.

This situation, if not corrected, is going to create serious problems for millions of American taxpayers, and will require significant changes in their estate plans. We continue to hope **and expect** that Congress will deal with this situation relatively soon (possibly in January 2010), and will make its corrective legislation retroactive to January 1, 2010. However, it would be foolhardy to make any predictions in light of what has occurred this month.

Clients affected by these changes will have estate plans that include formulas, typically in trusts, that are based on federal tax law. Thus individuals with simple wills that contain no formula bequests, or wills with trusts only triggered by disclaimers, will not be affected. Similarly, clients whose trust documents include formulas based solely on the Maine taxable threshold will also not be affected. Clients, particularly couples with federally oriented estate tax planning or wealthy individuals whose plans create complex generation skipping planning, might wish to review their plans with us if the intervening time period before this situation is finally resolved by Congress is of concern.

If you would like to consult with any of us about your particular situation, and discuss the feasibility of a short-term "fix" in your estate planning documents, please feel free to contact us at any time. We regret being the bearers of such bad tidings during this festive holiday season, but we think it is important that our clients be alerted about these important developments sooner rather than later.

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