



Hot Issues in Estate Planning Today

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1. Still No Change in Federal Estate Tax Law. We anticipate changes to the federal estate tax before the end of 2009 or in 2010 (with a January 1, 2010 effective date). In 2009, the federal estate tax exclusion is set at \$3.5 million and the federal estate tax rate is 45%. Currently, the federal estate tax is set to expire on December 31, 2009 but return in 2011 with a \$1 million federal estate tax exclusion. On December 3, 2009, the U.S. House of Representatives passed a permanent extension of the 2009 federal estate tax \$3.5 million exemption and 45% tax rate; however, the Senate may not be willing to pass a permanent extension at this time.

2. Other Tax Changes Important to Clients Subject to Federal Estate Tax. Proposals in Congress could eliminate valuation discounts and certain irrevocable grantor trusts (e.g., Grantor Retained Annuity Trusts) that last fewer than 10 years. Clients who contemplate federal estate tax minimization with discounts or GRATs should act before the end of the year.

3. Structuring Assets to Protect Against Creditors. There is a new movement to convert C and S corporations into LLCs for asset protection purposes without causing adverse income tax consequences. Further, the clear trend is that a judgment creditor can go after the debtor's single person LLCs. Although it is fraudulent to transfer assets to delay or defraud creditors, there are valid business and estate planning reasons to protect a business. Difficult planning situations have ensued because of the recession.

4. Asset Protection Trusts. The economy has resulted in increased interest in offshore and domestic asset protection trusts. The effectiveness of such trusts is questionable as some courts view these trusts as a threat to the civil justice system. For example, one judge in Connecticut reacted harshly when he was told the Connecticut court had no jurisdiction over an asset protection trust or the trustee. He held that the Connecticut court does have jurisdiction over a Connecticut company owned by the trust. He then ordered that the stock ownership be retitled in the name of the creditor.

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