Veterans and Widows of Veterans TAKE NOTE!

Veterans, or widows of Veterans, who meet the following criteria can be eligible for additional non-taxable income from the VA of between $1,056-$1,949 per month:

- Served at least ONE (1) DAY during a war time period
- Served 90 active duty days in the service
- Received a discharge that was other than dishonorable
- Is disabled and unable to work
- 65 years of age or older and in need of assistance by another person to help with their activities of daily living (walking, bathing, dressing, etc.)
- Meet certain financial criteria

Doug and Jamie are both accredited by the Veterans Administration to counsel you regarding these valuable benefits.

Does your group need a guest speaker?

We are available to speak to your professional, civic, religious or special interest group on various topics (Estate Planning, Elder Law, IRA Planning, Special Needs Trusts, Disability Planning.) Give our office a call at **(856) 489-8388** to arrange a date and time or visit our website at www.fendricklaw.com

YOUR FUTURE DESERVES

FORETHOUGHT

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Staffordshire Professional Center
1307 White Horse Rd. • Bldg. B • Suite 200 • Voorhees, NJ 08043
ph: (856) 489-8388 • fax: (856) 489-8424
www.fendricklaw.com

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Congress Lets Estate Tax Expire, But New Jersey Estate Tax Still in Effect

As you may have heard, the federal estate tax rules changed radically on January 1, 2010, and could change again come January 1, 2011 unless Congress passes new legislation. As a result, we have dedicated the majority of this newsletter to advising you about those changes and explaining why you might need to reevaluate your estate plan as soon as possible.

Background: The 2001 Tax Act

In 2001, Congress passed the Economic Growth and Tax Relief Reconciliation Act (EGTRRA), which provided for significant phased-in increases in the federal estate, gift and generation skipping transfer (GST) tax exemptions and phased-in decreases in such tax rates. Key EGTRRA provisions included the following:

Increasing Exemptions/ Decreasing Rates of Tax

After steadily increasing from $1 million estate and GST tax exemptions in 2001, the estate and GST tax exemptions peaked at $3.5 million per decedent in 2009. Simultaneously, the estate and GST tax rates steadily decreased, bottoming out in 2009 with a flat 45% estate and GST tax rate on any estates valued in excess of the $3.5 million exemptions. The gift tax exemption remained steady at $1 million, with tax rates from 41% to 45%.

Repealed Estate and GST Taxes in 2010

EGTRRA further provided that for the year 2010, the federal estate and GST taxes were repealed–but only for 2010. Additionally, for the year 2010, the $1 million gift tax exemption remained, but the rate of tax was reduced to a lower flat tax rate of 35%.

Elimination of the Step-Up In Cost Basis Rules for 2010

Prior to 2010, when a person passed away, in most cases, their heirs inherited their property with a basis equal to the property's fair market value as of the date of the decedent's death. For example, pre-2010, if Mom paid $50,000 for her residence when she purchased it and, as of the date of her death, her home was worth $500,000, her beneficiaries would inherit the property with a basis equal to $500,000 (not $50,000). Therefore, when the beneficiaries sold the property after Mom's death for $500,000, they would realize no capital gain on the sale. However, in 2010, there is no automatic "step-up" in the basis of inherited assets.

The "step-up in basis" rules have been replaced with "adjusted carryover basis" rules. The new basis rules permit a step-up in basis of up to $1.3 million of assets in the aggregate (to be allocated at the Executor's discretion), plus an additional $3 million for certain spousal transfers at death. This is certain to result in confusing administrative burdens for executors, including the difficult task of determining the basis of assets in the hands of decedents, as well as capital gains taxes being due where none previously existed.

Return of the Estate and GST Taxes in 2011

Because of a "sunset" provision in the law, as of January 1, 2011, the EGTRRA provisions are set to lapse, and pre-EGTRRA laws come back into play. Accordingly, unless Congress enacts new legislation in 2010, on January 1, 2011 the following will result: (1) the estate tax exemption will drop to $1 million per decedent; (2) the estate tax rates increase (55% above $1 million and 60% above $10 million); and (3) the fair market value step-up in basis returns for most assets passing from a decedent.

This all results in an odd death tax scheme: A $3.5 million estate and GST tax exemption and flat 45% tax rate in 2009; no estate or GST tax in 2010; and a $1 million estate and GST tax exemption and tax rate of up to 60% in 2011 and future years.

What Happened (or, Didn't Happen) in 2009?

2010 seemed like a long ways away when, in 2001, former President Bush signed EGTRRA into law (legislation which would repeal the federal estate tax effective January 1, 2010). Most estate planning practitioners (present company included) believed that, at some point prior to December 31, 2009, Congress would enact legislation to keep the federal estate tax in place with, perhaps, an exemption amount of $3.5 million or even greater. At various points in time between 2001 and 2009, different legislation regarding the future of the federal estate tax was debated and, occasionally, voted on, to make the federal

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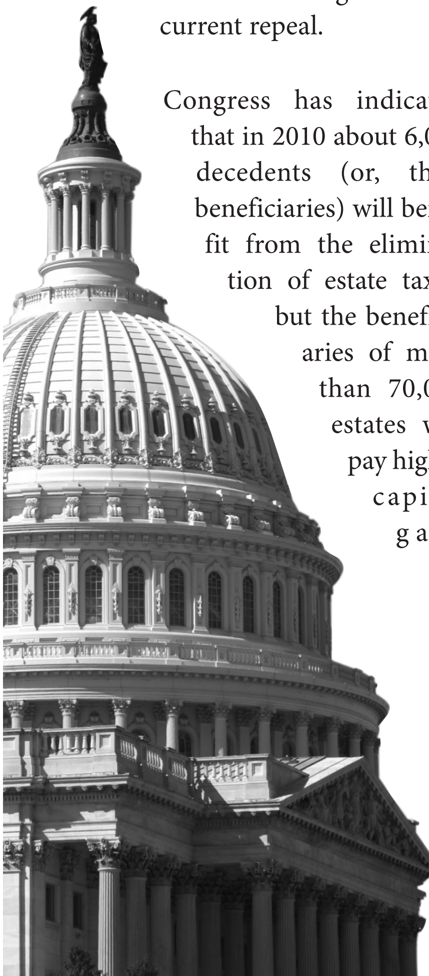
Estate Tax cont'd from page 1

estate tax permanent, with varying exemption amounts. Most recently, in early December of 2009, the House passed a bill which would have permanently extended the 2009 estate tax rules (a $3.5 million exemption and 45% rate of tax). However, the Senate, focused on health care reform and in wide disagreement about the future of the federal estate tax, was unable to do the same. In the end, nothing was passed. As a result, at least for the moment, there is no federal estate or GST tax.

Planning in Chaos

Congress' failure to adopt estate tax legislation in 2009, and the possibility that change will also not be adopted during 2010, radically changes how we must plan for our clients going forward, or, at least, for the year 2010. Likewise, it forces us to revisit estate planning documents executed by our clients prior to 2010 that may result in undesirable outcomes in light of the current repeal.



Congress has indicated that in 2010 about 6,000 decedents (or, their beneficiaries) will benefit from the elimination of estate taxes, but the beneficiaries of more than 70,000 estates will pay higher capital gain taxes because of the change in the income tax basis rules for assets received from decedents.

What Next?

We are in the midst of an uncertain planning environment, in which either of the following could occur during 2010:

I. *Congress does nothing in 2010*

Congress may do nothing in 2010, in which case heirs will receive property from deceased loved ones with a basis determined under the new adjusted carryover basis rules. And, estates of persons who die during 2010 will not be subject to federal estate or GST taxes. While you may not be likely to die in 2010, you still must consider planning for that possibility. Not planning for these changes, if death occurs, could be disastrous for your family.

For example, formula clauses (e.g. terms that allocated your estate exemption to a "By-Pass Trust," "Credit Shelter Trust" or "QTIP Trust") in your planning documents could inadvertently disinherit certain heirs and/or your surviving spouse. Additionally, if you die during the repeal of the estate tax in 2010, conflicts could arise among your heirs and fiduciaries regarding the allocation of the $1.3 million basis adjustment. Lastly, if you die during the repeal of the estate tax in 2010, passing assets directly to your surviving spouse may result in higher estate taxes upon your spouse's subsequent death if your spouse dies after 2010 when the federal estate tax exemption is scheduled to be only $1 million and the rate of tax as great as 60%. There may be tax planning that should be undertaken in order to avoid any unnecessary tax.

If your current documents establish a "Disclaimer Trust," then you should be fine. If, however, your documents have a "By-Pass Trust," a "Credit Shelter Trust" or a "QTIP Trust," then you should schedule an appointment to discuss any changes that might need to be made to your documents.

II. *Congress enacts retroactive legislation*

Another looming possibility is that Congress may enact legislation to reinstate the federal estate tax and may make such legislation retroactive to January 1, 2010. Of course, if Congress does, in fact, act retroactively, they would most certainly be creating fertile ground for lawsuits by those whose family members die between January 1, 2010 and the date when any retroactive law is enacted. Such suits seem inevitable.

While the concept of a retroactive tax may seem unconscionable, there is some precedent for retroactively enacting tax legislation. In a 1994 decision, the U.S. Supreme Court ruled that the Constitution's ban on the enactment of ex-post facto laws does not apply to tax legislation, provided the retroactive application is "supported by a legitimate legislative purpose furthered by rational means." *United States v. Carlton*, 512 U.S. 26 (1994). Since most estates don't file tax returns until nine months after someone dies, if Congress can come to an agreement quickly in 2010, the problems caused by a retroactive law may be limited. Stay tuned.

What About the New Jersey Estate Tax?

It is important to note that the New Jersey estate tax remains in force, and there are no scheduled changes on the horizon. For New Jersey estate tax purposes, any New Jersey resident, whether single or married, who has an estate valued at $675,000 or more will owe a New Jersey estate tax upon their death absent proper planning. If you are a New Jersey resident and your estate (including retirement accounts and life insurance) is valued at $675,000 or more, we should review your estate plan to ensure that all proper planning has been undertaken. **Many clients who executed estate planning documents prior**

to 2001 are likely to have documents which will over fund trusts upon their respective deaths and result in significant New Jersey estate tax, even if they have a surviving spouse. Regardless of the size of your estate, if you have either a "By-Pass Trust" or a "Credit Shelter Trust" (for anything other than the New Jersey Credit Shelter Amount) in your estate planning documents and you are a New Jersey resident, you should schedule a time to have your documents reviewed.

In Summary

Unless Congress adopts new legislation during 2010, the federal estate tax rules will remain 180 degrees from where they were in 2009, and such radical changes are certain to result in confusion and the need to review many of your estate plans. Then, the federal estate tax rules will make another dramatic turn in 2011, only the federal estate and income tax rules which are slated to come into play at that time are significantly harsher than what we had in 2009.

The uncertain future of the federal estate tax makes it difficult to plan, however, waiting to see what happens could be disastrous–and very expensive–for your loved ones. The earlier that you review your existing estate planning documents and implement more flexible tax and estate planning in those documents to respond to these changes, the better.

We strongly suggest that you schedule a time to review your current estate plan and to determine what changes, if any, need to be made to your current plan in order to minimize taxes and to reduce the possibility of future family conflicts in these uncertain times. Note that unless we hear from you that you would like us to review your existing plan, we will not unilaterally begin that process.

You've Been Appointed Trustee of a Trust... Here Are 8 Dos and 2 Don'ts

Whether it's an honor or a burden (or both), you have been appointed to serve as Trustee of a trust. What responsibilities have been thrust upon you? How can you successfully carry them out?

Here are eight dos and two don'ts to get you started:

1. Do read the trust document. It sets out the rules under which you will operate, so you need to understand it completely. Ask questions of the attorney if you do not understand the dispositive provisions.

2. Do create a checking account for the trust. All income and expenses should go through this account. While you can, and should, invest the money, a checking account will enable you to make distributions and payments, and to keep track of them.

3. Do keep the best interests of the beneficiaries in mind at all times. You have what's called a "fiduciary" duty to the beneficiaries, which is an extremely high standard.

4. Do provide the beneficiaries (and anyone else indicated in the trust) with an annual account of trust activity. This can be in the form of copies of the checking and investment account statements, or a more formal trust account prepared by an accountant or attorney.

5. Do invest the trust funds prudently and productively. You cannot simply leave the trust funds in a savings account. And, you can't put them all into a promising new company. You need to diversify the trust portfolio among stocks and fixed income securities. It is wise to get professional investment advice.

6. Do keep in regular contact with the beneficiaries so that you understand their needs.

7. Do be aware of any public benefits the beneficiaries may be receiving and make sure you do not jeopardize the beneficiaries' eligibility by making a disqualifying distribution to them or on their behalf.

8. Do file annual income tax returns for the trust.

9. Don't fly solo. Get professional advice from our office to make sure you are correctly fulfilling your role

10. Don't have any personal financial dealings with the trust. For instance, you cannot borrow money from the trust.