

The Other Shoe – a New Federal Estate Tax Law

For most of the last year, we have had no federal estate tax. This gave rise to macabre commentary, suggesting that anyone who had a substantial estate and poor health might do well to die before year-end to save taxes. I did not make this suggestion to any of my clients, because of the grave consequences.

The Economic Growth and Tax Relief Reconciliation Act of 2001, (EGTRRA), provided that the federal estate tax exemption amount gradually increased, to \$3,500,000 in 2009, and the tax rate on the excess over \$3,500,000 decreased, to 35%. Unless Congress acted earlier, the federal estate tax was wiped out for 2010, and on January 1, 2011 returned to the 2001 rates. The tax rate in 2001 provided an exemption of \$1,000,000 and an excess rate of 45%.

All of us working in estate planning expected that Congress would act in 2009 or early 2010 and reinstate the federal estate tax as it was in 2009. This did not happen, leaving us with the prospect of a draconian tax increase next year.

Finally, last week, Congress enacted a law providing for an exemption amount of \$5,000,000 and a top tax rate of 35%. This law, The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 is more favorable to taxpayers than expected, although the acronym, (“TRUIRJCA”) is, you will agree, needlessly hard to pronounce.

TRUIRJCA is complicated, and raises a number of questions, which will not be answered for some time. For example, it purports to be retroactive, covering the estates of all decedents dying in 2010. There is some question whether Congress can make an estate tax law retroactive – particularly for so many months. The Supreme Court may have to decide this.

The law wipes out the estate tax on families with less than \$10,000,000 in wealth and makes estate tax planning somewhat simpler. Planning for Massachusetts residents will still be necessary because of the Massachusetts estate tax, which is still significant.

I am preparing a detailed discussion of TRUIRJCA which will be posted on our website by next this time next week.

Merry Christmas and a Happy New Year to all of our friends!