WHAT IS THE STATUS OF THE ESTATE TAX?

The next few years provide uncertainty in estate planning for anyone with more than $1 million in assets. This is because the changes to the estate tax established in the Economic Growth and Tax Relief Reconciliation Act of 2001 (the "EGTRRA") are scheduled to end in 2011.

The EGTRRA set up a yearly lowering of the maximum tax rate on estates subject to the estate tax. It also set up a yearly increase to the dollar amount of assets excluded from the federal estate tax. For the year 2009, the first $3.5 million in assets of an estate are excluded from the federal estate tax. The maximum tax rate under the federal estate tax is 45%. In 2010, the federal estate tax will temporarily expire – meaning there is no tax on any estate under the federal estate tax system in 2010. However, in 2011, the federal estate tax system returns to 2001 levels, with a $1 million exclusion and a maximum tax rate of 55%.

It is expected Congress will act before the end of the year so as to prevent the temporary expiration in 2010 and the resetting of the federal estate tax to 2001 levels. Many estate planning experts believe that Congress will act before the end of the year to extend the 2009 rules to 2010, allowing Congress more time to draft permanent estate tax law.

There are several proposals circulating in the Congress right now. Several of the proposals include some type of indexing of the exemption amount to inflation. Some of the proposals would increase the exemption to $4 million or $5 million, with or without some type of indexing. Other proposals would provide for set incremental increases of the exemption amount each year until 2015, similar to what was done under EGTRRA, with indexed increases every year thereafter. The proposals also provide for varying maximum tax rates from 35% to 55%.

Because of the uncertainty created by the various legislative proposals, an individual with more than $1 million in assets should seek legal advice before creating or changing his or her estate plan. Married couples, in particular, need estate plans that provide for flexibility to the surviving spouse to accept or decline inheritances, based on the tax laws that are in effect at the time of death. Also, individuals and married couples should review what they are doing with their assets during their lifetimes to get the most out of current estate tax laws. It may be advantageous for yearly reviews of estate plans for the next few years in order to make sure that any changes made in the federal estate tax laws are accounted for in the best ways possible for each individual estate.

For more information regarding this and other estate planning and estate administration issues, please do not hesitate to contact me to schedule a consultation at 1-877-LAW-2555.

Virginia H. Henning
Attorney-at-Law
Scaringi & Scaringi, P.C.