

Law in limbo as citizens ride the roller coaster on estate tax

August 17, 2008 – As published in The Naperville Sun

Back in 2001, Congress changed the law on estate taxes, creating estate tax exemptions that changed over the years. For instance, in 2008, the exemption from federal estate tax is set at \$2 million. If you have one dollar more than that number, your excess will be taxed at 45 percent plus, depending on the amount of the excess.

According to this legislation, the federal estate tax exemption amount was to increase in 2009 to \$3.5 million and in 2010, the federal estate tax was abolished for a year. Even though your estate may not be subject to federal estate tax if you were to pass in 2010, your estate will not receive a "stepped up" basis in that year. In other words, your estate is "trading" the federal estate tax for the capital gains tax in that one year.

As this law now exists, in 2011, the federal estate tax exemption is scheduled to come back at the \$1 million amount, with the highest tax rate at 55 percent. This means

that many estate plans (wills and trusts) would need to be reviewed to determine how the law would apply and how much tax your estate would be subject to. Obviously, it also would mean that many more estates would be subject to federal estate taxes if this were to happen.

Despite that there is only one year left before the federal estate tax is repealed and then springs back with a \$1 million exemption and a higher top tax rate, Congress has failed to act. Some years ago, there was a movement to abolish the federal estate tax altogether, as the thought was that a person paid taxes of many varieties all their lives and should be allowed to transfer the balance of their assets tax free to their children. Despite this fact, Congress instead entered into this compromise and has failed to place estate tax reform on the front burner.

This lack of action by Congress has caused people to be on a roller coaster, having to monitor their account fluctuations on an annual basis to determine how the law in that year will apply to them. The conventional wisdom was that Congress would act sometime before the 2010 reset of the exemption to make a more permanent reform. In March, some members of the Senate Finance Committee set forth a budget resolution that included a nonbinding amendment that would freeze the estate tax at 2009 levels, meaning that \$3.5 million worth of an estate would be exempt (or \$7 million for a couple, if properly structured). The rest of the estate above the exemption would then be taxed at 45 percent. There have been a number of other proposals put forward, some of which are more generous federal estate tax exemptions.

Until Congress acts, be prepared to ride the roller coaster!

Denice Gierach is a lawyer and owner of The Gierach Law Firm in Naperville. She is a certified public accountant and has a master's degree in management. She may be reached at deniceg@gierachlawfirm.com or 630-756-1160.



*Denice Gierach,
founder and owner,
The Gierach Law Firm*