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The Only Things Certain are Death, Taxes and the Reform of Death Taxes

by Michael A. Dribin, P.A.

As you know, for the last year or so, Congress has been contemplating reform or repeal of the estate, gift and generation-skipping taxes. We thought it would be advisable to update you on where this issue stands and to make some suggestions as to what you should or should not be doing with your estate plan.

By way of review, Congress passed legislation in 2000 which would have repealed the estate tax by the year 2010. President Clinton vetoed the legislation and Congress did not override the veto.

President Bush has made estate tax repeal one of the key components of his tax proposals. A tax bill was introduced in January, which is not entirely representative of the President's plan. The bill which was introduced, however, would repeal the estate tax by 2009.

Various other proposals have been considered, including proposals from Democrats calling for substantial increases in the exemption from estate taxes (the exemption this year is \$675,000.00 and is currently scheduled to increase to \$1 million by 2006) and reducing some of the top brackets.

In essence, the Democratic proposal is to reform the estate tax law, but not to repeal it. These proposals call for increases in the exemption to anywhere from \$2 million to \$2.5 million per person. There are also proposals for more liberal relief for family businesses and farms.

One of the less publicized aspects of the Republican repeal provisions is that it would, to some extent, reinstate "carryover basis". Under the current law, assets that are owned by an individual who has

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MEMORANDUM

TO: Friends and Clients
 FROM: Kenneth Edelman, Esq. Carl S. Rosen, Esq
 DATE: February 7, 2001
 RE: IRS simplifies IRA distribution rules

In a surprise announcement on January 11, 2001, the Treasury made significant changes to simplify the IRA distribution rules. The new rules should benefit most IRA owners and beneficiaries. The following is a summary of the new rules:

- Prior to the change, IRA owners were required to elect a distribution method on or before the "required beginning date" (generally, April 1 following the year the owner attained age 70½). Now taxpayers are no longer required to

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Estate Tax Repeal, continued from front page

died get a step up in basis for income tax purposes to the fair market value of the asset on the date of death. Under the proposed repeal legislation, this step up in basis might only be available for assets passing to a surviving spouse and assets passing to other individuals would only receive a partial exemption. This would require the maintenance of records concerning the original basis for assets and could require some significant planning to take into account the different basis which assets may receive.

The question many clients are asking us, at this time, is what they should be doing either with their existing estate plans or with pending estate plans. First, it seems apparent that until legislation is enacted, no steps should be taken to alter existing estate plans merely to deal with the proposed legislation (unless there is a non-tax reason to do so). It also appears that it continues to be advisable to make gifts within the annual exclusion amount. It does not appear to make sense to make large gifts that will generate the payment of significant gift taxes (those which are in

excess of the exemption amount).

For people who are considering implementing estate plans, we can only offer certain advice until the "dust settles". If the estate tax is repealed, it most likely will be over an eight

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to ten year period. Even in the last year of the repeal period, the likelihood is that the estate tax burden on large estates will be heavy. It is also possible that a future Congress could decide, midway through the phase out of the estate tax, to freeze future reductions in the tax. This would be particularly likely if federal revenues do not reach the levels currently anticipated. It is also important to remember that some estate planning devices, such as family limited partnerships, have util-

ity beyond their tax benefits. The ease of management of assets and the flexibility in making gifts can still make them important planning tools. Finally, it remains important to retain records concerning the costs basis of assets, in the event carryover basis is part of the repeal.

In short, while it seems likely that tax legislation will be enacted concerning the estate tax over the next several months, we think that given the relatively long period of time over which the repeal would be implemented (assuming it is not frozen at some point) it can still make sense to move forward with estate plans that take into account estate tax concerns and the desire to reduce estate taxes. The advisability of doing this will vary on a case by case basis. For this reason, we intend to update this information as the picture starts to clear. Certainly, to the extent any of our clients or friends have questions, they should contact their estate planning counsel at Broad and Cassel. We will be happy to answer your questions. Now, if we can only get Congress to answer our questions.

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elect a method for receiving minimum distributions. If an IRA owner has already chosen between the “term-certain” and “recalculation” methods, he or she can elect this year to receive the lowest possible amount based on his or her age and account balance. In 2002, there will be no choice at all, the required distribution will automatically become the lowest possible amount.

- Prior to the changes, IRA owners had to name a beneficiary on or before the required beginning date in order to take distributions over joint life expectancies. Now, for purposes of calculating minimum required distributions, most taxpayers will use a uniform life-expectancy table (which uses a joint life assumption). These calculations will apply to all IRA owners, except those who are more than 10 years older than their spouses. In those cases the IRA owner can use his or her (and his or her spouse’s) joint life expectancy which will pro-

duce even lower minimum distributions.

- It is no longer required that an IRA owner name a designated beneficiary on the date he or she



starts taking withdrawals. The IRA owner can also change his or her beneficiary at any time without affecting the amount of his or her

minimum required distribution.

- Lump sum distributions are no longer required where no beneficiary is named. For example, if

heirs up to 5 years to withdraw the proceeds and pay taxes. Previously, the IRA proceeds had to be withdrawn by December 31st of the year after the IRA owner died, creating a severe tax burden to the heirs.

- The mandatory date for distributions remains the same as before (the IRA owner must withdraw the minimum required distributions by December 31st of each year). In addition, it is still critical that the IRA owner name a designated beneficiary; however, the IRA owner doesn’t have to do it at any particular time, and the ages of the beneficiary won’t affect the amount of required distributions. However, after the IRA owner’s death, the beneficiary must be ascertained by December 31 of the following year.

Please call us if you would like to discuss the new IRA rules or any other aspects of your estate plan. We look forward to hearing from you and in helping you in any way that we can. **BC**

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