

FALL 2010 ESTATE PLANNING NEWSLETTER

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To: Clients and Friends
From: A. Kel Long, III
Re: News from the Estate Planning World

ESTATE TAX COMPROMISE

As the end of the year approaches, there are discussions underway in both parties about potential compromise options for the estate tax. If no action is taken on the estate tax, then the exemption reverts to \$1 million on January 1, 2011. At that time, the estate tax rate would also increase to 55%.

Some members of the Democratic caucus support increasing the exemption to \$3.5 million, but also support increasing the tax so that decedents with larger estates would pay a higher tax. For example, the rate for estates over \$20 million would be 65%.

Some Republican Senators have continued to propose a complete repeal, while others, such as Sen. Jon Kyl (R-AZ), have proposed that the exemption would be \$5 million and the estate tax rate would be reduced from the 2009 level of 45% to 35%. And still others, like Senate Finance Chair Max Baucus (D-MT) have proposed a compromise where the exemption would start at \$3.5 million and increase to \$5 million over 10 years. The estate tax would initially be 45% and then be reduced to 35% over the same time period.

In order to pass a new provision on estate taxes, the Senate normally requires 60 votes. If the provision is opposed by President Obama and subject to a veto, then 67 votes would be necessary to override the veto. As a result, a compromise solution that can be supported by 60 or even 67 senators will be needed. Note that President Obama indicated during the campaign that he supported making the 2009 law permanent (\$3.5 million exemption and a 45% tax rate).

Because Republican members do not want to see a \$1 million exemption and Democratic members prefer a level of estate tax exemption similar to the \$3.5 million number of 2009, a compromise will have to be reached.

All commentators say that a compromise will be reached, but the real question is: When? Some commentators say it will be late 2010 or early 2011. Keep in mind that if not passed until sometime in 2011, the new law can be made retroactive to January 1, 2011.

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My guess is that Congress won't act until early 2011 when their backs are against the wall, implementing a \$3.5 million exemption and 45% rate, made retroactive to January 1, 2011.

As soon as we learn more, I will send an updated newsletter. Also check my website for updates: www.AKELLONG.com

NEW GEORGIA TRUST CODE:

On July 1, 2010, Georgia's new trust code became effective. It will govern all trusts, including trusts written before July 1, 2010. (Thus, all trusts under Wills executed before July 1 are governed by the new trust code). A few significant changes in the new trust code are:

1. Requires more stringent annual reporting and notifications to the beneficiaries. (These can be waived by the Trustor, if desired.);
2. Increases the standard individual trustee fees that are allowed if the trust does not state what the fees should be. (This may be of import to some clients who had not put much emphasis before on fees because they were much lower.) ; and
3. Clarifies the creditor protection provisions allowed in trusts. (See my August 2009 newsletter for the advantages of lifetime creditor protected and estate tax exempt trusts. A copy can be found on my website.)

If any of these concern or interest you, please let me know and we can meet to review your existing trusts and Wills to determine what changes, if any, you may want to make.

RECENT SPEAKING ENGAGEMENTS:

In November, I will be giving the Estate Planning Update to the Georgia Bar via satellite broadcast to multiple locations around the state. That seminar is seen by about 2,000 lawyers across Georgia.