

# Tax *Flash*

## “Repeal of the Federal Estate Tax”

We would like to advise you of a “change” in the Federal estate tax law which may impact your estate plan. The change is a result of Congress’ failure to act during the last two weeks of 2009. We, like the tax and estate planning community at large, expected that Congress would amend the tax code to prevent the problems outlined below. Since we are tax advisors, this issue is too important not to address.

In all likelihood your estate planning documents divide the estate of the first spouse to die into two broad portions. One portion is equal to the deceased spouse’s unused estate tax exemption amount. The other portion is equal to what is called the “optimum” marital deduction. Neither portion will be subject to estate tax when the first spouse dies even if there is an estate tax. This is the way most married couples have disposed of their wealth for many years. This may continue to be appropriate for you. However, a change in the tax law that just became effective on January 1<sup>st</sup> and will last only this year suggests that it may be appropriate to have your documents reviewed to see if they should be modified.

This year (2010) there will be no Federal estate tax (although some states, including Ohio, will retain independent estate tax systems). It may be uncertain how the provisions of your estate planning documents will be interpreted since there is no estate tax. This is because several provisions of your documents are phrased in terms of tax concepts, such as the estate tax exemption amount and marital deduction. Because those tax concepts are not in the law this year, there may be some question as to what your documents mean and how your property is disposed of. In turn, that may raise tax questions.

Another change relates to the income tax basis of inherited assets. Income tax basis is the value from which gain or loss on assets sold is measured. Under the law prior to this year, the general rules were that the income tax basis of an asset was changed to its current market value when its owner died. But this year, this automatic change in basis will not occur. Rather, the deceased owner’s income tax basis in assets will “carry over” to the persons who inherit the assets. It may be appropriate for your documents to be revised in order to take into account the possibility of this carryover basis.

Therefore, we think it is important for you to consider whether your existing estate plan does what you want it to do. Should it be reviewed? Please consider this as we get together this busy season. We look forward to hearing from you in the near future.