The 2010 Federal Estate Tax

On December 17, 2010, President Obama signed the Tax Relief, Unemployment Insurance Reauthorization and Jobs Creation Act. The Tax Relief Act covers gift, estate, generation-skipping and income taxes. In 2001, Congress passed legislation that repealed the estate tax in 2010. The estate tax levies a tax on the value of assets transferred at death, including life insurance. The 2010 Tax Relief Act reinstates the federal estate tax but makes it applicable to fewer people.

For decedents who died in 2010, Executors can choose to either file an estate tax return with a $5 million exemption or, if an election is made, skip the estate tax in exchange for determining the basis of assets under the modified carryover basis rules. Normally, the basis of appreciated assets increases to their date of death value. Under the modified carryover basis rules, recipients of the decedent’s property receive a basis equal to the lesser of the decedent’s adjusted basis or the fair market value of the assets owned by the decedent. An Executor can increase the basis of the decedent’s assets by $1.3 million. In addition, the Executor can increase basis of property transferred to a surviving spouse by an additional $3 million. Thus, the basis of property transferred to surviving spouses generally may be increased up to $4.3 million. To increase the basis of assets received from a person dying in 2010, the Executor must allocate basis on IRS Form 8939 and attach it to the decedent’s final income tax return.

For estates of decedents who died in 2010 prior to December 17th, the deadline for filing the estate tax return is extended to September 19, 2011. The due date for filing the carryover basis report with the final income tax return was also deferred to that date.

For decedents dying in 2011 and 2012, the Executor does not have to file a federal estate tax return unless the gross estate exceeds $5,000,000. Nevertheless, if the decedent was married and the surviving spouse’s estate may incur estate tax, the Executor should file an estate tax return to preserve the unused estate tax exemption for the surviving spouse. This principle is known as the “portability of unused exemption between spouses.” With portability, couples can now have assets of $10 million without owing any estate tax. A surviving spouse who remarries will lose the prior deceased spouse’s exemption. Portability does not apply to the generation-skipping tax (GST), a tax that applies to gifts and trust distributions to grandchildren.

Connecticut has not adopted portability. The Connecticut estate tax exemption is currently $3.5 million with marginal rates between 7.2% and 12% on assets exceeding the exemption. Estate planning with a credit shelter trust is still advisable for married couples with sizeable estates to preserve the Connecticut estate tax exemption and the federal GST tax exemption of the first spouse to die.

Congress also lowered the top estate tax rate for 2010 to 2012 from 45% to 35%. The new top estate tax rate is the lowest it has been since 1931 and the new estate tax exemption is the highest it has ever been.