

# THE RISELING REPORT . . . . .

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## ESTATE TAX UPDATE – MAY 2010

### BACKGROUND

About 8 years ago, Congress revamped the Federal Estate Tax Law and provided for scheduled increases in the Federal Estate Tax exemption commulnating with a \$3.5 million dollar per person exemption in the year 2009. In order to make these tax cuts more palatable to a divided Congress, the law contained an expiration date of Midnight, December 31, 2009 for the Federal Estate Tax. After one year, the Federal Estate Tax was then re-imposed with a \$1 million dollar per person exemption on January 1, 2011.

For the last 8 years, members of both the House Ways and Means Committee and the Senate Finance Committee have been quoted as stating that the law would not be allowed to expire or sunset and that a permanent “fix” in the Federal Estate Tax law would occur before 2009. Unfortunately, Congress did not address the Federal Estate Tax in 2009 and we find ourselves in a very unusual set of circumstances.

### HERE IS THE CURRENT STATUS OF THE FEDERAL ESTATE TAX LAW

1. There is no presently applicable Federal Estate Tax Law. The existing Federal Estate Tax Law was rendered non-applicable as of Midnight, December 31, 2009.
2. Some members of Congress have publicly stated the Federal Estate Tax Law will be re-imposed retroactively to January 1, 2010. The longer Congress fails to act, the less likely it is to occur. There are substantial legal questions if a tax law is imposed retroactively.
3. The income tax basis rules on inherited assets is also changed **BUT ONLY FOR THE YEAR 2010**. Instead of a universal “step-up” in income tax basis to fair market value at date of death, there is a modified “carry over” basis rule which is presently in effect. In order to confuse things ever more, this modified carry over basis rule is only applicable for the year 2010. On January 1, 2011, we revert back to the “step up” in basis rules which we had in 2009. This is another area that some members of Congress have stated will be addressed “retroactively”.

### THE GOOD NEWS!

There is some good news we can report – the Oklahoma Estate Tax permanently expired at Midnight, December 31, 2009. There is no movement to reinstate the Oklahoma Estate Tax, even though the State is in dire financial circumstances. The proposed State budget for the next fiscal year does not contain any indication that there will be revenues from the Oklahoma Estate Tax.

If the Federal Estate Tax law is re-imposed with a \$1 Million Dollar exemption, that law contains a provision for something called the “state death tax credit”. Although Oklahoma does not technically have an estate tax, it does have a “catch up” type of estate tax equal to the allowable Federal Estate Death Tax Credit. Although this would not actually result in more tax, it would result in Oklahoma being able to share in some of the Federal Estate Tax. Not a tax increase, but it would divert some revenues to the State of Oklahoma.

## **WHAT TO DO**

In order to deal with this unfortunate estate tax situation which has been caused by an irresponsible Congress, we recommend the following:

1. Watch the news. If you hear news about the Federal Estate Tax being reinstated, call our office and we will be happy to bring you up to date.

2. Although many practitioners feel that the Federal Estate Tax when reenacted will contain a \$3.5 million dollar exemption as we enjoyed in the year 2009, there is no guarantee that this will actually happen. It is entirely possible that we will revert back to a \$1 million dollar Federal Estate Tax Exemption with a maximum Federal Estate Tax rate of 55%. If this occurs, then many estate plans will need to be revised to accommodate the potential increase in Federal Estate Taxes. Strategies such as the utilization of irrevocable life insurance trusts will have much greater significance.

3. If you are planning your estate, the prudent course of action would be to anticipate a \$1 million dollar exemption and plan accordingly rather than gamble on having a \$3.5 million dollar exemption and leave a nasty surprise for your heirs. Remember, if we revert back to a \$1 million dollar Federal Exemption, the Federal Estate Tax on amounts over that exemption start at 55%.

If you have any comments or questions regarding this Riseling Report, please contact us.

## **RISELING & RHODES, P.C.**

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