



## FALL 2010 ESTATE PLANNING UPDATE

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As many readers may be familiar, the laws governing estate planning are constantly changing and evolving. Below are some of the more recent updates to the law governing estate planning:

### I. Wisconsin's New Durable Power of Attorney Act

On September 1, 2010, Wisconsin's new Uniform Power of Attorney Act came into effect. The adoption of the new Uniform Power of Attorney Act will significantly change Wisconsin's existing laws governing powers of attorney in a number of ways, including:

- All powers of attorney drafted pursuant to the new law and after September 1, 2010 will automatically be considered durable, unless the principal provides otherwise;
- Allowing for greater flexibility in accepting an agent's authority and adding provisions to prevent and redress financial abuse;
- Extending protection to principals by adding provisions which will prevent an agent from abusing their authority under the power.

### II. Federal Estate Tax to Return in 2011

In 2001, Congress passed the Economic Growth and Tax Relief Reconciliation Act of 2001, which, over time, increased the estate tax exemption to \$3.5 million and ultimately repealed the estate tax for 2010. Of course, at the time, no one thought Congress would allow the estate tax to expire in 2010. Nevertheless, Congress did not take any action, and the estate tax ceased to exist as of January 1, 2010.

Nonetheless, the Economic Growth and Tax Relief Reconciliation Act of 2001 only repealed the estate tax for 2010. The estate tax will return from its one-year hiatus on January 1, 2011, with a \$1 million exemption and maximum tax rate of 55%. In the meantime, Congress has been debating how the estate tax should be reinstated. There are three competing lines of thought on how Congress should handle the estate tax:

- Retroactively reinstate the estate tax. In other words, Congress would pass a law which would rescind the one-year repeal and reinstate the 2009 \$3.5 million exemption and 45% rate effective as of January 1, 2010.
- Do nothing. If Congress does nothing, the estate tax will be reinstated on January 1, 2011, with a \$1 million exemption and maximum rate of 55%.
- Reinstatement of the estate tax as of January 1, 2011, with a \$3.5 million or higher exemption and a maximum rate ranging from 35% to 45%.

Page 1

Political Commentators are predicting that Congress will likely not retroactively reinstate the estate tax and will eventually pass legislation to permanently keep the exemption at \$3.5 million, with a maximum rate between 41% and 55%. Only time will tell.

Despite the fluctuating nature of the estate tax, most estate plans are written to take into account changes in tax law. However, it is always beneficial to review your estate plan every three to five years to ensure that taxes are minimized, circumstances have not changed, and the appropriate beneficiaries are accurate.

### **III. P.O.D. Beneficiaries Do Not Have to Contribute to Estate Taxes**

The Wisconsin Supreme Court, in *Estate of Sheppard v. Schleis*, 2010 WI 32 (May 2010), recently ruled that a decedent's estate could not recover a portion of the federal estate taxes from the recipient of the decedent's payable-on-death (P.O.D) account. The Court concluded that P.O.D. accounts do not constitute "lifetime transfers" under the particular Internal Revenue Code provisions allowing an estate to recover the estate taxes attributable to lifetime transfers; thus, "the P.O.D. accounts are therefore not required to pay any portion of the federal estate taxes." The Court further held that the beneficiary of a P.O.D. account is not required to reimburse an estate for some or all of the Wisconsin estate taxes connected to the P.O.D. account when a decedent dies with no will.

If you have any questions regarding any of the above topics or any other estate planning questions, please feel free to contact me or any of our estate planning attorneys at (920) 437-0476.