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September 10, 2009

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WILL THERE BE ESTATE TAX REFORM? WHAT WILL IT LOOK LIKE?

There are several Bills pending in the House of Representatives and the Senate dealing with estate tax reform. At a seminar I attended recently, the speaker indicated that the favored Bill among the Democrats was Senate Bill 722, the "Taxpayers' Certainty And Relief Act Of 2009." Some of the key provisions of the Taxpayers' Certainty And Relief Act Of 2009 are as follows:

1. The Federal Estate Tax exemption would remain at \$3.5 Million and would be indexed for inflation after 2010.
2. The Estate Tax rate would remain at 45%.
3. Gift Tax and Estate Tax exemptions would be unified, such that taxpayers can give up to \$3.5 Million during life or at death which would be exempt from both Federal Gift Tax and Federal Estate Tax.
4. Special Use Valuation would increase from \$750,000.00, indexed for inflation, up to the current Estate Tax exemption amount of \$3.5 Million.
5. The concept of "portability" is introduced. Portability allows the first spouse's exemption to be used in the second spouse's estate. The second spouse to pass away would have his/her own \$3.5 Million exemption, plus any unused exemption amount from a prior deceased spouse. This concept is called the "Aggregate Deceased Spouse Unused Exclusion Amount" or "ADSUEA." The Bill puts a limit on stockpiling exemptions from multiple marriages. An election would be required at the first spouse's death to take advantage of any ADSUEA at the second spouse's death. The election would have to be made on a timely filed Form 706, regardless of the estate size. This election would be required by an executor and would be irrevocable.

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