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Federal Death Tax – Is it Coming for You?

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We were hoping to bring you an update on changes to the Federal Estate or death tax. Unfortunately, as of this writing, Congress and the President have yet to decide just what those changes will be. For 2012, estates under \$5,120,000 pay no estate tax. With proper planning, married couples can pass up to \$10,240,000 to their heirs without paying any estate tax.

Currently, the tax rate for that portion of an individual's estate over \$5,120,000 and a married couple's estate over \$10,240,000 is 35%. However, the current estate tax law is going to expire at the end of 2012.

For those who die January 1, 2013, only the first \$1,000,000 of an individual's estate and \$2,000,000 of a couple's estate will be exempt from the federal estate tax. Also, the tax rate on the amount over the exemption goes up to 55%. Because of this uncertainty we have several clients wondering whether a change to their estate plan is necessary and if so, what those changes should be. While we do not have a crystal ball, we believe Congress will leave the exemption where it is or set it at \$5,000,000, and here's why.

First, the exemption from the federal estate tax has never gone down. That is like raising taxes and politicians are loathe to raise taxes, except on the very wealthy. Perhaps surprisingly, people with \$1,500,000 to \$3,000,000 estates are considered middle class and should be safe from a reduction in the estate tax exemption. Second, the media has been reporting that a number of Democrats in Congress have sent letters to their leadership expressing their desire to leave the exemption at \$5,000,000. It appears that the momentum is to leave the exemption where it is. However, Congress may be willing to let the tax *rate* increase even if the exemption remains the same.

Hopefully, by our next newsletter, Congress and the President will have resolved this issue permanently, instead of setting an exemption that lasts only two years, thereby allowing us to create and maintain estate plans with some confidence of what will be happening in the future.