



## The State of the Estate Tax: Part I

On January 1, 2010, among all of the usual festivities and football games, you may not have noticed that our country experienced something for the first time since 1916. There is no estate tax - at least, not for the moment.

The tax system that integrates the estate, gift and generation-skipping transfer (GST) taxes, generally collectively referred to as the "death tax," has long been the subject of immense debate regarding its utility in generating revenue for the government. Prior efforts at repeal have failed, and several unsuccessful measures regarding these taxes were introduced by both the U.S. House and Senate in 2009. To the surprise and disappointment of estate planners and tax practitioners, Congress recessed last December without enacting legislation to extend the estate tax through 2010. As a result, the tax sunset on December 31, 2009 and the waters in this area will remain muddy until Congress reconsiders the issue and passes new legislation.

The issue of whether there should be an estate tax, and if so, for which estates and at what rate, has been on Congress's to-do list since 2001 when it passed the Economic Growth and Tax Reconciliation Act of 2001 (EGTRA). This tax bill provided for a gradual reduction of the estate and GST taxes through 2009, followed by a one-year repeal for 2010, and followed again by a reinstatement of the tax in 2011 - at 2001 levels.

In 2001, estates were taxed at a rate of 55% with a \$1,000,000 applicable exclusion amount, which is the amount of a decedent's assets that is effectively exempted from the estate and gift taxes after application of the unified credit against those taxes. The unified credit acts to set the amount of lifetime gifts, as well as property passing at death, that may be exempt from taxation. In other words, an estate generally will not be subject to taxation unless its value exceeds the applicable exclusion amount available in the year of death. For 2009, the applicable exclusion amount was \$3,500,000 and the maximum rate of federal tax on estates was phased down to 45%.

The inaction of Congress on this important issue has left estate planners and tax advisors begging for clarity as the eight-year deadline for estate tax repeal (or reform . . . pick your side of the aisle) expired with the stroke of the clock. Don't get too excited - a whole new set of tax rules replace the former rules for 2010, so there effectively remains a "death" tax. However, congressional Democrats have recently vowed to pass a "patch" tax bill when Congress reconvenes. This "patch" would be retroactive to January 1, 2010, and would restore the former rules (and 2009 levels) through 2010. Effectively, this would give Congress one more year to decide whether to enact reform or repeal or let the tax return to 2001 levels.

It is always a good idea to review your estate plan periodically. Due to the progressive increases in the unified credit this decade, as well as the threat of a future decrease of the credit, now is as good a time as ever to reevaluate your current estate plan to ensure that it has the

flexibility to maximize whatever unified credit may be available to your estate. Additionally, you may want to take a fresh look at which assets may be included in your gross estate for estate tax purposes (life insurance, for example) since a reduced unified credit may result in a taxable estate that may not have been taxable at the time your plan was put into place.

Regardless of the direction Congress takes on this issue, the estate tax promises to be a dynamic topic in Washington this year and figures to feature prominently in this year's elections. We will be following Congress's every move, and you should look for updates on this topic in our upcoming newsletters. In the meantime, our estate planning attorneys would be happy to help you analyze your current plan and provide you with appropriate recommendations to ensure that you and your family avoid the diminution of the value your estate through avoidable tax liabilities.

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## DEBT COLLECTION 101: Protecting Your Ability to Collect Receivables

In a prior edition of our firm newsletter, I outlined the key elements of a well crafted Customer Account Form. In that article, I explained that this form, signed by the customer, is your first line of defense in collecting funds due to your business. In this article we will go a little deeper to illustrate how collection starts BEFORE the receivable goes bad, not after.

A recent call from a client located in Denver illustrates this point. His customer in Vail owed him \$4,600. Our client wanted to know what he should do to collect the debt. My first question was, "Did you have your customer sign an account form or contract that entitles you to choose the court venue and to collect attorney fees in a court action?" He answered, "No."

This businessman is in a situation where the economics now favor his delinquent customer. He now has to weigh: (1) "How much can I afford to spend to collect \$4600?" (2) "What extra costs and time will be incurred to travel to my customer's home court?" and (3) "What is the lost opportunity cost of chasing bad debt instead of focusing on current paying customers?" Many business owners in this situation abandon pursuit; others collect pennies on the dollar, if anything at all. This businessman, as a result of not using a well drafted Customer Account Form, found himself struggling against himself, instead of the debtor.

The best defense is a good offense. So remember, properly draft your Customer Account Form and have it signed by your customer. At a minimum, your form should include the following clauses: (1) Attorney fees - this clause provides that the debtor causing the problem pays for the legal costs you incur; (2) Venue selection - set the venue for all commercial lawsuits in your own county so the debtor, not you, bears the expense of having their attorney travel; (3) Limitations on countersuit - this provision should limit the dollar amount for which a debtor can countersue to the dollar amount the debtor actually paid you; (4) Time limitations - it is important to limit the time period a customer can bring a claim or lawsuit against you; and (5) Personal guaranty - this clause allows you the ability to collect from the individual owner in the event his business fails.

Start 2010 off right; resolve to review your company's existing Customer Account Form or to put one into place immediately. Create the economics where you can place delinquent accounts with your attorney for collection and keep your attention and resources where they belong: focused on your valuable, paying customers. We wish you a happy and profitable new year!

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