

Compilation of Estate Planning Newsletters – (LISI) Reproduced Courtesy of Leimberg Information Services, Inc.

Steve Leimberg's Estate Planning Email Newsletter: Key Numbers for 2010

LISI Estate Planning Newsletter # 1537 (October 23, 2009)

It drives me crazy when I search for key numbers and can't find them. LISI posted these on our ActualText archives last week – but you may have missed them. So here they are, up-front and center!

EXECUTIVE SUMMARY:

Here are the most important 2010 numbers for estate planning purposes:

FACTS:

- Annual Exclusion - \$13,000.
- Federal Estate/GSTT Exemption - \$3,500,000 per person (I'm assuming Congress will not surprise us and either (a) do nothing (If no action is taken, the federal estate tax will be repealed for just one year, 2010, and then will be restored in 2011, with a \$1 million exemption) or (b) enact a higher or lower amount.
- Gift Tax Exemption - \$1,000,000.
- Dollar Amount Used to Compute "2 Percent" Portion of 6166 Calculation - \$1,340,000
- Section 2032A "Special Use" Qualified Real Property Value Reduction Limit - \$1,000,000
- Exclusion for Present Interest Gifts from Citizen to Non-Citizen Spouses (IRC Sec 2523(i)(2)) - \$134,000.
- Notice of Large Gifts from Foreign Persons (IRC Sec. 6039F) - \$14,165
- Average Income Tax Threshold for Expatriation to Avoid Tax (Code § 877) - \$145,000
- Reduction in Amount of Gain Included in Gross Income Upon Expatriation (IRC Sec. 877A) - \$627,000

WANT MORE?

- IRS Inflation-Adjusted Tables for 2010 Rev. Proc. 2009-50, 2009-45 I.R.B. 1 (October 15, 2009).
- Pension Plan Limitations for 2010 – IR-2009-94

I rarely make predictions, especially those about the future.

But my guess is that Congress will – on November the *.* - continue the wild rumpus with essentially the same numbers and rules we have now.

LISI will keep you posted!

HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE.



Steve Leimberg

CITE AS: LSI Estate Planning Newsletter #1537 (October 23, 2009) at <http://www.leimbergservices.com>

Steve Leimberg's Estate Planning Email Newsletter: Berall's Predictions About Estate and Gift Tax Legislation

LISI Estate Planning Newsletter # 1538 (October 23, 2009)

We just sent out Estate Planning Newsletter # 1537 with some key 2010 numbers and foolishly made predictions about what Congress will do – and when. The electronic ink hadn't dried before we received this.

Long-time LISI commentator Frank S. Berall, who has provided previous LISI tax and same-sex marriage law commentaries, now provides members with recent Washington tax developments.

Frank S. Berall, principal of Copp & Berall, LLP, was Co-chair (since 1977) with Prof. Regis Campfield, of the Notre Dame Estate and Tax Planning Institute, is on the editorial boards of the Connecticut Bar Journal and Estate Planning, was a former Regent of the American College of Trust and Estate Counsel, is a Vice President of the International Academy of Estate and Trust Law, was former Co-chair of the Hartford Tax Institute's Advisory Council for ten years, was a part-time faculty member of Yale Law School, the University of Connecticut Law School and in the University of Hartford's Graduate Tax Program.

Frank is a frequent speaker at many tax institutes, has published 127 articles, portions of 13 books and co-authored two Tax Management Portfolios. He has been recognized for his expertise in both trust and estate law as well as tax law in all editions of the Best Lawyers in America and is named as one of the top 50 Connecticut Super Lawyers and the New York area's Best Lawyers.

Here are Frank's thoughts on what Congress will do – and when:

EXECUTIVE SUMMARY:

Based on a speech by John Buckley, Chief Tax Counsel for the House Ways and Means Committee, the 2009 law with its \$3,500,000 per person federal estate tax exemption and \$1,000,000 gift tax exemption will probably be extended, at least for one year, probably just before Christmas. Various proposed changes to discounts and GRATS will probably not be acted on at that time nor will there be any recoupling or transferability of credits. Carryover basis will probably be repealed.

FACTS AND COMMENTS:

POINTS MADE IN BUCKLEY'S SPEECH:

John Buckley, Chief Tax Counsel for the House Ways and Means Committee and formerly Chief of Staff of the Joint Committee on Taxation, spoke on Friday, October 2, 2009, at the 35th annual Notre Dame Tax and Estate Planning Institute in South Bend, Indiana, to an audience of 800 lawyers and accountants.

He began by analogizing the existing uncertainty about the estate and gift taxes to the pre-1939 tax laws. Congress reenacted these every other year. The result was a lack of predictability and thus uncertainty in tax planning.

Enactment of the Internal Revenue Code of 1939 gave some stability to the tax law, thus enabling practitioners and their clients to do better tax planning. This was replaced by the Internal Revenue Code of 1954. The latter became the Internal Revenue Code of 1986.

Buckley pointed out that in 2001, during George W. Bush's first term, there was a controversy between factions in Congress; one group favored complete repeal of the estate and gift tax laws by extensive rate reductions which would ultimately lead to actual repeal.

The Joint Committee on Taxation was concerned that repeal would have an adverse impact on the income tax. Instead of rate reductions leading to repeal, the committee preferred exemption increases. These would benefit small and medium estates, thus gradually eliminating many taxpayers who, after finding their estate would not be liable for tax at their death, would no longer be concerned about repeal.

Mr. Buckley pointed out that one of our perennial and present speakers at Notre Dame, Jonathan Blattmachr, wrote a letter in 2001 which resulted in a major change being made in the 2001 Act. He urged a gradually increased exemption, to shrink the constituency favoring repeal of the estate and gift tax laws. Ultimately, the estate and gift tax provisions that were adopted had a nominal rate reduction for estates retaining a state death tax, but no federal credit for it.

Thus, the 2001 Act's estate and gift tax provisions, presently still in effect and expiring at the end of 2010, gradually increased the exemption to the present \$3,500,000.

But, as a result of the ten-year budget cycle, in 2010 the estate and gift tax will expire for one year. Then, the 2001 law sunsets in 2011. Unless Congress acts before 2011, the lower exemptions, rates and other provisions in force prior to the 2001 Act will return.

Furthermore, during 2010, when the estate and gift tax rates will be zero, for revenue reasons, the previously discarded concept of carryover basis will be revived. This will also guarantee that there would be no complete repeal of the estate and gift tax. Between 1978 and 1980, there had been a successful struggle to repeal carryover basis, after it surfaced in the 1976 Tax Reform Act.

Mr. Buckley, in response to a direct question, predicted that carryover basis would not be permitted to become effective and would disappear. Although he firmly believes that extension of the current law will mean repeal of carryover basis, he qualified his answer, saying that this was just his reasonably well informed opinion and Congress might do something else.

His main prediction is that the estate and gift tax rates and exemption levels will be extended at their present 2009 level, because the pego (pay as you go) rules require Congress to pay for any new benefits either by increasing other revenues or cutting spending. However, certain policies, including permitting the extension of the 2009 estate and gift tax rates, are exempt from pego. But, further rate liberalization would require other offsets.

Mr. Buckley hopes that the 2009 law will be extended. He believes this will probably occur between Thanksgiving and Christmas. He thinks that the House of Representatives will vote for permanent extension of the 2009 rates, but the Senate may hold the extension to a single year, to prevent the odd situation of 2010 decedents being exempt from estate tax.

Buckley also believes that various proposed discount and GRAT changes will probably not be considered this year, nor will there be recoupling nor transferability of credits.

Finally, he mentioned that Representative Charles Rangel of New York, Chair of the House Ways and Means Committee, while favoring extension of the 2009 rates and exemptions to 2010 may then decide to do nothing further about the transfer taxes. The result will be that for 2011 deaths, the pre-2001 law will be revived.

In subsequent informal discussions with Mr. Buckley, I received the impression that when he was a very junior staff member of the Ways and Means Committee in 1976, he was involved in creating carryover basis. Also, although he tried to be neutral in his discussion, he was aware of the four year efforts made by various groups, including the American College of Probate Counsel (now the American College of Trust and Estate Counsel) which I then represented and thus testified at a number of House and Senate hearings, urging repeal of carryover basis.

Jonathan Blattmachr wrote a 1977 book about carryover basis to guide practitioners. He co-authored an article with me and others in Estate Planning on the 2001 Act's carryover basis provisions (effective in 2010, if Congress does not act). He believes carryover basis will not come into effect, but, if it does, he said he will update his book (and make a fortune in royalties).

Apart from the opinions expressed by John Buckley, Chief Tax Counsel of the House Ways and Means Committee, the general consensus of many of the Notre Dame speakers was that Congress would probably act before the end of this year to extend the present estate and gift tax laws.

If this does not occur until 2010, the extension would then be retroactive to the first of that year. Retroactive estate and gift tax laws are believed to be constitutional.

Stay tuned to LISI for the latest developments!

HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE.

Frank Berall

CITE AS: LISI Estate Planning Newsletter # 1538 (October 23, 2009) at <http://www.leimbergservices.com> Copyright 2009 Leimberg Information Services, Inc. (LISI). Reproduction in Any Form – or Forwarding to Any Person Prohibited – Without Express Permission.

Steve Leimberg's Estate Planning Email Newsletter: FLASH – Aucutt – Ways and Means Committee Chairman Taking Up Estate Tax

LISI Estate Planning Newsletter # 1539 (October 26, 2009)

Ron Aucutt is a partner in the McLean, Virginia (Tysons Corner) office of McGuireWoods LLP and is the group leader of the firm's trusts and estates practice group.

Ron brings us the very latest news out of Washington on estate tax reform. He indicates momentum for action is picking up.

FACTS:

In the last couple weeks, House Ways and Means Committee Chairman Charles Rangel (D-NY) has been talking more about the estate tax.

For years, most significant clues about likely congressional action have been found in the Senate, especially in the Finance Committee, including the early permanent repeal efforts led by Senator Jon Kyl (R-AZ) and others, the subsequent compromise efforts led by Senators Kyl and Blanche Lincoln (D-AR) and others, and S. 722 introduced by Chairman Max Baucus (D-MT) on March 26, 2009. (S. 722 would make 2009 estate tax law permanent, index the applicable exclusion amount for inflation, reconfirm the gift tax and estate tax exclusion amounts, make the unified credit portable from deceased spouses to surviving spouses, and increase the benefits of special use valuation for family farms and other family businesses with substantial real estate.)

In the Democratic-led 110th Congress (2007-08), Chairman Rangel said little about the estate tax and seemed to have little interest in fixing the "problem" of the one year repeal in 2010 followed by a full reversion in 2011 to pre-2002 law, a problem that had been created in the Republican-led Congress in 2001.

With a Democrat in the White House and larger Democratic congressional margins this year threatening to make this a "Democratic problem" if the Democratic leadership cannot fix it, there has been a greater willingness to acknowledge that some action is needed before the end of the year.

Furthermore, a consensus of sorts has developed that the proper response is to simply extend 2009 law, with a \$3.5 million estate tax exemption and a top 45 percent rate. This consensus was seen in both the Obama Administration's budget proposals and the fiscal 2010 Congressional Budget Resolution.

Even so, at least through September, the infrequent references to the estate tax by Chairman Rangel and others close to the Ways and Means Committee leadership tended to hold out the possibility that 2009 law would be extended only for one year, eliminating the repeal year but leaving permanent stability to another day and, with the revenue gains from 2010 already harvested, a higher price tag.

Then on October 14, after a meeting with the Democratic members of the committee, Chairman Rangel said that the committee was considering moving at least three items – the economy and jobs, the "extenders" of temporary provisions, and the estate tax – independently of health care

reform. Unlike past references to the estate tax, however, the reports of his remarks did not reveal the same inclination to limit the extension of 2009 law to only one year.

On the next day, the whole Ways and Means Committee met and, by a largely party-line vote, rejected Republican efforts to reopen the decisions the committee had previously made regarding health care reform. Understandably this action provoked considerable discussion of the political implications for the health care reform debate. But the subtext was that the committee itself now had some time to step back from the health care debate and devote some effort to other tax issues, possibly including the three e's – economy, extenders, and estate tax – that Chairman Rangel had identified for attention the day before.

Sure enough, on October 22, Chairman Rangel described making the 2009 estate tax law permanent as a "high priority" and said he was working on legislation to accomplish that, so the House could take up the legislation when it had the opportunity. The legislative options are likely to be discussed in the next meeting of committee Democrats, which should be this week.

On the same day, Ways and Means Committee members Shelley Berkley (D-NV), Kevin Brady (R-TX), Artur Davis (D-AL), and Devin Nunes (R-CA) introduced H.R. 3905, called the "Estate Tax Relief Act of 2009." Under H.R. 3905, in each of the ten years from 2010 through 2019, the estate tax applicable exclusion amount would increase by \$150,000 and the top rate would decrease by 1 percent. Thus, by 2019 the exemption and rate would be \$5 million and 35 percent.

In addition, the deduction for state death taxes would be reduced 10 percent per year through 2019, when it would be eliminated entirely.

Finally, the \$5 million exemption would be indexed for inflation after 2019.

H.R. 3905 would also abandon carryover basis and make permanent the other 2001 transfer tax changes, including the several helpful rules regarding allocation of the GST exemption.

While the Ways and Means Committee Democratic caucus is unlikely to embrace such a reduction in the estate tax as H.R. 3905, the timing of the introduction of this bill confirms that committee members are getting ready to talk about the estate tax.

Thus, Ways and Means Democrats will have a lot to discuss when they meet this week. A week from now we will not have all the answers, but we might know more than we know now.

HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE.

Ron Aucutt

CITE AS: LISI Estate Planning Newsletter # 1539 (October 26, 2009) at <http://www.leimbergservices.com> Reproduction in Any Form or Forwarding to Any Person Prohibited – Without Express Permission.

Adapted from Ronald D. Aucutt's "Capital Letters" on the website of the American College of Trust and Estate Counsel.

© Copyright 2009 by Ronald D. Aucutt. All rights reserved.

Steve Leimberg's Estate Planning Email Newsletter: An Insider's Perspective on the IRS's Estate and Gift Tax Staff

LISI Estate Planning Newsletter # 1542 (October 28, 2009)

This week, **LISI** has provided members with commentary on various aspects of the never-ending estate tax reform saga. We first reported on the issue of federal estate tax reform in [LISI Estate Planning Newsletter #1539](#), and supplemented that with commentary on how Connecticut has attempted to deal with the issue of estate tax reform in [Estate Planning Newsletter #1540](#).

Now comes **Lorraine New**, who provides members with an insider's perspective on what's happening within the IRS regarding those who comprise the Service's Estate & Gift tax complement.

Lorraine F. New has a legal practice dedicated to helping other attorneys and taxpayers move through the intricacies of estate and gift tax law and procedure to seek a fair result. This follows a career as an estate and gift tax attorney and manager for the IRS in the state of Michigan. In the past, Lorraine has provided **LISI** members with information as to what's happening inside the IRS, including [Estate Planning Newsletter # 1109](#), [Estate Planning Newsletter #1096](#) and [Estate Planning Newsletter #1089](#).

Here are her observations:

EXECUTIVE SUMMARY:

The calendar says October 2009, but do any of us know with 100% certainty where the estate tax is going? We may be able to get some clues from the IRS's current estate tax staff.

FACTS:

As we move ever closer to 2010, the future of the federal estate tax is still unclear. The Internal Revenue Service Estate and Gift Tax staff, however, appears confident that work for them will continue since they have hired 15 new staff in California, and now new attorneys for Florida.

Recently, the Estate and Gift Tax managers had a nation-wide meeting, followed by a meeting with all estate tax attorneys. These items are investments for the long term of estate tax work; if the estate tax goes away, estate tax attorneys cannot be automatically "absorbed" into the Internal Revenue Service, since attorneys have appointments that are excepted, and not career.

Comment:

Anita Babb is the current director, with a background in collection matters. The staff is divided into four territories, 27 groups, and still has a national program.

This means that audits can be assigned anywhere in the country. Face- to- face audits are not prohibited if called for by the facts and circumstances.

All employees have a performance plan and standards that measure critical job elements that include completion of audits, timely and accurately. Managerial involvement is also required and measured.

Valuation issues are still the majority of audits. Family Partnerships discounts remain an appeals coordinated issue, which means that potential settlement of cases in Appeals are reviewed by the Coordinator for consistency.

The IRS's Estate and Gift Tax program recently started working with state and county authorities in several states to determine if real estate transfers reported to them are unreported gifts. Although a tax may not be due, a gift tax return may be required for real estate transfers above the applicable exclusion amount. In addition, attorneys will be looking for a pattern of such unreported transfers.

The IRS has a procedure to file a return on behalf of a taxpayer who does not cooperate. Penalties will be considered on all delinquent taxable gift tax returns filed.

In many states, real estate values have plummeted and properties

cannot be sold for the amounts that appraisals indicate, based upon prior sales information. The IRS has indicated that they are aware and sympathetic to this. While there isn't any new discount or theory to apply, documentation of attempted sale, actual sales, etc. supplied to the auditor may have an impact.

Automatic six month extension of 706, Estate tax return, is made by filing Form 4768, Application for Extension of Time to File a Return and/or Pay U.S. Estate Taxes.

However, the Internal Revenue Service no longer returns the approved form to you. As a result, it is recommended that you send the form with some sort of tracking or proof of receipt to show that it was timely filed to avoid any problem should the form be mislaid.

Additionally, closing letters are no longer being sent to attorneys of record, but only to the Executor. This means that you need to educate the Executor about the meaning of this form and the necessity to let you know when it is received.

I continue to hear complaints about long periods of audit inaction by estate tax attorneys, difficulty for practitioners in finding telephone numbers to make contact, and even the threat of assessment of fraud penalties when an obvious inadvertent error was made on an estate tax return. Managers I worked with indicate that there is continuing pressure on them to do more with less.

Finally, of ever increasing assistance is the Cincinnati Service Center Estate Tax Unit. These individuals can help you track a case, let you know if it is closed or what amount might be due. They can get you to the Code section 6166 staff, or to the proper IRS Estate and Gift Tax manager. Their toll-free number is 1-866-699-4083.

HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!

Lorraine New

CITE AS:

LISI Estate Planning Newsletter #1542 (October 28, 2009) at <http://www.leimbergservices.com> Copyright 2009 Leimberg Information Services, Inc. (LISI). Reproduction in Any Form or Forwarding to Any Person Prohibited – Without Express Permission.