

Estate Planning Is Still Necessary, Even If The Estate Tax Goes Away

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Many of our Physician clients have recently been asking us, “What is the purpose of estate planning since the estate tax has been (or is about to be) repealed?” Estate planning and asset protection are still very important for professionals.

First and foremost, the estate tax is not (and never has been) the only reason to do estate planning. Estate planning is more than tax planning. An individual estate plan will address more than just taxes; it should reflect the needs of your family and promote the values and objectives that you want. Even if there were no estate tax, you might still need to appoint a guardian for minor children, address the terms of the disposition of assets, arrange the ownership of assets to reduce your vulnerability to risks and liabilities, determine the succession of management and ownership of a medical practice or other operating business, make arrangements for the needs of beneficiaries who have special problems and circumstances, or some combination of the above. The object is not just to save taxes, but also to provide for an orderly distribution of assets that reflects your values and meets your family’s needs. A complete estate plan addresses not only the tax planning and distribution planning, but also includes a review of all medical and financial decisions that we may make.

In most cases, the non-tax issues addressed in the estate plan far overshadow and outweigh the importance of the tax planning, even though the tax planning element is undoubtedly important. Also, there are numerous cases where the lack of estate planning documents have resulted in adverse consequences—the frustration of the deceased person’s intentions, family conflicts over the disposition of assets, the dissipation of assets by beneficiaries who lack maturity and guidance, and the failure of a family business due to succession issues.

That said, we would like to address the current state of estate tax law. Under the current scheme, established by the 2001 tax act, the threshold for imposition of a federal estate tax has been increasing in stages. Currently, it is \$2 million; it will increase to \$3.5 million on January 1, 2009. On January 1, 2010, the estate tax will be eliminated entirely—but then reinstated, at a much lower threshold, in 2011. The 2001 act also reduced the top marginal rate from 55% to 46%, and it is programmed to decrease again to 45% next year. Also, in 2010 and thereafter, there will continue to be a gift tax on lifetime gifts, and a significant change in the rules for determining income tax on the proceeds of the sale of inherited assets.

Even though the estate tax is scheduled to be eliminated, the gift tax, under any current or proposed legislation, will remain in effect. In addition, planning will still accomplish avoidance and deferral of the Ohio estate tax, which currently has a top rate of 7%. Contributions to charity will continue to qualify for a charitable deduction.

Recently, there has been a movement to repeal the estate tax, or to at least make the repeal scheduled for the year 2010 permanent. While President Bush supports repeal, it is uncertain whether the proposed repeal has the support of the necessary sixty votes to override a threatened

filibuster in the Senate. There have been a number of possible compromises suggested: increasing the amount per person that is exempt from federal estate taxes to \$3 million, or even more; reducing rates; and other changes which would drastically reduce the number of individuals required to file and pay federal estate taxes, but still stop short of repeal. This uncertainty has persuaded many individuals to avoid any planning in an effort to wait for a final decision before putting in place a “final estate plan.”

The only thing certain about the tax laws is that they will never remain the same, especially in an election year; so if you are waiting for some certainty in the tax laws before establishing an estate plan, you will never take the first step. Also, your family’s non-tax planning concerns will never be resolved by an act of Congress. We would urge you to consider your estate planning issues at your earliest opportunity so that your affairs are in order—not just for tax planning, but to protect your family as well.

Mr. Burke and Mr. Morley concentrated their law practice in the areas of estate planning, business succession planning, retirement plan administration, and probate administration. They can be reached at (330) 253-5060.