

November 2, 2009

H.R. 3905 – A New Bill Introduced in the House of Representatives to Provide More Certainty Regarding Estate Taxes Starting in 2010.

The current federal estate tax law exempts \$3.5 million (or \$7 million for a married couple) from estate taxes at death and applies a tax rate of a flat 45% on the excess value of an estate above those amounts. Current law also provides that the estate tax will be repealed in 2010 for one year only (with carryover basis to the recipients of assets inherited in 2010) and a return to 2001 estate tax law in 2011 and beyond with the estate tax applying to estates of over \$1 million (or \$2 million for married couples) with a tax rate as high as 55%.

A proposed new law, H.R. 3905, the “Estate Tax Relief Act of 2009,” was introduced on October 22, 2009 by House Ways and Means Committee members Shelley Berkley (D-NV), Kevin Brady (R-NV), Devin Nunes (R-CA) and Artur Davis (D-AL). This bill would repeal both the one-year termination of the estate tax in 2010 and the carryover basis rules that would apply in that year to inherited property. It would also increase the estate tax exemption equivalent amount from the current \$3.5 million in 2009, by \$150,000 per year between 2010 and 2019, to a maximum of \$5 million per estate (\$10 million for married couples) in 2019 and beyond. The \$5 million exemption amount would be indexed for inflation after 2019. In addition, the top estate tax rate (currently 45%) would decrease by 1% per year starting in 2010 until 2019, when it would stand at 35%.

The measure would also phase out the deduction from the federal taxable estate for state death taxes (inheritance or estate taxes), currently 100% deductible and slated under the new bill to have the deduction reduced by 10% each year starting in 2010 to be completely phased out by 2019. This would increase the effective amount of tax paid by estates of decedents residing in or owning property in one of the twenty-five states that still impose estate or inheritance taxes.

We will monitor this bill and others that might be introduced in the coming months and keep you updated. One thing appears very likely — Congress will take some action before the end of 2009 to prevent the estate tax from being repealed in 2010. If not H.R. 3905, we may see a simple “band-aid” solution to the perceived problem — an extension of current law (\$3.5 million exemption per estate) for another year to prevent the scheduled 2010 repeal of the estate tax. Stay tuned.

