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Is the Death Tax Dead or on Life Support?

January 1st has brought about not only a new year and a new decade, but also some very significant changes in the law that will have a profound effect on many estate plans. For the first time in nearly a century, a major component of our federal tax system--the death tax--is no longer in place.

What does this mean? It would appear that under the current law a deceased person can leave assets of *unlimited* value to his or her heirs, completely free of death tax!

But that's only the beginning of the story. Unless Congress enacts new legislation (see below), the federal death tax will be permanently reinstated in 2011, but at much higher rates and lower exemption amounts than what applied in 2009. In short, the tax will be much more burdensome and will affect a much larger segment of the population as compared to recent years.

Even further complicating matters is the possibility that Congress will pass legislation to retroactively reinstate the death tax for *this year*. So, although there is no death tax in effect under the law as it exists today, this may change depending upon the whims of Congress!

So what does all of this mean in terms of planning for your loved ones? Many wills and trusts are structured to minimize, or even eliminate, the impact of the death tax. Gifts provided for under those wills and trusts are specially defined to produce this result. For instance, many married people divide their estates into two broad portions: one portion equal to the unused estate tax exemption, which typically goes into a "bypass" or "family" trust, and the other portion going to a special "marital" trust. But this method of dividing the estate loses its meaning if the death tax is no longer part of the law. For this reason, many

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Quote of the Day

"...a government big enough to give you everything you want is big enough to take everything you have."
 --Thomas Jefferson

Points to Ponder

If lawyers are disbarred and clergymen defrocked, doesn't it follow that electricians can be delighted, musicians denoted, cowboys deranged,

models deposed, tree
surgeons debarked and dry
cleaners depressed?

wills and trusts should be revised to account for the possibility of death at a time when the death tax may not be in effect.

We strongly encourage you to schedule an appointment with one of our attorneys to ensure your estate plan continues to carry out your wishes, regardless of the status of the law.

Looking Ahead

In a future issue of the DWS Connection, we will discuss certain income tax changes taking effect in 2010 and how your estate plan can minimize the impact of these changes to your heirs.

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