



## Estate Tax Repeal and Reinstatement

Adam L. Fernandez, Esquire

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Adam L. Fernandez, Esq.  
[afernandez@wispearl.com](mailto:afernandez@wispearl.com)

In 2001, President Bush signed The Economic Growth and Tax Relief Reconciliation Act of 2001 (the "Act") into law. The Act made significant changes in several areas of the Internal Revenue Code, including income tax rates, estate and gift tax exclusions, and qualified and retirement plan rules. All of the 2001 tax cuts are set to expire at the end of 2010 unless Congress acts to extend them. The uncertainty about whether or not Congress will act has left those subject to the estate tax and their advisers with no end of planning considerations.

Under the Act, if you die in 2010, your heirs will not be subject to the Federal estate tax (but they will be subject to complicated carry-over basis rules). However, if you live until 2011, not only is your estate again subject to the estate tax, but the amount that is exempt from taxation, which was \$3.5 million in 2009, will be reduced to \$1 million. In addition, the highest marginal rate of taxation on an estate, which had been 45% in 2009, will increase to 55%. In other words, if Congress does not act before the end of 2010, the law reverts back to what it was before the Act was enacted in 2001 and will affect many more taxpayers as a result, thereby causing many taxpayers to review their estate planning documents.

In addition, many wills prepared over the last ten years were drafted to take maximum advantage of the estate tax exemption, which kept increasing under the Act (for example, in 1999, the exemption was \$650,000; by 2009, it had reached \$3.5 million). Instead of naming a specific sum that would go into a trust, many wills refer to an amount up to the exemption or express the sum as a percentage of whatever the limit happens to be when the person dies. This was good standard practice, but in a year without an estate tax, such formula clauses may not achieve the desired result. It is possible that your existing estate planning documents may not produce the results that were intended at the time they were drafted.

Very recent statements made in Washington lead us to believe that Congress will not act any time soon to deal with this issue. It is therefore both prudent and advantageous that you contact your estate planning counsel at our Firm about whether amendments to your estate planning documents are necessary, especially if you have not had your estate plan reviewed recently.

In addition, for all of the talk right now about estate tax repeal, you still need an up-to date estate plan because estate planning goes far beyond taxes. Whether or not taxes were a concern for you in 2009 or might be again — either later this year or in 2011 — now is the time to revisit your estate plan. If you have a spouse, partner, children or charity you wish to provide for financially, or wish to name a guardian or trustee for your children who are minors or have special needs, it is extremely important that you have all of the basic estate planning documents necessary to leave your assets to the people or charities that you wish to benefit upon your death.

**About the Author:** Mr. Fernandez focuses his practice on structuring and implementing estate and tax planning strategies for individuals and closely held businesses. His work includes assisting clients with all of the legal and tax aspects of the administration of decedent's estates. If you have any questions, please contact Mr. Fernandez ([afernandez@wispearl.com](mailto:afernandez@wispearl.com)) or one of the other attorneys in Wisler Pearlstine's Estate Planning Practice Group. We look forward to hearing from you.

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