THE ESTATE TAX

WHY CONGRESS MUST ACT NOW TO PROVIDE ESTATE TAX RELIEF

Estate Tax

- The estate tax is imposed on transfers of property at death. The estate tax applies to property transferred at death if the value of the property exceeds the estate tax exemption.
- While the owner of the estate is responsible for the tax, the heirs often are responsible for the actual payment of the tax upon the death of the owner.
- The value of the estate to which the tax is applied includes all property the owner has an interest in at the time of death including life insurance, annuities, and business assets.

Current Status

- The 2001 Economic Growth and Tax Relief Reconciliation Act (EGTRRA) phased the estate tax out over 10 years. Under EGTRRA:
    - In 2009, the top tax rate was 45% and the exemption level was $3.5 million per individual ($7 million per couple). The basis of property received from a decedent is generally stepped-up to the fair market value (FMV) at the time of death.
    - In 2010, the estate tax is fully repealed. However, the basis of property received is a carryover basis, or generally, the original cost basis of the decedent. This carryover basis is modified slightly for 2010.

Looming Tax Hike

- In 2011, the estate tax returns to pre-2001 EGTRRA levels, i.e., a top tax rate of 55% and exemption of $1 million per individual ($2 million per couple). Additionally, for 2011, estates with a value over $10 million are assessed a surtax of 5% on the value up to $17.184 million which brings the rate on certain estates to almost 60%. The basis of property received is again stepped-up to the fair market value at the date of death.
- The uncertainty only adds more confusion to the burden of estate tax planning. For example, partial distributions are in abeyance because of the necessity of

retaining assets to cover potential 2010 tax if the estate tax is restored retroactively. That is just one example of the impact of delay and indecision.

OTHER ESTATE TAX RELATED ISSUES

Gift Tax

- A federal gift tax is imposed on lifetime gifts of property. Although the estate tax has been repealed for 2010, the gift tax remains in place.
- Individual taxpayers may gift up to $13,000 ($26,000 per couple)in 2010 without reducing the amount of the lifetime exemption. The top marginal rate for the gift tax is 35% per year with a total lifetime exemption of $1 million.

Generation-Skipping Transfer Tax

- The generation-skipping transfer tax is imposed to prevent bequests to successive generations, typically grandchildren.
- The generation-skipping tax (GST) applies to bequests made to grandchildren or others who are more than a generation younger than the decedent. The GST also sunset for 2010. It will revert back to the 2001 levels starting in 2011.

ESTATE TAX LEGISLATIVE PROPOSALS AND ACTION

- **Administration**
    - The Administration's FY2010 Budget Proposal permanently extended the estate tax at the 2009 levels of a $3.5 million exemption level ($7 million per couple) and a top rate of 45%.
    - The stepped-up basis rules would remain in effect.

- **The House**
    - The House of Representatives passed H.R. 4154 on December 3, 2009, which incorporated the Administration's proposal. This bill retains the estate and gift taxes at the 2009 levels of a $3.5 million exemption ($7 million per couple) and a top rate of 45% on a permanent basis. It is not indexed for inflation.
    - In addition, the H.R. 4154 reverts back to the stepped-up basis rules.

- **Senate**
    - The Senate did not act on the estate tax in 2009 and thus far has not acted in 2010.

- **Lincoln-Kyl Proposal**
    - This proposal allows a $5 million exemption level per spouse ($10 million per couple) and a 35% top tax rate.
    - This proposal was indexed for inflation, and includes a step-up in basis.
    - This provision passed the Senate as part of S. Con Res. 13 but was not included in the final conference agreement.

CHAMBER POSITION

The U.S. Chamber of Commerce endorses Senators Jon Kyl's (R-AZ) and Blanche Lincoln's (D-AK) estate tax legislation that would make the 35 percent rate and $10 million ($5 million/spouse) exemption permanent. The Lincoln-Kyl estate plan would amount to a tax cut relative to the 2009 law, but falls short of full repeal which the U.S. Chamber of Commerce ideally seeks. As with any tax on savings and capital accumulation, we oppose the estate tax because it:

- Takes away jobs and stifles economic activity.
- Crushes the incentive to save and invest.
- Burdens small businesses and farmers and creates planning nightmares.
- Penalizes hard work and punishes entrepreneurship.
- Contradicts the central promise of American life--wealth creation--and hurts those who have their savings tied up in land and other hard-to-sell assets.