

LESOURD & PATTEN, P.S.

ATTORNEYS AT LAW

2401 ONE UNION SQUARE • 600 UNIVERSITY STREET • SEATTLE, WASHINGTON 98101-4121
TELEPHONE: (206) 624-1040 • FACSIMILE: (206) 223-1099

January 15, 2010

ESTATE PLANNING ALERT

What we thought couldn't happen has happened. As of January 1, 2010, there is no federal estate or generation skipping transfer (“GST”) tax. In contrast, under prior law, the federal estate tax exemption and GST exemption was \$3.5 million and the tax rate was 45 percent. The federal gift tax remains with a lower maximum rate of 35 percent, a \$13,000 annual exclusion, and a \$1 million lifetime exemption. As a part of this law change, the “basis step up” with respect to capital gains on property included in a decedent’s estate is materially different.

Washington State continues to impose its own estate tax, with a \$2 million exemption and a tax rate of 10 percent to 19 percent. There is no Washington gift or GST tax.

If Congress does not act in 2010, the federal estate and GST tax will return in 2011, with a vengeance: Estate and GST tax of 55 percent and \$1 million exemptions. The old law with respect to basis step up and capital gains will also return. If Congress does act in 2010, nobody knows what the new laws will provide or whether they will be enacted retroactively to January 1, 2010.

These law changes may cause a distribution of your estate in a way that you did not intend. Many Wills refer to the estate tax and exemptions from estate tax in “funding” a Bypass or Credit Shelter Trust, and a marital bequest. Because there is neither an estate tax nor an exemption, currently, the Bypass trust or the marital bequest could be funded with much more, or much less, than was intended. Further, the distribution pursuant to the original estate plan could create Washington State estate taxes which would have been delayed or avoided under the original Will and pre-January 1, 2010 law.

Because of this unexpected development and the uncertainty that exists, we recommend that you contact your attorney listed below to discuss whether any changes should be made to your existing estate plan and to consider some additional planning opportunities presented by the current state of the law.

Judd R. Marten

Direct: 206.357.5085

E-mail: jmarten@lesourd.com

Rodney J. Waldbaum

Direct: 206.357.5087

E-mail: rwaldbaum@lesourd.com

P. Warren Marquardson

Direct: 206.357.5090

E-mail: pwm@lesourd.com