



Morrison, Gilger & David
A Professional Corporation

9255 Towne Centre Drive, Suite 975
San Diego, CA 92121

Telephone 858.558.9300

Facsimile 858.558.9301

www.mgdtaxlaw.com

Scott G. Morrison
ATTORNEY AT LAW

Ari C. David
ATTORNEY AT LAW

Dean E. Gilger
CERTIFIED PUBLIC ACCOUNTANT

Stacy L. Otto
CERTIFIED PUBLIC ACCOUNTANT

Re: ESTATE TAX AND WHAT TO EXPECT FROM PRESIDENT OBAMA

With president Barrack Obama taking office in January 2009 and a democratic majority in the House of Representatives and Senate, we are anxious to know what the new administration will propose or enact relative to income and estate taxes. As to estate taxes, President Obama has provided some information as to his intentions that most taxpayers should find agreeable.

Currently, the Internal Revenue Code ("IRC") and provisions enacted pursuant to President Bush's 2001 Tax Act ("Act") raised the value of assets that are exempt from estate tax while, simultaneously, lowering the estate tax rate until 2010. Before the 2001 Act, a decedent's estate was potentially subject to estate tax of up to 55% of the inherited assets that exceed the exemption amounts of \$1,00,000 for an individual and \$2,000,000 for married couples. Pursuant to the Act, in 2009, the highest rate is 45% and only assets exceeding \$3.5 million for an individual and \$7,000,000 for married couples are subject to the estate tax.

The 2001Act also provides that in 2010, all estate taxes are eliminated. However, without further action or new law by our government, the exempt asset amount and estate tax rate will return to the figures in 2001 (i.e. \$1,000,000 for individuals; \$2,000,000 for married couples, with the highest rate at 55%).

It is safe to speculate that there is little likelihood the new administration will permanently repeal estate taxes. Therefore, we have to ask , "What can we expect from President Obama and our democratic majority legislatures?"

Recent reports indicate that President Obama plans to propose freezing the estate tax rate and exemption amount at the figures set for the 2009 tax year. This would mean that an individual can pass assets of up to \$3.5 million upon death without incurring any estate tax liability. Furthermore, married couples would be able to pass \$7,000,000. Also, the tax rate on assets in excess of these amounts would be a flat and fixed rate of 45%.

President Obama has indicated that the exclusion amount of \$3.5 and \$7 million dollars will, likely, be indexed for inflation after 2011.

President Obama also proposes preserving the present rule allowing for a “step-up in basis” on inherited assets. President Obama has indicated that he opposes any estate tax reform that would apply a “carryover basis” for inherited assets. This means that upon inheriting assets, the heir or beneficiary will inherit a tax basis equal to the value of the inherited asset on the date of the decedent’s death, or the value on the alternate valuation date (i.e. Six months after the date of the decedent’s death) rather than the decedent’s tax basis in the assets.

Ultimately, we all hope that President-elect Obama will implement long term tax reform for estate and income taxes. Permanent reform will allow our clients to plan for a know tax future and avoid the currently faced difficulties of planning when the existing estate tax laws are temporary and subject to reversion to the 2001 amounts and rates.