



1909-2009
A century of adding value.

LOEB & LOEB adds Knowledge.

Tax Law

ALERT

FEBRUARY 2009

Estate and Gift Taxes – Change Is Coming

We already see the beginning of Congressional action on estate, gift, and generation-skipping transfer taxes. Although it is too soon to predict the outcome, H.R. 436, a bill introduced last month in the House of Representatives by Rep. Earl Pomeroy (D-ND), is an example of the issues that Congress and the Obama administration will be addressing in the coming months.

Under current law, the amount of assets which can pass through an estate free of tax (the "estate tax exemption") is \$3.5 million in 2009. Current law provides that the estate tax will not apply in 2010, and that the pre-2001 exemption of \$1 million returns in 2011. The maximum estate and gift tax rate, presently 45%, will rise to 55% in 2011.

H.R. 436 would amend the Internal Revenue Code to eliminate the one year estate tax repeal in 2010, retain the estate tax exemption at \$3.5 million, and retain the maximum estate and gift tax rate at its present rate of 45%. H.R. 436 would also add a 5% surtax for amounts over \$10 million up to an amount that would eliminate the benefit of the \$3.5 million estate tax exemption, thereby making the estate tax a 45% "flat tax" for large estates.

Current law also changes the income tax basis adjustment taking effect at a person's death. The "step-up in basis" rule currently in effect resets the income tax basis to the fair market value at the decedent's death (or the alternate valuation date six months later if the estate elects alternate valuation for estate tax purposes). However, the "step-up in basis" rule is scheduled to be replaced by a "modified carryover basis" rule in 2010. Specifically, in 2010, the "modi-

fied carryover basis" rule will limit the permitted step-up in the basis of assets transferred at death to \$1.5 million per decedent, plus \$3 million for assets transferred to a surviving spouse. H.R. 436 would amend the Internal Revenue Code to rescind this scheduled change and maintain the "step-up in basis" rule in 2010 and beyond.

Finally, if H.R. 436 becomes law, appraisers valuing assets transferred after its enactment would not be allowed to apply any discounts to "nonbusiness" assets (including passive assets, with the exception of working capital) held by partnerships or other entities. Instead, those assets would be valued as though they were transferred directly to the recipient. For example, if \$1 million held by a partnership consisted of cash and/or marketable securities, a 10% interest in the partnership would be valued for gift and estate tax purposes at \$100,000, even if a willing buyer might pay only \$60,000 for the interest because of an otherwise applicable lack of marketability discount.

Even more significantly, under H.R. 436, if a family controls a business entity that is not "actively traded," no discounts will be allowed for the transferee's lack of control of the entity, in contrast to current law that allows for minority interest discounts. Such a change would substantially reduce a parent's ability to transfer minority ownership interests to children in a tax-efficient manner.

This publication may constitute "attorney advertising" under the New York Code of Professional Responsibility.

Although H.R. 436 may or may not become the template for changes in the tax law, it highlights the key issues that will be considered in the coming months.

For more information about any of the techniques and strategies discussed in this newsletter, or any other income or estate tax planning assistance, please feel free to contact any member of our High Net Worth Family Practice Group.

If you received this alert from someone else and would like to be added to the distribution list, please send an email to alerts@loeb.com and we will be happy to include you in the distribution of future reports.

This report is a publication of Loeb & Loeb and is intended to provide information on recent legal developments. This alert

does not create or continue an attorney client relationship nor should it be construed as legal advice or an opinion on specific situations.

Circular 230 Disclosure: To ensure compliance with Treasury Department rules governing tax practice, we inform you that any advice contained herein (including any attachments) (1) was not written and is not intended to be used, and cannot be used, for the purpose of avoiding any federal tax penalty that may be imposed on the taxpayer; and (2) may not be used in connection with promoting, marketing or recommending to another person any transaction or matter addressed herein.

© 2009 Loeb & Loeb LLP. All rights reserved.

High Net Worth Families Group

Los Angeles

C. DAVID ANDERSON	DANDERSON@LOEB.COM	310.282.2128
JOHN ARAO	JARAO@LOEB.COM	310.282.2231
MARLA ASPINWALL	MASPINWALL@LOEB.COM	310.282.2377
LAURA B. BERGER	LBERGER@LOEB.COM	310.282.2274
LEAH M. BISHOP	LBISHOP@LOEB.COM	310.282.2353
DEBORAH J. BROSS	DBROSS@LOEB.COM	310.282.2245
TARIN G. BROSS	TBROSS@LOEB.COM	310.282.2267
YOO-JEAN CHI	JCHI@LOEB.COM	310.282.2351
REGINA I. COVITT	RCOVITT@LOEB.COM	310.282.2344
TERENCE F. CUFF	TCUFF@LOEB.COM	310.282.2181
LINDA N. DEITCH	LDEITCH@LOEB.COM	310.282.2296
PAMELA J. DRUCKER	PDRUCKER@LOEB.COM	310.282.2234
ANDREW S. GARB	AGARB@LOEB.COM	310.282.2302
NEAL B. JANNOL	NJANNOL@LOEB.COM	310.282.2358
THOMAS N. LAWSON	TLAWSON@LOEB.COM	310.282.2289
JEFFREY M. LOEB	JLOEB@LOEB.COM	310.282.2266
ANNETTE MEYERSON	AMEYERSON@LOEB.COM	310.282.2156
DAVID C. NELSON	DNELSON@LOEB.COM	310.282.2346
RONALD C. PEARSON	RPEARSON@LOEB.COM	310.282.2230
ALYSE N. PELAVIN	APELAVIN@LOEB.COM	310.282.2298
STANFORD K. RUBIN	SRUBIN@LOEB.COM	310.282.2090
PAUL A. SCZUDLO	PSCZUDLO@LOEB.COM	310.282.2290

Los Angeles (continued)

ADAM F. STREISAND	ASTREISAND@LOEB.COM	310.282.2354
STUART P. TOBISMAN	STOBISMAN@LOEB.COM	310.282.2323
NICHOLAS J. VAN BRUNT	NVANBRUNT@LOEB.COM	310.282.2109
GABRIELLE A. VIDAL	GVIDAL@LOEB.COM	310.282.2362
JOHN S. WARREN	JWARREN@LOEB.COM	310.282.2208
MICHELLE A. WEINSTEIN	MWEINSTEIN@LOEB.COM	310.282.2175
ZACHARY WINNICK	ZWINNICK@LOEB.COM	310.282.2381

New York

MICHELLE W. ALBRECHT	MALBRECHT@LOEB.COM	212.407.4181
PATRICIA J. DIAZ	PDIAZ@LOEB.COM	212.407.4984
STEVEN C. GOVE	SGOVE@LOEB.COM	212.407.4191
ELIOT P. GREEN	EGREEN@LOEB.COM	212.407.4908
JEROME L. LEVINE	JLEVINE@LOEB.COM	212.407.4950
LANNY A. OPPENHEIM	LOPPENHEIM@LOEB.COM	212.407.4115
LAURIE S. RUCKEL	LRUCKEL@LOEB.COM	212.407.4836
JOHN SETTINERI	JSETTINERI@LOEB.COM	212.407.4851
C. MICHAEL SPERO	CMSPERO@LOEB.COM	212.407.4045
KENNETH W. SUSSMAN	KSUSSMAN@LOEB.COM	212.407.4273
ALAN J. TARR	ATARR@LOEB.COM	212.407.4900
BRUCE J. WEXLER	BWEXLER@LOEB.COM	212.407.4081