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## **Estate Tax Provisions of New Tax Law May Create Unexpected Winners & Losers**

The ECONOMIC GROWTH & TAX RELIEF & RECONCILIATION ACT (EGTRRA) 2001, signed into law on June 7, promises a variety of tax-relief measures, including repeal of the federal estate tax. Of the estimated \$1.35 trillion tax cut, approximately \$138 billion will come from the gradual phase-out and repeal of the estate, gift and generation-skipping transfer taxes. But with this extended phase in period, and a complex cadre of calculations, the new law may create some unexpected winners and losers.

“Many people expected, and may believe this law contains, a complete repeal of the federal estate tax,” says [INSERT YOUR NAME of INSERT YOUR CITY] estate planning attorney. “What they may be surprised to learn is that the tax is not actually repealed until the year 2010, and then only for a short window of one year, before the law “sunsets” on December 31, 2010 ... essentially revoking the whole scheme and returning all the tax rates to their 2001 levels.”

The biggest story, [LAST NAME] says, is that this law makes “prudent estate planning even more challenging than before. It would be foolhardy for anyone with a sizable estate to ignore the need for estate tax planning. This legislation must survive five Congresses and as many as three presidents before estate tax repeal becomes a reality. At an annual cost of more than \$50 billion, set to hit the federal budget just when the baby boomers start drawing on Social Security and Medicare, the political odds of a complete and sustained estate tax repeal seem dicey at best.”

Even more surprising, however, are the “winners” and “losers” created by the complex language and accounting maneuvers to minimize the law’s revenue impact on the federal budget, [LAST NAME] says.

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“There are basically two categories of winners under this law. First, the very wealthy benefit from repeal of the five percent surcharge on estates in excess of approximately \$10 million. This surcharge is repealed in 2002,” [LAST NAME] said. “The top rates are then reduced by one percent each year through 2007, until the estate tax is repealed in 2010. So, the very wealthy are both winners and losers under this scenario – the losers are those unfortunate enough to die before repeal ... the winners are those fortunate enough to have accumulated enough wealth to benefit from the repeal of the five percent surcharge and the gradual reductions of the top tax rate.”

[LAST NAME] says the “moderately wealthy” also benefit from this law as the “unified credit exemption amount” (the value of an estate that is allowed to pass to heirs tax-free) bumps to \$1 million in 2002, and eventually to \$3.5 million in 2009.

“Because of this increase in the exemption amount, moderately wealthy may enjoy an estate tax repeal sooner than the very wealthy,” [LAST NAME] said. “Raising the exclusion to \$1 million would eliminate estate taxes on approximately 38% of all taxable estates, based on 1999 numbers. With proper legal planning, a married couple may apply both the husband’s and the wife’s unified credit exemption amount to their combined estate assets, allowing them to shield twice as much from taxation. Again, based on 1999 statistics, this would exempt nearly 80% of all currently taxable estates from taxation.”

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But, [LAST NAME] says the law creates some “big losers,” too.


“The biggest losers are the states and those who reside in them. By the year 2005, states will lose approximately \$6 billion in annual revenue generated by the State Death Tax Credit. Currently, 35 states utilize a “pick-up” tax, which is an estate tax set to equal the amount of the federal credit – repeal of the State Death Tax Credit in 2005 will automatically repeal the state estate tax.”

States that levy their own estate or inheritance taxes in addition to the pickup tax could continue to collect those taxes. However, all of these states provide that if the amount of the state tax is less than the credit allowed against federal taxes the estate tax is increased to the amount of the credit. As a result, these states also will lose revenue.

“Most states cannot afford to take that kind of revenue hit and continue to provide services,” [LAST NAME] said. “The money will have to be made up somewhere, either by reduced services or additional state taxes.”

In 1999, there were [INSERT YOUR STATE NUMBERS FROM THE TABLE PROVIDED] federal estate tax returns filed from [INSERT YOUR STATE NAME], for a total net federal estate tax (after deductions) of [INSERT \$\$ FROM THE TABLE PROVIDED].

“Our state is/is not one of those that relies on a pick-up from the federal estate tax,” [LAST NAME] said. “Our revenue from the pick-up tax alone totaled [INSERT \$\$ AMOUNT FROM TABLE] in 1999. Somehow, we are going to have to replace that money.”

Due to the complex nature of this law, and the uncertainty of whether it will ever be fully implemented, [LAST NAME] says consumers should view their estate planning as a “lifetime process,” insist on flexible planning options from their legal advisors, and be prepared to make appropriate revisions  the tax landscape changes.

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for more information, contact:  
YOUR LAW FIRM  
YOUR NAME  
YOUR PHONE NUMBER