

THE BERNSTEIN REPORT

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Dear Reader,

The Senate Budget Committee passed a resolution on the 2011 fiscal year budget. The tax provisions included in the resolution are not in formal bill language but present guidelines to the various affected committees including the Finance Committee, which ultimately has responsibility for drafting legislation. It does reflect some direction for legislation with the potential to pass the full Senate. The resolution included amendments from Senator Grassley to delay some of the tax increases in the recent health reform changes, discussed last month, if such delay would not increase the deficit.

Key components of the budget resolution include the following extensions of selected tax relief provisions from the Bush Administration:

- Continuing the 15 percent tax rate for capital gains and qualified dividends for married taxpayers with income below \$250,000 (\$200,000 for single taxpayers).
- Extending the alternative minimum tax (AMT) relief for 2010 and 2011.
- Permanently extending the \$125,000 current expensing limit provided under Sec. 179.
- Permanently extending the marriage penalty relief, child tax credit and portions of the lower brackets, but only for married taxpayers with income below \$250,000 (\$200,000 for single taxpayers).
- Reinstatement of the 2009 levels for the federal estate tax for 2010 and 2011 providing an exemption at death for \$3.5 million of taxable estate and a 45 percent rate. The Chairman anticipates a more permanent reform to be recommended by the President's bipartisan fiscal commission.

The budget provides for \$1,315.3 billion (that's a lot of zeros) for discretionary programs in 2011 and forecasts a 70 percent reduction in the deficit by 2015; the deficit would still be 3 percent of GDP.

The extenders legislation is being discussed by the key players in the House and Senate with hopes of pre-Memorial Day consideration. There is not yet a firm timetable for movement of federal estate tax reform. The inside report discusses the need to revisit estate plans.

Cordially,

Richard S. Bernstein

A Second Opinion Costs You **NOTHING**,
But Could Save You **MILLIONS!**

WHEN IT COMES TO YOUR HEALTH, YOU GET A SECOND OPINION,
SHOULD YOUR FINANCIAL WEALTH BE ANY DIFFERENT?

WHEN TO UPDATE AN ESTATE PLAN

An estate plan that is never updated works about as well as a car that is never serviced. They're both in great condition when they're new, but the wear and tear of the intervening years can take an enormous toll. Because even the most well-conceived plan cannot predict every contingency, a careful review of an existing estate plan is critical to making sure that it will continue to meet evolving needs.

The best time to review? Many people find it convenient to conduct an annual estate plan review after they file their income tax return. That way the review becomes a yearly exercise while financial information is easy to access. Other people prefer to use an important date (their birthday, for instance) to trigger an estate plan review. It doesn't matter which method is selected, as long as the plan is reviewed periodically.

KNOWING WHAT QUESTIONS TO ASK

As a starting point for reviewing an estate, determine if any of the following changes have occurred since the estate plan was created:

- Has there been a change in marital status (marriage, divorce, separation, remarriage)?
- Are there more children in the family? More grandchildren? Has the number of dependents increased or decreased? Have any children moved out of (or back into) the home?
- Have any relatives or beneficiaries died?
- What about the relationship among family members and beneficiaries? Has it changed significantly between any of them?
- Have there been any changes in anyone's health (both physical and mental) that would materially affect the estate plan?
- Has there been a change in occupation?
- Has there been an address change, particularly a change to another state?

Now determine if there have been any of these other personal or professional changes:

- Have there been any changes in property ownership? Has any property been purchased either jointly or separately? Has any property been transferred to joint ownership? To a dependent? To a trustee? Has a residence in a different state been purchased?
- Has there been any other substantial change in family assets or liabilities? For example, have major assets been acquired, any gifts or inheritances been received, a significant sum of money been borrowed or loaned, or a tax-deferred annuity opened? Have investments been augmented?
- Was a business purchased? Has a business been mortgaged, sold, or liquidated? Has there been any other material change in business circumstances?
- Have there been any changes in the amounts or sources of retirement benefits (pensions, IRAs, profit-sharing plans, Roth IRA conversions, and so forth)?

Finally, ask these questions regarding the overall financial plan:

- Have any changes been made to a will, trust agreement, buy-sell agreement, or any other document that will have an impact on the estate plan?
- Has the person named as executor of the estate died? Has any trustee died? Or has the health of these individuals changed?
- Has any insurance changed? Besides life insurance, this includes health insurance, group insurance, any other employer plan, property insurance, and casualty insurance. Have insurers changed? Have any policies been surrendered? Have any policies lapsed?
- Have charitable intentions developed (or altered)?

Changes in any of the above areas might indicate that an estate plan has become outdated.

KEEPING UP WITH CHANGES IN THE LAW

Federal or state legislation might also have a significant influence on an existing plan. This currently is causing the most anxiety of any point in the memory of most practitioners. The uncertainty over the future of the federal estate tax indicates a review of the estate plan and related documents as soon as possible. The law has a repeal of the federal estate and generation-skipping transfer (GST) taxes currently in effect only for 2010. The statute would renew the federal estate and GST in 2011 with \$1 million exemptions and significantly higher maximum rates. The gift tax exemption is \$1 million indefinitely, but the rate for 2010 is reduced to 35 percent. The following are just some of the issues that should be addressed in a review of an estate plan:

- Does the Will or Living Trust contain a formula for the estate tax (and GST) exemption amount? If so, this could create an unintended result for a death during the period of the estate tax repeal. In many instances, the marital share of the estate would be eliminated by the operation of the formula and the exemption (unified credit) trust would receive the entire estate. The document should be reviewed and revised as necessary.
- Does a Will or Living Trust contain the appropriate directions for the executor to handle the modified carryover basis for estate assets for a death in 2010?
- Have gifting opportunities been considered? If there is no GST and a reduced gift-tax rate, there may be a unique opportunity for high-net worth grandparents to make wealth transfers at lower transfer tax costs than before and after 2010. This should be attempted only with the advice of estate-planning professionals with a wary eye aimed at the potential retroactive reinstatement of higher taxes.
- Have grantor-retained annuity trusts (GRATs) been used or considered in the estate plan? In a separate bill passed by the House, but not yet enacted, the use of short-term GRATs would be prohibited. It might be indicated to take advantage of existing law before short-term GRATs are no longer available.

With respect to nontax issues, many state probate laws, as well as laws affecting trusts, living wills, and powers of attorney, have undergone substantial changes in the past few years. For example, most states have adopted new flexible definitions of income and principal of a trust

that could affect the distributions to various trust beneficiaries. In addition, some states are considering legislation to solve the problem discussed above, with respect to document interpretation of formula clauses during any period of estate tax repeal. It would be important to review the documents in light of such developments to ensure that unintended results do not occur.

MAINTAINING ACCURATE PERSONAL DATA

In addition to updating the estate plan itself, care must be taken to ensure that the addresses and phone numbers of all the individuals named in the plan (beneficiaries, executors, trustees) are current. It is a good idea to take an inventory of all estate planning documents (do family members know exactly where to find all these documents)? There should be a written list of the location of all important financial information, along with a list of the financial advisors to contact in the event of death. Any information that would affect tax reporting should be available to heirs. This is particularly important for the executor and the heirs to be prepared to handle the current modified carryover basis rules in effect for 2010. The records reflecting initial acquisition costs plus any additional expenditures or depreciation incurred with respect to assets will be relevant. Having this information readily at hand will make settling the estate that much easier.

Conducting regular estate plan reviews can pinpoint personal, professional, and legislative changes that will have an impact on the estate plan. Annual reviews will ensure that loved ones will be taken care of and property distributed according to an estate owner's wishes in spite of unforeseen circumstances (good or bad) that have occurred since the plan was first drafted. Procrastinating can be a costly mistake.

This Tax Letter is intended to assist you to conserve your estate and to protect the interests of your family and business associates. Estate planning involves the joint services of a competent Trust Officer, Attorney, Accountant, and Life Underwriter. The experience and advice of each is generally essential.

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