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## Estate Tax Uncertainty Continues

With nine weeks left in 2009, the fate of the federal estate tax remains unsettled. If Congress does not act before 2010, the estate tax will be repealed for one year (the gift tax continues in effect with the current \$1,000,000 exemption), then the estate tax will be restored on January 1, 2011 with a \$1,000,000 per taxpayer exemption and a top marginal rate of 55% (except for estates between \$10,000,000 and about \$20,000,000, with a top marginal rate of 60%). Democratic Congressman Charles Rangel, Chair of the House tax-writing committee, announced last week that he is drafting legislation to make the current law (\$3,500,000 per taxpayer exemption and a top marginal rate of 45%) permanent, avoiding the repeal in 2010 and reversion to old rates and exemptions in 2011. At the same time, other members of the House Ways and Means Committee, including both Democrats and Republicans, offered a bill to continue the \$3,500,000 exemption and 45% top rate in 2010, with a gradual increase to a \$5,000,000 exemption by 2019, and a gradual reduction in the top marginal rate from 45% to 35% over the same period. Until last week, there seemed to be momentum behind an effort to extend the 2009 exemption and rates to 2010 as a one-year patch to avoid repeal, with a promise to address 2011 and future years at a later time; that proposal leaves open the possibility that no additional action would be taken and the exemption would fall to \$1,000,000 in 2011 with a 60% top marginal rate.

At this time, we have not heard that a consensus has formed to enact any of these proposals. However, the most encouraging development in the past few weeks is the attention being given to this topic by senior Democrats, including House Majority Leader Hoyer and Congressman Rangel. With the need for additional revenues to offset the perceived loss of estate taxes by extension of the current rates and exemptions, any estate tax bill may well include provisions intended to restrict or eliminate the benefits of some popular estate planning techniques, such as grantor retained annuity trusts and transfers of interests in closely held businesses, including family limited partnerships. Stay tuned.

If you have any questions, please feel free to contact one of the attorneys listed below:

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