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Estate Planning | Wills & Trusts

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Estate Tax Bill Introduced by Senator Bernie Sanders

Senator Bernie Sanders (I-VT) introduced an Estate Tax bill on Thursday, June 24, with a new twist: the Billionaire's Surtax.

The bill, which is co-sponsored by Senators Sheldon Whitehouse (D-RI), Tom Harkin (D-IA) and Sherrod Brown (D-OH) and would be retroactive to January 1, 2010, calls for a restoration of the 2009 exemption of \$3.5 million per individual. Under the bill, tax rates would be as follows:

- 45% for estates valued between \$3.5 million and \$10 million;
- 50% for estates between \$10 million and \$50 million; and
- 55% for estates exceeding \$50 million.

Additionally, there would be a 10% "Billionaire's Surtax" for estates exceeding \$1 billion.

It is estimated that the proposed bill would exempt 99.7% of American estates while generating at least \$264 billion over a decade to help lower the national debt.

According to the release from the Senator's office, the bill also calls for the closing of "Estate and Gift Tax loopholes as President Obama proposed in his budget for next year," which the White House estimated would generate at least \$23.7 billion in revenue over 10 years. This includes imposing a 10-year minimum term for Grantor Retained Annuity Trusts (GRATs), which would impose a significant burden on their use in Estate Tax planning.

While practitioners may see each additional proposal as adding mud to the Estate Tax waters, it is a positive sign that there is at least some discussion in Washington about a tax that has so many attorneys' and clients' attention. We will see whether Congress can reach a resolution before the calendar strikes January.

Reporting Requirements for Foreign Trusts Shift to Grantor

On March 18, President Obama signed the Hiring Incentives to Restore Employment (HIRE) Act into law, which includes several unrelated provisions intended to generate revenue. Consistent with the increased scrutiny on foreign investments that we saw in

2009, the HIRE Act includes a provision that shifts the burden of reporting foreign trusts from the foreign trustee to the domestic grantor.

First, the new law treats the rent-free use of foreign trust property as a distribution of the fair-market value of such use to the domestic user.

Second, the HIRE Act increases the likelihood that the U.S. individual will be treated as the grantor of the foreign trust and will thus be responsible for payment of income tax. The U.S. individual is treated as the grantor for property that he or she contributed to the trust if the beneficiary of such property is a U.S. beneficiary. The Act broadens the definition of a U.S. beneficiary to include a U.S. person who is a current, future or contingent beneficiary. Additionally, the trust must specifically state that no U.S. person may receive a distribution from such trust and the transferor of property must submit such verification to the IRS; otherwise the trust will be deemed to have a U.S. beneficiary.

The HIRE Act is effective for tax years beginning after March 18, 2010. Clearly, this is an extremely complex area of tax law and should only be approached with the direct counsel of an expert.

Definition of the Month: *Pourover Will*

A Pourover Will is a document that *pours* all of the creator's assets into his or her Trust at death. The Trust document then controls the distribution of the assets. Proper funding of a Revocable Living Trust during the individual's life is important, but the Pourover Will ensures that any assets that remain outside of the Trust, whether intentionally or unintentionally, are transferred to the Trust at death in order to be distributed in accordance with the wishes of the individual.

Upcoming Event: *July 15 – Estate Planning Primer (Chicago)*

I will be speaking at a CLE Luncheon for the [Indian American Bar Association of Chicago](#) on July 15 at the NBC Tower, 455 N. Cityfront Plaza Dr., Suite 3600. The luncheon, from 11:30 a.m. to 12:30 p.m. will consist of an Estate Planning Primer, where I will discuss the basics of the Estate Tax and the benefits of proper planning. The luncheon is FREE to IABA members and \$17 for non-members; attendees will receive 1.0 hr of General IL CLE credit (subject to MCLE Board approval). If you are interested in attending, please RSVP to [Aseet Patel](#) by July 12.