



THE LAW FIRM OF
BOVE & LANGA, P.C.

MASSACHUSETTS ESTATE TAX ADVISORY – DECEMBER 2002

The Commonwealth of Massachusetts has recently made a significant change to its estate tax law that **will affect the estates of Massachusetts residents dying after December 31, 2002**. These changes come in response to the 2001 federal law which phases out the federal estate tax through 2010, and resurrects it in its current state in 2011.

THE NEW MASSACHUSETTS ESTATE TAX

Massachusetts, like many other states, is a so-called “pick-up” or “sponge” tax state. What this means is that Massachusetts does not have a separate system for determining estate taxes, but instead “picks-up” the state death tax credit granted by the federal tax code. As the federal estate tax is phased out, the state death tax credit is also phased out, quickly leaving nothing for the states to “pick up”. In response to this loss of revenue, the Massachusetts legislature has passed a new estate tax law which is based on the federal estate tax law as it existed on December 31, 2000, instead of the new federal law.

As you probably know, under the 2001 changes to the federal tax law, the estate tax exclusion (presently at \$1,000,000) will increase to \$3,500,000 by 2009; however, the new Massachusetts estate tax law does not recognize the new federal law, but will instead require payment of a Massachusetts estate tax based on the federal exclusion amount set by the federal law in effect on December 31, 2000. This results in an “additional” Massachusetts estate tax which is not addressed in most (if not all) estate plans for Massachusetts residents.

CHANGES TO YOUR DOCUMENTS

Although we do our best to draft documents with the flexibility to adapt to legislative changes, because of the state legislature’s unorthodox approach of basing the Commonwealth’s tax on an outdated federal law, this change is not accommodated by the provisions used in most of the documents prepared not only by our attorneys but most other firms as well. As noted in our recent client letter, this law was originally passed with so many flaws that it had to be redrafted after comments from the Massachusetts bar, including from our own Robert H. Ryan, Esq. However, even now that the law has been revised, practitioners are still left with numerous unanswered questions. Nevertheless, we are in the process of developing trust language that will accommodate these changes, and are working with the Department of Revenue to obtain a clarification of the new law and how it will be applied.

WHO WILL BE AFFECTED BY THIS CHANGE?

Although all Massachusetts residents with assets in excess of \$700,000 are affected, it is primarily married couples with more than \$700,000 in combined assets (whether held individually, jointly, or in trust) that can take action to reduce or eliminate this additional tax. As many of you know, the estate plans put in place for married couples are designed to eliminate the estate tax (federal and state) on the death of the first spouse and reduce it on the death of the survivor. With this new tax law, there may be a Massachusetts estate tax *on the death of the first spouse* and a higher Massachusetts estate tax on the death of the survivor.

Single (and widowed clients who have not remarried) cannot accomplish any tax savings by changing the provisions of their trusts; however, if an estate tax is anticipated, you might contact us to discuss whether a gifting program would work for you to reduce your potential estate tax.

HOW MUCH IS THE TAX?

For a single person with an estate of \$1,000,000 in 2003 or a married couple with combined assets of \$2,000,000 on the death of the first spouse in 2003, the additional Massachusetts estate tax will be \$33,200. The additional Massachusetts estate tax resulting from the new law continues to grow to, for example, \$229,200 in 2009, which is the year immediately before the federal estate tax repeal (the consequences beyond that year are likewise beyond the scope of this letter). Although married couples are still significantly reducing their overall combined estate taxes with the creation of the Family Trust and Marital Trust on the death of the first spouse under their current estate planning trusts, this Massachusetts estate tax on the death of the first spouse can still be quite a bite.

WHAT TO DO

If you would like us to review your trusts and advise how this new Massachusetts estate tax law will affect you and how you might be able to amend your trusts to minimize its impact, please contact us to set up an appointment. This is also a good opportunity for some of you to have an overall review of your estate plans if you have not done so within the last two years. Please understand that we will only review estate plans as requested. Also, please let us know if there are circumstances in your family which require immediate attention, so that we can take care of your plan immediately.

This up-date is abbreviated and not offered as a complete review of the applicable law. It is provided for educational and informational purposes only and is not intended and should not be construed as legal advice.