

STATEMENT OF PURPOSE

RS19393

The Federal estate and GST taxes are repealed with respect to estates of decedents and (for the generation-skipping transfer tax) taxable transfers occurring after December 31, 2009 and before January 1, 2011. This will have a serious adverse effect on many estate plans that contain formula clauses tied to the applicable exclusion amount, unified credit, or GST exemption, because those items will no longer exist. For example, a typical formula clause might leave to a decedent's children the largest amount that can pass without Federal estate taxes, and leave the rest of the estate to the decedent's surviving spouse. Such a clause would pass \$3.5 million to the children and the rest of the estate to the surviving spouse, if the decedent died on December 31, 2009. The same formula could be construed to pass the entire estate to the children if the decedent died on January 1, 2010, because the entire estate can pass free of Federal estate taxes. On the other hand, another typical clause might leave the decedent's children an amount equal to the decedent's applicable exclusion amount. Such a clause would pass \$3.5 million to the children and the rest of the estate to the surviving spouse, if the decedent died on December 31, 2009. The same formula could be construed to pass nothing to the children and the entire estate to the surviving spouse if the decedent died on January 1, 2010, because there would be no applicable exclusion amount.

None of these results reflect the intention of testator or grantor. A state court construing these instruments, however, may not be allowed to consider extraneous testimony about the testators intent, unless it deems the clause to be patently ambiguous.

It is possible that Congress will retroactively reinstate the estate and GST taxes, but this is far from certain, and legal challenges to the constitutionality of such reinstatement will take many years to resolve.

FISCAL NOTE

This bill will have no fiscal impact.

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