

So, Is There a Virginia Estate Tax or Not?

When Congress increased the estate tax exemption amounts in 2001, they also eliminated the credit for estate taxes paid to the decedent's state government against the Federal liability. Virginia estate taxes were imposed as an amount equal to the federal credit. For example, if the tentative estate tax on a Virginia decedent in 1999 was \$345,800, the credit for state estate tax would be \$38,800, which Virginia accepted as an estate tax. The federal tax payable would then be the remaining \$307,000. After 2001, Uncle Sam gets the whole \$345,800. Congress saw the elimination of this credit as a way of lessening the fiscal impact of the increased exemption amounts.

With the demise of the credit in 2001, the Virginia estate tax, defined as it was by that term, was essentially eliminated (after a phase-out period). The General Assembly acted quickly to define the word, "credit," under state law in order to preserve the state's estate tax income at existing levels pending the evaluation of the fiscal and political arguments over the estate tax.

As of July 1, 2007, the estates of Virginia residents were, effectively, no longer subject to a Virginia estate tax. While that statement might seem clear to some, this is where the confusion may begin for others who seek understanding. Perhaps it is because the statute continues to require an estate tax to be paid to Virginia "in the amount of the federal credit," which no longer exists in the federal estate tax regime. The change that generated the rumors of "repeal" was a new definition of the term, "federal credit," in 2006 legislation, the effect of which was to impose an estate tax that always equals zero.

All of this is to say that our Virginia estate tax status is predictable currently; however, the past year has illustrated the unpredictability of the U.S. Congress. The passage of the 2010 Tax Relief Act only provides said relief until December 31, 2012, when the estate tax regime will likely change again. For now, we have a federal estate tax exemption of \$5 million per taxpayer and continued protection from a state estate tax. If Congress fails to act within the next two years and the new tax legislation "sunset" in 2012, the credit for state estate taxes paid will return, and the days of estate tax "repeal" in Virginia will likely also end.

In summary, while the Virginia estate tax has not been repealed, we will continue to benefit from a definition of "credit" which results in a Virginia estate tax of zero, so long as the federal estate tax system is consistent with the current one. For now, it works.