

# THE B&B ALERT

(800) 533-7227



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## ***WHY THE FEDERAL ESTATE TAX EXEMPTION INCREASE MAY NOT SAE YOU TAXES***

**By Neil A. Derman, Esquire**

The most common excuse an estate planning attorney hears when interviewing a client is that they don't need estate planning with the rising federal estate tax exemption. Most clients are well educated on the Federal Estate tax exclusion table and how it progressively increases from \$1,500,000 this year, to \$2,000,000 next year, \$3,500,000 in 2009 and finally unlimited in 2010. As the exemption rises, less people become subject to the federal estate tax. They therefore casually explain to their attorney that soon they will either not be in a taxable estate as they are below the exemption or are sure they will die in 2010. Be that as it may, what our clients tend to overlook is that the Federal Estate Tax is not the only tax that they are subject to at death.

As of July 2002, New Jersey enacted their own estate tax to compensate for the increasing federal estate tax exemption. Any estate in excess of \$675,000 would be subject to New Jersey Estate taxes. Unlike the Federal Estate tax which begins at 45% and increases to a maximum of 47%, the New Jersey Estate Tax is less burdensome. It begins at approximately 4.8% and increases to a maximum rate of 16%. However, the first \$50,000 over the New Jersey Exemption is taxed at a rate of 37%.

Any Estate between \$675,000 and \$1,500,000 must file a New Jersey Estate Tax Return and a New Jersey Inheritance Tax Return as well as a Federal Estate Tax Return Form 706 if the Estate exceeds \$1,500,000. Most plans written prior to 2002 which utilize trusts or other estate planning devices to shelter an estate from tax may now be taxable estates. Does your trust which excluded the Federal Estate tax exemption amount of \$1,500,000 save you from paying estate taxes? Federal Estate taxes- yes, New Jersey Estate taxes – **NO**. And its important to note that this is a progressive tax, as the estate grows, so does the percentage of the tax assessed. For Example, an estate of \$750,000 is only in the 4.8% tax bracket and subject to approximately \$20,400 in taxes, but an estate of \$1,500,000 is in the 6.4% bracket and subject to \$64,400 in taxes.

Careful consideration should be taken when looking at Wills with Disclaimer or Credit Shelter Trusts. Most Credit Shelter Trusts or Disclaimer Trusts specify the amount to fund the trust is equal to the Federal Estate Exemption amount. This amount has increased since 2002, but the New Jersey Estate tax has not. By funding the trust we are preventing estate tax on both the first spouse's death and the surviving spouse's death as well. This disparity between the Federal Estate Tax exemption and the New Jersey Estate Tax exemption may cause taxes to be owed on both the first spouse's death and the subsequent death of the surviving spouse. As the exemption increases, so to does the amount of New Jersey Estate Tax owed.

Year of Death	Taxable Estate	New Jersey Estate Tax
Before 2002	\$675,000	\$ 0
2002	\$1,000,000	\$33,200
2004	\$1,500,000	\$64,400
2006	\$2,000,000	\$99,600
2009	\$3,500,000	\$229,200
2010	- Unlimited -	- Variable - (depending on size over \$675,000)
2011	\$1,000,000	\$33,200

With the increase in the Federal Exemption and the New Jersey Estate Exemption remaining at a constant \$675,000 larger estates may not be subject to Federal Estate Tax but will still remain subject to New Jersey Estate and Inheritance Tax. Perhaps it is best to have your estate planning attorney review any documents implemented prior to 2002 to assure that they are designed to prevent both New Jersey and Federal Estate tax. An Estate tax plan review may not be a thing of the past anymore.



Begley & Bookbinder, P.C. is a law firm that specializes in Elder & Disabilities Law. We are based in Moorestown, NJ, with offices in Stone Harbor & Lawrenceville.

If you have any comments, e-mail us at [ccaruso@begleylawyer.com](mailto:ccaruso@begleylawyer.com)

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