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**Must Read**

# Law

Wills, Taxes and  
Estate Planning

Issues in Law You Need To Know

## U.S. Estate Tax – Should You be Concerned?

We have all heard the saying that there are two things in life that are certain: death and taxes. For tax and estate professionals, both are always concerns but especially so for clients owning U.S. properties or assets. This is due to the U.S. estate tax.

Canada does not impose an estate tax upon the death of an individual. In fact, when Canadians die they are deemed to dispose of all their capital property at fair market value.

The U.S. system works differently: upon the death of a U.S. citizen, a tax is levied on the fair market value of the deceased's world-wide property. Furthermore, the U.S. estate tax applies to all property situated in the U.S. including property owned by non-residents of the U.S. (often referred to as "Canadian Snowbirds").

Consequently, upon death, a Canadian resident who owns U.S. real property or U.S. stocks may be regarded to have a large "deemed" capital gain with respect to such property in addition to a possible

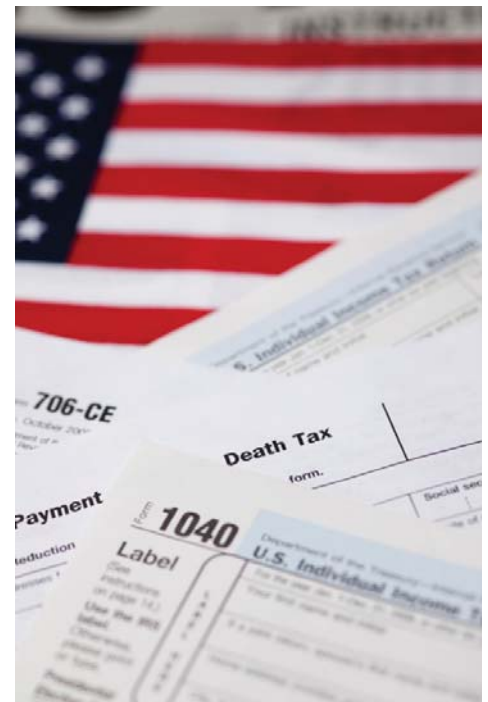
U.S. estate tax liability depending on the value of their U.S. properties or assets.

The first \$3.5 million USD of a U.S. citizens' estate is exempt from tax. However, non-residents, including Canadians, are only entitled to a pro-rated exemption under the Canada-U.S. Tax Treaty. This exemption is equal to \$3.5 million USD multiplied by the ratio of U.S. property to your worldwide estate.

Essentially, if your worldwide estate is worth less than \$3.5 million, you need not worry about paying U.S. estate tax ... at least for now.

In June 2001, the U.S. passed a law that commenced the phasing-out of the estate tax over the following decade. Essentially, the estate tax rate has been gradually reduced and the exemption amount increased and, based on the legislation, the estate tax will be repealed for the 2010 tax year.

However, this may not be permanent as the legislation contains a "sunset clause" whereby, unless further steps are taken by Con-



gress, the repeal of the estate tax will only last for one year, being 2010.

In 2011, the estate tax rules will revert back to the rules applied before 2001 resulting in the effective exemption of only \$1 million USD (compared to \$3.5 USD in 2009) and a maximum estate tax rate of 55% (compared to 45% in 2009). Many U.S. tax experts expect this issue to be addressed by Congress

in the near future. The Senate has already proposed legislation that would cap the top estate tax rate at 35% and maintain the personal exemption at \$3.5 million USD.

Nonetheless, Canadians who own U.S. property or assets should consult their tax professionals until

Congress legislates on this issue. Until Congress acts on this issue, Canadian Snowbirds should review the U.S. estate tax with their estate planning advisor. Canadians who have an estate worth more than \$1 million USD may be at risk of having to pay U.S. estate tax.

If you have questions regarding this issue or any other issue pertaining to your estate, please contact Sebastien Desmarais, Associate, Tierney Stauffer LLP at (613) 288-3220 or [sdesmarais@tslawyers.ca](mailto:sdesmarais@tslawyers.ca).

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### CALL TO THE BAR

Law Society of Upper Canada, 2007

### EDUCATIONAL BACKGROUND

- University of Ottawa, LL.L., 2007
- University of Ottawa, LL.B., 2005
- Michigan State University, College of Law, J.D., 2005



### PRACTICE SUMMARY:

Sébastien joined Tierney Stauffer LLP as an Associate in the Wills, Estates & Trusts Planning & Administrative Practice Group in 2009. His practise focuses on estate planning, will drafting and personal and corporate taxation. Sébastien has experience in resolving disputes with the Canada Revenue Agency (CRA), filing voluntary disclosures, assisting individuals with their tax related issues and tax planning for families and businesses. Sébastien is bilingual and practices in both official languages.

He has spoken at various seminars on estate, trust and tax matters. Sébastien has also appeared on radio and television discussing legal issues. He is a tutor for the Law Society of Upper Canada for the Estate Practice section.

Prior to joining Tierney Stauffer LLP, Sébastien practiced with another Ottawa law firm where he gained experience in tax law, charity law, estate planning and will drafting.