

Estate Tax Reform?

One of the foremost advocates of reform tells us what to expect



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While estate tax reform doesn't seem as pressing these days as the Iraq war or immigration, it is an important enough issue that members of the U.S. Senate, from both parties, are discussing possible solutions to the one-year window when the tax will be repealed in 2010 and sunset in 2011.

Both parties agree that the law needs to be fixed; that one year of repeal in 2010 makes no sense. Their argument is over the fix. Republicans are not inclined to give up one year of repeal for a freeze at the 2009 tax rate of 45 percent with a \$3.5 million lifetime exemption. The Democrats will not accept a tax rate or exemption amount that results in too significant a loss in federal revenue.

The new makeup of the Senate, with eight new Democrat senators, means the dynamics behind the reform movement have changed considerably. Full repeal of the estate tax rate seems unlikely, even though the Democratic Senator Blanche Lincoln of Arkansas and Republican Senator Jon Kyl of Arizona—champions of estate tax repeal—would both like to see a real fix in 2007.

If that doesn't happen, estate tax reform will be part of the debate for the 2008 elections. And the Democratic senators Mary L. Landrieu of Louisiana, Max Baucus of Montana and Mark Pryor of Arkansas are concerned about the impact the issue might have on their re-elections. Baucus, now chairman of the Senate Finance Committee, has supported repeal

in the past but lately has been talking about a 35 percent tax rate and \$3.5 million exemption.

Are there 60 votes for any kind of estate tax reform legislation? And would the Senate majority leader allow a vote to take place in this session of Congress? To reach a 60-vote count requires 11 Democrats agreeing with all 49 Republicans. That is a heavy lift!

So what can we expect? I see three possible scenarios:

(1) There will be no change in gift, estate and generation-skipping tax (GST) law, because the "paygo" rules are applied and an offset cannot be determined.

(2) Legislation is proposed that would freeze gift, estate and GST as the law stands in 2009, thereby eliminating the one year of repeal. That means there would be a \$3.5 million exemption for estate and GST, \$1 million for gifts, with a 45 percent maximum rate of tax.

(3) Kyl—with Lincoln and/or Baucus—attach an amendment to a bill that the House will pass. That means there'd be a 30 percent to 35 percent rate of estate and GST with an exemption of \$3.5 million to \$5 million. Senator(s) Lincoln and/or Baucus are strong enough figures in their party to secure the needed Democratic votes for a 60-vote passage.

Any of these scenarios and their permutations are possible before 2008 ends. And, indeed, the parties should act soon. If they wait until they are on the cliff in 2009, the lawmakers will be pressed to do a quick

fix before repeal in 2010. Those who want to turn back the clock on estate tax reform will want to wait, as the cost of reform will be more expensive at the last minute. But Senators who are up for election in 2008 will be pressed to take action sooner.

While most of the nation's attention has been fixed on the war in Iraq and immigration issues, there has been some movement on the estate tax reform front. On May 17, 2007, Congressman Kenny Hulshof (R,-Mo.), along with Congressman Bud Cramer (D,-Ala.), introduced H.R. 2380, the Death Tax Repeal Permanency Act of 2007. Sponsors are being secured for this bill. But it's unlikely that the House chairman of the Ways and Means Committee will ever take it up; so it is unlikely that it will ever be brought to a vote on the floor of the House in 2007. Even if a vote did occur, the bill's

chances of passing are unclear.

Talk continues about the form the federal estate tax law should take and the extent of certainty it should provide. Meanwhile, many lawmakers are forgetting to focus on the impact the state estate tax is having on their constituents with the elimination of the state estate tax credit. Estates in New York now pay a 53.80 percent tax rate, even though the federal rate has declined; the state tax credit has been eliminated and resulted in a higher tax for the New York residents and residents of other "decoupled" states.

It now appears unlikely that the Congress will repeal the estate tax. But it's still possible that Congress will fix what is broken before 2010. Let's just hope the solution is a significant improvement on the current law. **I**

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