
The Estate Tax Roller Coaster Ride



By now, you've probably grown accustomed to the fact that we still have an estate tax. If you tend to follow the estate tax debate, you may recall its one-year repeal in 2010—and its reinstatement, in 2011, with a maximum rate of 35 percent and a \$5 million per person exemption. Congress arrived at these rates/exemptions in a last-minute deal in December 2010.

But you may not have focused on the fact that the great estate-tax roller coaster is about to rev up one more time. That 11th hour deal—with its relatively generous \$5 million exemption and 35 percent maximum rate—is “good” for two years only, 2011 and 2012. What happens when 2013 rolls around in a few months? Unless Congress intervenes, estate tax rates and exemptions are scheduled to be reinstated at punitive 2001 levels—that is, rates as high as 55 percent with a mere \$1 million exemption.

During the balance of 2012, Congress *could* enact legislation that keeps rates and exemptions stable. Although hope springs eternal, the probability of a 2012 congressional fix seems remote. After all, Congress has had difficulty keeping the government funded and has flubbed the opportunity to reach any agreement on runaway spending.

In the opening months of 2013 a compromise may be possible, and that compromise may be made retroactive to the beginning of 2013. The nature of any compromise—whether high, low, or no estate taxes—will heavily de-

pend on the outcome of the November 2012 elections. Cato's scholars have consistently argued for a complete repeal of the estate tax, commonly referred to as the “death tax,” noting that the tax is typically imposed on the accumulated earnings and savings from a lifetime and, therefore, tends to tax—for a second or even a third time—assets that were already subjected to income and/or capital gains tax during a person's life.

Although it is difficult to predict exactly how it will all turn out, one thing is pretty certain: the rates and exemption levels of 2012 are likely to be different in 2013. Since rates and exemptions are fundamental drivers of estate planning, you may wish to consult with your financial advisers in this time of uncertainty and make sure that you have an estate plan that works with the fluctuating state of the law.

Tolerating this kind of legislative uncertainty is a dereliction of duty on the part of our legislators—making it difficult, sometimes impossible, for citizens to plan their business and family affairs. In order to protect yourself and your family, try to stay abreast of the changes as they happen. And we can all hope that, one day, Congress will take the advice of Cato's scholars and repeal the estate tax.

If you would like to discuss estate planning or gifting ideas, please feel free to contact **Gayllis Ward**, our director of planned giving, at gward@cato.org or at (202) 218-4631. ■