

The Estate Tax Mess



Federal estate tax policy is a complete mess. In 2010, we have no Federal estate tax. Congress may act sometime this year to re-impose the tax, probably retroactively to the beginning of the year. But if Congress should fail to act in 2010, the estate tax is scheduled to return in 2011 with rates ranging up to 55 percent and a \$1 million exemption level.

So how did this mess come to be? As many of you undoubtedly recall, the estate tax is often referred to as the “death tax” because it is imposed on the assets of folks who have died. For more than a decade, there have been strong calls for its full repeal since it taxes assets that were already taxed, via income and capital gains taxes, throughout a person’s lifetime. Indeed, the estate tax is a very anti-savings tax. The Bush administration supported permanent repeal but was never able to garner enough support to overcome supermajority rules in the Senate.

Instead, an awkward compromise was reached: through 2009 estate tax rates were gradually lowered and exemption levels were gradually increased. Then, in 2010, the estate tax was repealed for one year only. But the bad news is that the terms of the legislative compromise dictate that, in 2011, the estate tax comes back with a vengeance—with high rates and a \$1 million exemption per person.

When this Bush-era legislation was passed, most analysts were convinced that Congress would never allow the muddle of a one-year repeal, followed by a re-instatement of the tax at punitive pre-reform levels. Well, the pundits were wrong: Congress let matters slide and we are now in the midst of the 2010 one-year repeal. Granted, it remains highly likely that, sometime during 2010, Congress will

focus on the estate tax. Commentators predict that this re-crafted estate tax will have rates peaking at 45 percent and a \$3.5 million exemption. But nobody knows for sure!

So this leaves folks—citizens, taxpayers—in a real bind. What assumptions should they make when planning their estate? No tax? Low tax? High tax? Reasonable exemptions? Meager exemptions? The confusion is not academic, as many wills are drafted with specific reference to such items as the Federal exemption level—for example, “I leave my children an amount equal to the Federal exemption equivalent in effect at the time of my death.” The drafter of this will may have assumed that the exemption referred to would be upwards of \$1 million. But right now, this clause would utterly fail in its purpose of leaving money to children as there is no estate tax and no exemption.

What to do? Check with your lawyer and financial advisers to make sure that your will and other estate planning documents still work as you intended, even in these uncertain times. It is important to check now during this awkward hiatus in the estate tax and just as important to check after any new legislation. After all, you want to ensure that your assets go the family members and charities of your choice. Take nothing for granted. Congress has not been looking out for you.

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