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# The Estate Tax... Congress Kicks the Can Down the Road



In December 2010, Congress slapped an 11th hour band-aid on the estate-tax mess. Essentially this quick fix pumps up the exemption level (the amount of assets exempted from estate tax) and lowers the tax rate for a couple of years. It does not tackle the larger questions of whether estates should be taxed at all and, if so, at what level.

Indeed, Cato's scholars have long argued for a complete repeal of the estate tax, commonly called the "death tax." They point out that the tax is typically imposed on the accumulated earnings and savings from a lifetime and, therefore, tends to tax—for a second time—assets that were already subjected to income and/or capital gains taxes during a person's life. Beyond the inherent unfairness of this double taxation, Cato's scholars maintain that the estate tax is hugely inefficient—it is difficult to enforce and administer and it is the progenitor of a wasteful cottage industry devoted to estate-tax avoidance. It is also worth noting that several industrial nations have no estate tax.

If you are wondering why we reached a crisis point at the end of 2010, the answer is that the Bush administration could not garner enough votes for the full repeal of the estate tax. As an alternative, it opted for an awkward legislative compromise: a series of increases in the amount of assets exempted from the tax and a one-year repeal in 2010, followed by a reinstatement of the tax in 2011. That 2011 reinstatement was scheduled to come with a

kicker. Tax rates and exemptions levels were to be reinstated at punitive 2001 levels—that is, rates as high as 55 percent and a mere \$1 million exemption.

Given the widespread recognition of the innate unfairness of the estate tax, Congress and the president knew that something had to be done before the reinstatement witching hour. Hence, a last-minute compromise, signed into law on December 17, 2010, reinstated the estate tax but provided for an increased exemption amount of \$5 million per person and a decreased maximum rate of 35 percent.

The catch is that the increased exemption and decreased rate are available for 2011 and 2012 only. Unless Congress intervenes again, these relief provisions sunset on December 31, 2012, and the law reverts back to a \$1 million exemption and a 55 percent top rate.

So, once again, Congress has kicked the can down the road and taxpayers are left with some temporary relief but lack the long-term stability necessary for generational planning. Hopefully, when the debate heats up sometime in 2012, Congress will get it right and will finally repeal the estate/death tax. Perhaps the only certainty in this sorry mess is that Cato's scholars will continue to argue that the estate tax is both unfair and unworkable.

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](mailto:gward@cato.org) or at (202) 218-4631. ■