

Congressional bills could reshape estate planning

Under current law, the federal estate tax is scheduled to be repealed for 365 days during the year of 2010. Due to so-called legislative "sunset" provisions, the estate tax is scheduled to reappear on January 1, 2011, with a \$1.0 million exclusion.

Because of the uncertainty surrounding the future of the estate tax, it is often difficult for people to implement tax planning on a long-term basis. However, there may be relief on the horizon.

The House of Representatives recently passed H.R. 8, which was introduced by Rep. Kenny Hulshof from Missouri. The House voted on April 13, 2005, 272 in favor of H.R. 8 and 162 opposed.

H.R. 8 essentially repeals the "sunset" provisions in current estate tax law, which would make the January 1, 2010 repeal permanent.

Also permanent would be new rules for determining the income tax basis of inherited assets. Currently, most inherited assets receive a new "stepped up" basis for income tax purposes.

The new rule implements a modified carryover basis system. A married couple would be able to "step up" \$5.6 million worth of basis in assets transferred at death.

All other assets would have a carryover basis (the same income tax basis as the deceased owner of the property had).

Senate consideration

It now becomes the job of the Senate to vote on a form of estate tax repeal or reform. Because of certain budgetary rules, it will take 60 "Yes" votes in the Senate to pass an estate tax repeal or reform bill.

There are currently two bills pending in the Senate that are receiving a great deal of attention.

Senate bill 420, the *Death Tax Repeal Permanency Act*, was introduced by Sen. Jon Kyl from Arizona, and it mirrors H.R. 8, as passed by the House. As of June 20, 2005, it had 20 cosponsors.

The second bill receiving attention in the Senate is S. 988, the *Jobs Protection and Estate Tax Reform Act of 2005*, which was introduced by Sen. Jeff Sessions of Alabama.

Senate Bill 988 resembles S. 420; however, it accelerates permanent repeal and the modified carryover basis system to January 1, 2005.

This new proposed date is possible because the estate tax liability of a person dying on January 1, 2005, is not due to the United States Treasury until October 1, 2005. As of June 20, S. 988 had 25 cosponsors.

There is no *official* scheduled Senate vote for either S. 420 or S. 988 at the present time.

However, it is expected that one or both bills will be voted on as part of the upcoming Energy Bill debates, which are currently scheduled for the week of July 18, 2005. Again, an estate tax repeal or reform bill must be approved by 60 votes in the Senate in order to be presented to the President for signature.

Estimated Senate vote counts range from 54 to 60 in favor of permanent repeal in either 2005 or 2010. Therefore, if a vote occurs during the week of July 18th, it will be sure to be an exciting debate.

President Bush has consistently indicated that he will sign an estate tax repeal bill if presented to him.

Compromise on the horizon?

Although some changes in the existing estate tax laws are likely, it is uncertain whether the changes will take the form of the proposals in S. 420 or S. 988.

Some commentators have not ruled out the possibility of a compromise bill, which would include a larger estate tax exemption amount (estimates range from \$3.5 to \$5.0 million per person) and an estate tax rate lower than the current maximum rate of 47%.

Hopefully the week of July 18, 2005 will shed more light on the future of our federal estate tax laws.

Closer to home

On a more local level, the Alabama state estate tax became non-existent as of January 1, 2005. Because of a somewhat confusing statutory scheme tied to the federal estate tax laws, the Alabama estate tax is no longer in effect.

At the current time, we know of no pending legislation in the Alabama legislature to reinstate the state estate tax.

As unpredictable as the current estate tax laws are, they cannot be ignored when developing or updating your estate plan.

Until a new law is passed by the House and Senate and signed by the President, your current estate planning documents should be reviewed periodically to insure that they accomplish your wishes in this changing tax law environment.



**Estate Planning
Legislation**

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