

SAGE *Solutions*

Estate Tax Legislative Outlook Before Sunset

Before Sunset: Where Are We Now?

The Estate Tax Repeal and the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) applies for estate and gift tax purposes until 2011, when EGTRRA "sunset" and is replaced by prior law. Under EGTRRA, in 2009 the estate tax exemption is \$3,500,000 million per person, the top estate tax rate is reduced to 45%, and the gift tax exemption remains at \$1,000,000. EGTRRA calls for complete repeal of the estate tax in 2010. While using lifetime gift tax exemption still reduces the estate tax exemption, these two exemptions are not considered "unified" under current law since they are unequal. Furthermore, current law has a "use it or lose it" approach to an individual's exemption — the surviving spouse may not "carry over" any unused exemption of the first spouse to die; thus, there is no portability.

While no one can predict what legislation (if any) will be passed this year on estate taxes, there are a number of proposals in Congress. Their current agenda includes health care, energy, education and financial services reform. Since all of these issues are significant, the actual timetable remains to be seen. However, Congress is expected to address estate tax reform this fall.

What is on the Table Now?

Of the multiple proposals and bills in Congress, perhaps the most well known is the Baucus proposal for "middle class tax reform." Baucus proposes to freeze the exemption at \$3,500,000, keep the top estate tax rate at 45%, reunify the estate and gift tax credit (bringing up the gift tax exemption to \$3,500,000), allow for spousal portability of gift and estate exemptions, and index amounts for inflation.

Other proposals in Congress allow for exemptions ranging from \$2,000,000 to \$5,000,000 and top rates from 35%-55%. Most call for reunification of the estate and gift tax exemptions, portability between spouses, and indexing for inflation. Some limit the application of valuation discounts for family limited partnership interests and other assets.

What Happens Next?

If Congress does nothing this year, we will have one year of estate tax repeal and carryover basis. While this may create a potential quagmire for tax advisors (and Financial Advisors for basis calculations), it may or may not happen. Most analysts postulate that some action will be taken in 2009, even if it is simply freezing 2009 rates and addressing the future later.

With so much uncertainty and the myriad issues facing the country, people should be encouraged to keep their planning flexible and current. For more information on the status of pending or enacted legislation, contact us at Sage Hill.

PLANNING TIP

Full repeal seems less likely now than it was when EGTRRA first passed. With five bills currently in the House and three in the Senate addressing estate tax, it appears Congress has no consensus either. Since no advisor has a foolproof crystal ball, planning and preparing for the future is encouraged.

Sage In The News

Sage Hill successfully completes Family Bank Institute (FBI) for 50 bank owners in Minneapolis. The participants received two days of education regarding Business Succession Planning & Estate Planning. Look for the next FBI in the Spring in the Midwest.

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