

State of the Estate Tax

Beyond 2010: Uncertainty Reigns, but There's Still Planning to Do

It's called the estate tax, although some in the legal and accounting fields call it simply the 'death tax.' And there are a lot of questions surrounding this controversial federal assessment. At the moment, there is a \$2 million exemption, which will rise to \$3.5 million in 2009, but then, in 2010, there will be essentially no estate tax at all, an intriguing blip in time created by legislation passed in 2001 that also calls for the tax exemption to return to \$1 million in 2011 unless further action is taken. While there is considerable speculation about the year 2010, and jokes about why it will be a good time to die, estate planners say the focus should be on the present — and 2011 and beyond.

By GEORGE O'BRIEN

Jeff Roberts has heard a lot of jokes — or at least attempts at humor — regarding the year 2010.

"People will say, 'well, I guess I better die then,'" said Roberts, an estate-planning specialist with the Springfield-based firm Robinson Donovan, in reference to a year when there is set to be what amounts to no federal estate tax liability. "If it's a husband saying that, and his wife is there with him, I'll always say, 'that's fine, but in truth, you both need



Staff Photo

Hyman Darling says some people might be surprised to discover that they may eventually face estate-tax liability.

to die then."

Roberts is joking when he says this, obviously, but making an all-important point. Assets — most of them, anyway — will pass down from the husband to the spouse, he explained, and will, in all likelihood, be subject to a federal estate tax down the road. So dying two years from now probably won't be of much benefit to descendants.

"Everyone's focused on 2010," said Roberts, adding that there's been no shortage of jokes about that being the year wealthy individuals might (or should) meet their demise. "But they should really be focused on 2011 and beyond."

But that's somewhat difficult, because no one knows for sure what Congress will do with the estate tax over the next 24 months or so (a new measure doesn't need to be in place before the fall of 2010). The current

exemption is \$2 million per individual, up from \$1 million when tax-cutting legislation was passed seven years ago. On Jan. 1, 2009, the exemption will go to \$3.5 million, and a year later, the tax is due to be repealed altogether. But, unless current legislation is amended, the exemption goes back to \$1 million, which isn't a lot of money in 2008 and will be even less in 2011.

There is plenty of speculation, and somewhat of a consensus, that the so-called "death tax" will not be permanently eliminated, although some say it should be, said Hyman Darling, an estate-planning specialist with the Springfield-based firm Bacon Wilson, who paraphrased Mark Twain when he said that rumors of the estate tax's death are greatly exaggerated — and quite premature. The tax only accounts for roughly 1% of the income received by the federal govern-

ment, he explained, and many government leaders, especially conservatives, want the death tax to die.

But a record federal budget deficit, coupled with an expensive war in Iraq and persistent lobbying from those representing charities — who feel their causes will be hurt if individuals no longer need the existing charitable deduction — and other groups make full elimination of the tax unlikely, said Darling.

But there is also a growing consensus that the exemption will not revert to \$1 million. Indeed, numbers being suggested range from the current \$2 million to the more probable \$3.5 million to the highly improbable (some conservatives have tossed out figures as high as \$15 million), said Darling, adding that debate will also ensue on what the estate tax rate will be; it is currently 45% and will likely stay at or near that figure, he believes.

While there is some sense of probability regarding a period (post-2010) of relative uncertainty, individuals still need to plan, said Roberts, adding that amid all the question marks lie some simple truths — such as the state's estate tax, which isn't going anywhere, and the fact that, while \$2 million or \$3.5 million may sound like big numbers, in this day and age, they aren't, especially for business owners, and people who may not think they're in the 'wealthy' category still need to pay attention to the death tax.

"For most people, the fact that the estate tax is slated to be repealed is not the issue, because they're not planning on dying in 2010 and would prefer not to," he explained. "What's scaring the pants off everybody is that the exemption will revert to \$1 mil-

lion if Congress doesn't do something about it."

As Certain as Death and Taxes

Tracing the recent history of the estate tax, Darling said the current situation — and speculation about the future — result from President Bush's attempts to fulfill a 2000 election-year campaign promise to do away with the estate tax. He and a Republican-controlled Congress brought some relief, but not what amounts to a toe tag for the death tax.

The legislation that passed in 2001 as part of a \$1.35 trillion tax cut raised the estate-tax exemption first to \$1 million, then to \$1.5 million, and then to the current \$2 million, with the provision that it will become \$3.5 million on Jan. 1, 2009. Meanwhile, the highest rate on these taxes has gone from 50% steadily down to 45%. The legislation, which calls for an unlimited exemption in 2010, will sunset at the end of that year, meaning, effectively, that if Congress does nothing by the end of 2010, the death tax exemption will revert to that \$1 million number.

But that's not likely.

Both presidential candidates actually support some form of estate tax — although they differ slightly on exemption numbers and rates — and most pundits say a Democratically controlled Congress simply will not choose to do without the revenue gained from the estate tax, however small the number may appear.

"The estate tax really only impacts about 1% of the population, although that number is rising slightly, but Congress still doesn't want to give up that revenue," said Darling, adding that charities are worried that there will be less giving if people don't need the current charitable deduction, and insurance companies (represented by powerful lobbyists) won't be able to sell life-

insurance policies to cover losses from estate-tax payments, and thus want to maintain the status quo or something approaching it.

If repeal is truly not in the cards, then the remaining questions surround the size of the exemption and the rate, he continued, adding that some preliminary hearings have been held to sound out sentiment and float trial balloons — with much more of that to come in the months ahead.

What does all this mean for area residents and business owners?

It means that they still have to keep the federal estate tax clearly in mind when they do their estate planning and not make any assumptions regarding its repeal, said Darling, who echoed Roberts

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when he said that \$2 million or \$3.5 million isn't what it used to be.

"Assets up add quickly, and it's usually things that people don't think about," he said, noting that, with 401(k) accounts compounding and life insurance death benefits mixed in, not to mention the value of a business, people can find themselves easily exposed to death-tax liability — at least as it exists now. "There are a lot of millionaires out there — and some of them don't know they're millionaires."

Thus, they need to plan with an eye toward minimizing if not eliminating federal estate tax liability, say specialists in this field, which can be accomplished by carefully monitoring what is left

to spouses rather than children, for example, establishing trusts that can shield life insurance proceeds and other assets from estate taxes, and other measures.

There are currently two main estate-tax deductions at present, said Roberts, one for charity, which is unlimited — "if you're like Warren Buffet and say you're going to leave everything to charity, then you pay no tax" — and what is left to a spouse. But what is left to a spouse then becomes part of his or her exposure to estate-tax liability.

While one estate-tax law amendment currently being debated would automatically enable a couple to carry over the unused exemption of a spouse (this allowing a \$7 million cushion with the \$3.5 million exemp-

are forced to pay estate taxes," he said, adding that there are steps to minimize the effects, but the taxes are still impactful. "That's why planning is important.

"I'm telling clients to take advantage of what's available to them today," he continued, "but also to do what amounts to regular checkups, as they would with a doctor, to make sure they're ready. The rules are going to change — we just don't know exactly when or how."

Overall, said Roberts, people can't assume anything when it comes to the estate tax, nor can they merely be spectators and watch how the whole thing plays itself out.

"You can still do estate planning, and you shouldn't wait around to see what's going to happen," he said, noting, again, that it could be well into 2010 before anything is done. "People can do planning that certainly takes into account what might happen with these exemptions, and they should."

Death Tax Wish

The jokes about 2010 keep coming, said Darling, adding that, like all those in his specialty, he's heard myriad permutations on a common theme. But he noted quickly that the estate tax has never been, nor is it now, a laughing matter.

The picture has brightened somewhat on this subject, he said, and it appears likely that a \$3.5 million exemption per individual will become a more-permanent fixture, perhaps giving couples that \$7 million cushion from Uncle Sam. Still, there are no certainties, even with estate taxes.

Therefore, the bottom line, according to specialists in this realm, is what it is has always been: people can't plan for when they are going to die — so they need to plan for everything else, including the death tax. ♦

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