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Federal Estate Tax Update and What it Means to You

by Roger R. Billings

Those who own or hope to own at least \$1 million in assets should consider the effect of the Federal Estate Tax in their estate planning. Unfortunately, the changing and unpredictable Estate Tax has become yet another excuse for postponing personal estate planning.

The uncertainty started in 2001, when President Bush pushed EGTRRA through Congress, with the optimistic goal of permanently eliminating the estate tax. EGTRRA was designed to gradually phase out the tax, but only temporarily. The Estate Tax has an exemption amount, and the tax is only paid on the value of estates above the exemption amount. EGTRRA gradually increased the exemption amount from \$1 million in 2002 to the current \$3.5 million. In 2010, under EGTRRA, the estate tax will be eliminated for one year. In 2011, because there was not enough political support to make the death of the estate tax permanent, the exemption amount will return to \$1 million.

Congress has made several unsuccessful attempts to enact a permanent reduction of the estate tax. Still lacking sufficient support to do away with the tax, these attempts proposed higher permanent exemption amounts, to take effect in 2010. After the current economic crisis arrived, many gave up on enacting a permanent exemption amount before 2010, including President Obama, who has instead proposed a one-year extension of the current \$3.5 million exemption. The Senate Finance Committee chair prefers a multi-year extension, but committee staffers reportedly believe that by the end of this year the one-year extension is more likely to be adopted.¹ If that happens, the long-term future of the estate tax will continue to be clouded.

For those who have delayed making decisions because of this uncertainty, the longer the delay continues the more dangerous it becomes. Congressional procrastination should not lure anyone into complacency. Deferred estate plans and postponed updates bring serious consequences: the wishes of asset holders will be frustrated, disputes among heirs will increase, and the administration of estates will be more expensive. The Federal Estate Tax should not be yet another excuse to put off estate planning; it is rather one of the many uncertainties in life that must be anticipated in good planning.

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Footnote:

¹ Johnston, David Cay. 2009. Answers on Tax Questions, Part One. *The New York Times*, October 29.