



Congress Considers Changes in Federal Estate Tax Law

Believe it or not, health care reform is not the only thing lawmakers are working on this year. The search for additional revenue to fund proposed health care changes has led Congress and its minions to peer into every corner and under every rock for any loose change. The Federal Estate Tax Law has not escaped this scrutiny. Not surprisingly though, some of our lawmakers are looking to **increase** estate taxes while others look to **reduce** them. This article contains a snapshot of the various proposals, their sponsors and what affects they would have on various components of the law.

Changes in the Federal Estate Tax law currently under consideration include a one-year extension of the 2009 tax rate of 45% on individual estates over \$3.5 million. Of course, an extension would only delay the day Congress will have to fashion a permanent fix for the uncertainty in estate tax law. If Congress does nothing, there would be *no estate tax* for those dying in 2010. That's the good news. The bad news is the estate tax would raise its ugly head again in 2011 by reducing the exemption to only \$1,000,000 per individual and imposing a staggering 55% top rate on taxable assets.

Ignoring current economic realities, some members of congress want to delay any permanent changes at this time in the hope of a much larger exemption and significantly lower rates. Three major bills are currently being discussed. Their current provisions are as follows:

Provision	Senate Bill 722	House Bill 2032	House Bill 436
Exclusion	Made permanent at \$3.5 mil	Made permanent at \$2.0 mil	Made permanent at \$3.5 mil
Index exclusion for inflation?	Yes	Yes	No
Top tax rate	45% tax rate made permanent	Progressive, beginning at 45% rising to 55% (1)	45% tax rate made permanent
Reunify estate & gift tax credit	Yes	Yes	Yes (3)
Allow for portability	Yes (2)	Yes (2)	No
Restore state estate tax credit	No	Yes	No
Limit family limited partnership valuation discount	N/A	N/A	No
Strict valuation rules for transfer of non-business assets	No	No	Yes

NOTES:

- (1) Top tax rate is 45% \$2 to \$5 mil; 50% \$5 to \$10 mil; 55% over \$10 mil.
- (2) Allow transfer to the surviving spouse of a deceased spouse's unused exclusion.
- (3) Cap on tax-free lifetime gifts would go from \$1,000,000 to \$3.5 million (but use up protected amount so whatever exemption was used during lifetime would not be available at death).

CBO Options:

In addition to the three bills outlined above, lawmakers are also considering options presented by the Congressional Budget Office (CBO). Whether **any** of these options will make it into the new law is totally unknown.

Option	1	2	3
Exclusion	\$5 million starting in 2010	\$5 million starting in 2010	Retain at \$3.5 mil
Index exclusion for inflation?	Yes	Yes	No
Top tax rate	15% in 2010; 20% thereafter	First \$25 mil is 15%; Above \$25 mil is 30%	45% top tax rate
Allow stepped-up basis for assets transferred from a decedent	Yes	Yes	N/A
Allow deduction or credit for state death taxes?	No	No	Yes

CBO Option 4 was unique and defied charting in this table. In brief, it would repeal the estate tax in 2010; retain a \$1,000,000 gift tax exemption and institute a carryover basis regime.

So, where does all of this leave us? Nobody really knows but our “inside sources” are suggesting there will be no permanent fix at this time. Instead, there will be a temporary freeze at the current levels (\$3.5 mil exemption and 45% top marginal tax rate) and the entire issue will be revisited next year. In the meantime, plan for the worst and hope for the best!

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