

THE NEW YEAR IS JUST AROUND THE CORNER

What Will Become of the Estate Tax? BY GARY ALTMAN, ESQ.

On December 31st at 11:59 p.m., the New Year's Eve Ball in Times Square will begin its descent as we count down the final seconds of 2010. As an estate planner, for me, the looming question leading up to that moment is, "What will become of the federal estate tax?!"

When the Clock Strikes Twelve

Unless new law is enacted, Federal estate, generation-skipping (GST) and gift tax rates (which were repealed for all of 2010) will revert back to 2001 law on January 1st, 2011. This means that the federal estate tax exemption will become \$1,000,000, the GST exemption will be somewhat greater, and the maximum estate tax rate will return to 55% - with a surcharge of 5% for certain estates over \$10,000,000.

With the latest elections behind us, a lame-duck Congress, and less than two months remaining in 2010, chances are slim that any new estate tax legislation will pass this year. That said, here are the three courses of action the Congress could take:

- Do nothing and go back to the 2001 exemption and rates.
- Make the 2009 rates and exemption permanent, an approach that the Obama administration favors.
- Make the 2010 rules permanent, thereby eliminating the estate tax, as the Republican leadership would like to do.

It should also not be a foregone conclusion that Congress can make the estate tax retroactive to January 1, 2010. However, many already feel this would be unconstitutional and the lawsuits that would likely ensue could leave estates in limbo for years.

New Years Resolution: Kill the Estate Tax?

Many lawmakers and tax policy experts support the return of

the federal estate tax because, in reality, it affects less than 2 percent of the public. (Of the 2.4 million people who died in 2001, exactly 51,841 estates (2% of the total) faced a federal estate tax, according to recent IRS figures.) We also cannot ignore the revenue that the estate tax does provide the federal government from those who fit into that small portion of people who would be impacted by the estate tax. (So far in 2010, five billionaires have passed away with a combined net worth of around 20 billion dollars. Even with deductions and other considerations, the tax revenues from these estates would have been significant.) Some estimates suggest that eliminating the federal estate tax would cost the government \$410 billion in the next decade alone. That's quite a significant amount of revenue to give up – especially during a tight economy.

However, many Americans - even those whose estates are well below the exemption amount - consider the estate tax unfair and it looks like the Congress that's taking shape for 2011 may just agree. Prior to the elections, there were talks of a possible bi-partisan effort that would keep the estate tax, but bump up the exemption amount. As recently as July 2010, a bill was proposed to keep the estate tax, but increase the exemption to \$5 million. However, as elections grew closer, that possibility seemed less and less likely. More than half of the Republicans who ran for House and Senate this last election signed a pledge to eliminate the federal estate tax; only two Democrats and a few Libertarians signed the pledge.

The Bottom Line

With so little time on the clock, it's possible, but highly unlikely that we'll have an answer to the estate tax uncertainty by the end of the year. That said, you can bet that this issue is going to be hot on the next Congress' agenda. This makes it an especially important time to begin talking with an experienced estate planner now. They should be your eyes and ears during this nail-biter, and should be able to plan based on multiple scenarios. You do not want to go into the New Year with no one looking out for the single most important documents of your life – and death.

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