

## **Estate Tax Reform: It's Time for Action**

By Bob Kerzner

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The discussion of the estate tax – or as some have labeled it the “death tax” – stirs up strong feelings, especially in our business. I loved Warren Buffett’s comment testifying before the House when he said the term “death tax” showed “intellectual dishonesty.” He explained, “It’s clever, it’s Orwellian and it is, if you will pardon the expression, dead wrong.” Those who know its history recognize the truth in his comments.

Many affluent producers who rail about how unfair the tax is also made a good living helping clients plan for it, myself included. There have been many people – life agents, planners, lawyers and others – educating the public about the tax laws and showing clients the steps they could take to make an orderly well planned disposition of their estate.

Herein lies the dilemma. As an industry we have had to stay very quiet on an issue that is of great interest to us. Meanwhile the debate goes on and in my view no one’s best interests are being served by the lack of clarity that exists today.

History and economics tell us that we are always going to have an estate tax. On and off, the U.S. has relied on estate taxes for more than 200 years. The first estate tax was enacted in 1797 to fund construction of the U.S. Navy. That tax was repealed in 1802 but it came back in 1862 to help finance the Civil War.

And where are we today? In the midst of a two-front war that by some estimates will cost as much as \$3 trillion! The current national debt is over \$9 trillion and this year’s budget deficit is projected to skyrocket to over \$400 billion, more than double the level for 2007. The estimated cost of repealing the estate tax between now and 2012 is close to \$100 billion. So it seems unlikely to me that, in the end, our legislators will walk away from a significant revenue source for the federal government.

For those who follow these issues in an era of PAYGO when Congress is looking for ways to pay for new and existing programs, can there be any doubt this boomerang is coming back? In one form or another, the estate tax has been a fixture for most of the last century, and is likely to remain so, despite being changed numerous times over the years.

This being the case, doesn't it make for good public policy, not to mention fiscal sanity, for Congress to act and get some reasonable legislation passed as soon as possible? If you wonder why this would be good public policy, you only need to ask attorneys how people are doing estate planning today compared with 2001, when the rules were last changed.

Very simply, how are attorneys and planners to advise clients when no one really knows what the rules will be in 2011 and beyond? Right now the tax is supposed to disappear altogether in 2010, only to come back in its full pre-2001 form in 2011. As I argue, full repeal is not likely to be enacted. But will Congress really allow the pre-2001 burden to stand? I think that’s equally unlikely.

But today, as we consider the possibilities, people are getting older, people are becoming uninsurable, people are dying and no one is taking action. In the end, most pundits believe we will have a larger personal exclusion of two to five million dollars per person and there will be a tax.

I know the present administration is committed to elimination of the "death tax" but it's not going to happen. If it didn't happen when the Republicans had a president in the White House and full control of Congress, it won't happen now. So isn't it time to come to terms and produce a reasonable settlement?

I for one believe it's time to provide clarity so those who may be vulnerable to estate taxation can plan for a reasonable transition of their assets to the ones they love and to charity for the greater good.

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