



Don't Bet on Estate Tax Repeal

Estate tax reform is highly likely, although it probably won't happen until late summer or fall, 2009. The outlines of a bill are already somewhat clear because both Presidential candidates believe the estate tax should not be permanently repealed. Under current law, the estate tax exemption is currently \$2.0 million and is scheduled to increase to \$3.5 million on January 1, 2009. The estate tax is further scheduled to be repealed for 2010 only, and comes back in 2011 with the exemption reduced to just \$1.0 million. (I know this is crazy, who thinks this stuff up anyway!).

Currently, the candidates' respective proposals shape up as follows:

- Exemption: For 2010, Obama would keep it at \$3.5 million, while McCain would increase it to \$5.0 million.
- Top tax rate: For 2010, Obama would keep it at 45%, (the same as 2009), while McCain would reduce it to 15%.
- Exemption "portability": In what would represent a new approach, both candidates support making the exemption "portable" for spouses. This could greatly simplify estate planning for surviving spouses by eliminating requirements to retitle assets during their lifetimes to ensure that each spouse receives the maximum exemption benefit, and also would eliminate the need for the use of trusts in wills solely to save on estate taxes (although note that there would still be important and legitimate non-tax reasons to utilize trusts).

A number of issues would still remain for lawmakers to resolve. Among them:

- Credit for estate taxes paid to states: A number of states are pushing Congress to convert the current-law deduction back to a credit, which existed prior to 2005. Don't bet on this happening given the revenue cost to the federal government.
- The gift tax: The current lifetime exemption on taxable gifts is \$1.0 million, far less than the estate tax exemption. Tax writers are currently mulling combining the two again, which if accomplished, would allow taxpayers to make larger lifetime gifts to heirs on a tax-free basis.
- Carryover basis for assets: Lawmakers will likely take action to prevent rules previously enacted from taking effect in 2010 that require heirs to use the decedent's income tax basis when figuring gain or loss on sales of inherited assets. Lawmakers appear to realize that allowing these rules to take effect would create a tax planning nightmare for heirs, not to mention that it would in effect largely convert the estate tax into an income tax on heirs as they dispose of inherited assets.