

# Personal Financial Planning

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## ESTATE PLANNING WHILE WE SIT, WATCH, AND WAIT

AS THIS COLUMN IS BEING WRITTEN, THE country is still waiting to see how, if at all, Congress and President Obama will change the estate tax laws.

As the law stands now, for anyone who dies in 2009, \$3.5 million of the estate will be exempt from tax. If death occurs in 2010 there is no estate tax whatsoever, while 2011 brings a return of the 2001 exemption of \$1 million. In addition to the amount excluded from estate taxes, the law also alters the important issue of the beneficiary's basis in the inherited property. Simply put, for inheritors in 2009 and 2011, the basis of inherited property will be the fair market value of the property at the decedent's death, whereas property inherited in 2010 will retain the decedent's basis.

Despite the impending confusion, there are some steps tax practitioners can take in working with clients to ensure their estates are in the best position over the next few years.

### **Review the Client's Current Estate Plan**

First, determine how the client's existing estate plan will be affected by the current state of affairs. Will the plan work as well in 2010 as it does in 2009? Are changes needed now, or can the client wait until the new legislation is passed?

If the client's will includes a provision for a spousal credit shelter trust, is the amount to be funded explicitly stated (e.g., \$600,000, as is the case in some very old wills)? If so, it might be time to update the will.

### **Determine the Client's Taxable Estate**

Determining the amount of the client's taxable estate will be the starting point in determining whether or not the client will be subject to the estate tax. A client with a taxable estate of \$3.5 million will have no estate tax liability if she dies in 2009 (or 2010) but will have a liability if her death occurs in 2011.

With the drop in portfolio values, some clients with formerly taxable estates will no longer be subject to estate taxes in 2009 and possibly in 2011 as well.

### **Determine the Basis of the Client's Assets**

If the client makes gifts, the client's basis in the assets gifted will be the gift recipient's basis in the assets. (If the asset has lost value, the basis to the recipient is the lower of the client's basis and the fair market value of the asset on the date of the gift. This rule is important for clients with portfolios that have lost value.)

If the client dies in 2010 and the law has not changed, the beneficiary's basis in

the inherited property will be the decedent's basis in that property. For heirs looking to sell inherited assets, there is the likelihood of unwelcome capital gains.

Determining the decedent's basis can be a time-consuming procedure. Even a simple portfolio of mutual funds could require intensive research into reinvested dividends to identify the basis of the fund's shares. Likewise for securities moved from broker to broker. If a client has inherited property, it is possible to uncover the basis from the estate tax return, if one was filed. However, in many cases an estate tax return will not have been filed or cannot be located, necessitating additional research.

Estate taxes notwithstanding, a list of the bases of the client's assets is useful if clients make changes in their portfolios and wish to minimize the recognized capital gains or to absorb capital loss carryforwards.

## Review Beneficiary Designations

Practitioners should review all of the client's beneficiary designations. This is excellent advice regardless of the existing estate tax law. Many client financial documents have named beneficiaries. Some examples are:

- Wills;
- Trusts;
- IRAs and employer plans;
- Life insurance policies;
- Annuities; and
- Bank accounts with "pay on death" designations.

Remember that if an asset has a beneficiary designation, that named beneficiary supersedes any heirs named in the will. A review of named beneficiaries is crucial to estate planning. Named beneficiaries might have died, spousal beneficiaries might have been divorced, friends might have become estranged, and so forth. If a client has designated his children as beneficiaries by name,

make certain that he has added the names of younger children if he so desires.

In addition to beneficiaries, review the named trustees of the client's trusts and the executors of the will. Designations made years ago might need to be updated.

## Conclusion

Even though the estate tax is in flux, reviewing a client's existing estate plan now and updating it as necessary will benefit clients as the country awaits new legislation.

### EditorNotes

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