

# OPINIONS & IDEAS

## DAILY RECORD GUEST EDITORIAL

# What repeal of the Estate Tax really means

**F**ormulating an estate plan is a lot like coming up with a game plan for Sunday's football game.

Except that you don't know who the opponent is going to be, or even when the game is going to be played. And now, even the rules have changed.

Congress has just passed a massive tax code rewrite, including provisions changing our estate tax laws.

Under the new law, the so-called death tax is supposed to disappear altogether in 2010.

If we should live that long, and if the rules don't change again before then.

The question remains. Do I need life and estate planning if I die before 2010? Do I need planning after that?

The answer to both questions is yes, for various reasons. The difference the new law brings to the playing field lies in how to plan, not whether to plan.

The effect of the new law means that the amount of tax planning you will need continues to depend on the size of your estate.

The major change brought about by the new law is that the size of an estate requiring tax planning now changes from \$675,000.00 if you were to die before the end of this year, to \$1 million in assets in 2002 and 2003. The size of the estate tax exemption then grows to \$1.5 million in 2004 and 2005, \$2 million from 2006 through 2008, and \$3.5 million in 2009, with an "unlimited" exemption in 2010.

The second major change is that the top tax rate on estates larger than the exempt amounts is now 55%. It drops to 50% of the taxable estate in 2002, and continues to fall until it reaches 45% in 2007. The amounts states receive drop even faster.

Another major feature of the estate tax rewrite is not found in the estate tax end of the field, but at the income tax end. While the new law reduces the death tax burden, the income tax burden on death actually increases in many instances.

This is because the "stepped-up basis" of certain property passing on death becomes "capped" at not more than \$1.3 million of the whole estate.

Finally, the gift tax which until now has been unified with the estate tax, will diversify from it. The gift tax never goes away under the new law.

The real surprise of the game, however, is

that the instant replay rule remains in effect. A little known, and even less publicized, feature of the estate tax rewrite is that the entire new law "sunset" at the end of 2010. Unless Congress acts further before then, the old law comes back into play, and the latest changes simply disappear.

Unless the politicians enact new legislation, today's estate tax laws reappear in the year 2011. The tax free wealth transfer level drops back to \$1 million, and the tax rate goes back up to 55%. With Washington, it always pays to read the fine print.

Good planning can have the effect of both increasing the exemption level to amounts greater than given to everyone by Congress, and lowering the tax rate. With a plan focused entirely on tax savings, the estate tax can often be reduced substantially and even be eliminated altogether.

The question then becomes, do you still need life and estate planning regardless of the death tax and the changes brought about by the new law?

If any of the following apply to your situation, you do:

If you want to control who receives your money and other property when you die.

If you or your spouse might become disabled.

If you or your spouse might need long term care.

If you have minor children, or grandchildren.

If you are in a second marriage.

If any of your children or grandchildren are, or might ever be, in a second marriage.

If any of your children or grandchildren, are or ever will be in a non-marital relationship.

If you, your spouse, any child or grandchild might some day need governmental assistance to live on.

If you already have a plan in place, which may now be out-of-date.

Whatever the rules are when the whistle blows, the game will still have to be played.

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