Estate tax status cries out: Don't touch that dial(ysis)

Taxing matters

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This is the year with no federal estate tax. George Steinbrenner died in July 2010. His family will be saving about $500 million in estate tax and won't have to sell the Yankees to pay the tax. Forbes says five billionaires died so far in 2010, and the tax their estates would have owed totals $8.7 billion.

Under the tax cut legislation, the estate tax exemption increased to $3.5 million and then in 2010 the estate tax was repealed for the year. If nothing changes, the estate tax will be back Jan. 1 with a $1 million exemption.

The year with no estate tax was the year to "throw mamma from the train." This year's estate planning techniques included one-way tickets to Switzerland, where euthanasia is legal. Congressman Richard E. Neal, quoted in the New York Times when asked about the expiration of the estate tax in 2010 said, "If you're at the checkout counter, you might want to expedite things."

Three states — Oregon, Washington and Montana — allow versions of the practice of euthanasia or assisted suicide. Oregon's law took effect in 1997, and Washington enacted a similar one in 2009. Montana's Supreme Court recently ruled that nothing in the state constitution prohibited doctors from aiding patients with dying, but voters haven't yet specifically authorized it.

Some countries, such as Switzerland and the Netherlands, have long allowed physicians to aid patients in dying. But only Switzerland extends this benefit to foreigners.

In a recent news story in Wyoming, Rep. Cynthia Lummis claimed that some of her Wyoming constituents are so worried about the reinstatement of federal estate taxes that they plan to discontinue dialysis and other life-extending medical treatments so they can die before Dec. 31.

She didn't name names, but gave the example of a rancher on dialysis seriously considering termination of treatment to let the end come and, thus, escape the estate tax due to come back two months hence.

This news article generated page after page of comments on the Internet. Many took the approach that if a person has enough money to have to pay federal estate tax, they ought to be able to pay a professional to minimize or even eliminate the transfer taxes at death. True, good planning can minimize the impact of taxes, but it can't eliminate them.

Some commentators advocated stealth gifts to the family or selling the farm to the kids for $100. These approaches don't work. These are do-it-yourself techniques that just create problems.

The IRS is anything but naive. A transfer of a $5 million dollar ranch in a $100 sale is really a $4.9999 million gift. Doing this actually could result in more tax due, not to mention penalties and interest. The gift tax exclusion is only $1 million, but the estate tax exclusion might be as much as $5 million next year.

All this said, one enlightened responder to the posting, an estate planning lawyer named Emil Blatz, quoted a study showing this "hurry up and die" mentality to be a recurring phenomenon. He quotes research stating that academic researchers have known for years that death rates are influenced by major changes in estate-tax law.

A 2003 paper published in the prestigious Review of Economics and Statistics looked at 13 major estate-tax changes in the U.S. — after creation of the tax in 1916 — and found they had a small but statistically significant effect on death rates.

"Among those wealthy enough to be affected by the changes, the chance of dying increased slightly in the two weeks before rates went up and decreased in the two weeks after an estate-tax cut, a phenomenon, the authors have dubbed 'death elasticity.' "

As one elderly gentleman put it, with sardonic humor, "In 2010 I'm not going to linger too long at the top of any stairways."

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