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State of the Estate Tax

How Much Will Heirs Pay If You Die in 2010

By Kevin Bourke

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Bill and Fred were identical in every respect, same birth date, same income, same taste in music. In fact, the only factor that differentiated them was their spending and savings habit. Bill was a big spender, but Fred was more frugal.

They both died the same day. Bill left some nice possessions to his heirs, worth about a million dollars. Fred left a sizable estate, worth about five million dollars.

Bill's heirs got to keep all of his stuff.

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Fred's heirs? Well, it depends. If Fred died in 2009, his heirs had to pay $675,000 in estate tax. If he died in 2010, his heirs owed no estate tax (but might owe capital gains tax). If Fred died in 2011, his heirs owed $2,045,000 (these numbers from a study done by Deloitte Tax).

What's going on here?

In the early part of the 20th century, the United States enacted an estate tax, designed to tax the wealthiest families. There are many reasons tossed about: to pay for war efforts, to prohibit any one family from having too much influence on the country, to distribute wealth more evenly. It doesn't really matter why, what matters is that it's yet another tax to worry about.

Why should you care? Because anyone with a million dollars in net worth, whether it be equity in a house, a business, a retirement plan, or any other asset might need to review their estate plan. Soon.

Let's take one of my neighbors, who inherited the house he grew up in and lives there now. He is single and owns the home free and clear. He would never think to describe himself as rich, yet his net worth is over a million dollars, just in home equity. He might also have a savings account, investment account, and a retirement account.

Should he care? Yes! Because his estate might be subject to estate tax should he die in 2011 or after. At least that's the way the law reads now.

Recently, the House passed a bill repealing the provision that allows for no estate tax in 2010. But the Senate hasn't addressed it yet. In the meantime, health care is on the front burner, estate taxation is not, so it's hard to know what will happen next.

What if a person died with a large estate on January 1, 2010? Initially, his or her heirs might think no taxes were due. But what if Congress raises the 2010 estate tax rate retroactively? Then those heirs might have to cough up cash that they were already planning to spend, in order to pay taxes. Delightful.

It's a big, fat, hairy mess. The current law was goofy to begin with, back when it was instituted in 2001, but it was a compromise between those who wanted to abolish the estate tax and those who wanted to leave it as is.

My opinion? The estate tax is not going away any time soon, and you would be wise to plan for it, even in 2010 when it theoretically doesn't exist. Hopefully, Congress won't institute an estate tax later in 2010 retroactively, but I don't think they have a choice.

What should you do? Ask your tax preparer, financial planner, or estate planning attorney to keep you in the loop. Keep an eye out for news, and don't forget this important topic. Even a person with a modest income and lifestyle could potentially be a target of the estate tax.

Kevin Bourke is a registered principal with and offers securities through LPL Financial Member FINRA/SIPC. The opinions voiced in this material are for general information only and are not intended to provide specific advice or recommendations for any individual.