

Price & Farrington's Estate and Tax Planning FastFacts

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Estate, Tax, Business and Wealth Planning for Advisors and Clients

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Election 2006 and the State of Estate Taxes: A Perennial Political Football

Every year since 2001 Congress has brought to a vote the total repeal of the "death tax" (a politically astute Republican sobriquet) and every year repeal has failed to happen. Even during the late '90s, President Clinton vetoed two congressional efforts to erode the federal estate tax.

Recent history. This year the House & Senate voted on two different measures which called for less than total repeal. Both measures passed the House but neither measure received the 60 votes needed in the Senate to close off debate and then have a vote on the underlying legislation. To review where we've been and where we might be headed, a summary of these two failed pieces of legislation is useful.

H.R. 5638, The Permanent Estate Tax Relief Act of 2006. The House Committee on Ways and Means summarized the bill as follows:

1. Permanent Estate and Gift Tax Relief.

The estate tax relief provided in the Economic Growth and Tax Relief Reconciliation Act of 2001 will end in 2010. Unless Congress acts, in 2011 the estate tax exemption will drop to \$1 million per person and the maximum estate tax rate will increase to 55 percent. The Permanent Estate Tax Relief Act of 2006 would provide permanent estate and gift tax relief.

2. Unified Estate, Gift and Generation-Skipping Transfer Tax.

The Permanent Estate Tax Relief Act of 2006 would reunify the estate, gift and generation-skipping transfer taxes – giving individuals greater flexibility to make estate planning decisions during life. A non-unified estate and gift tax provides less favorable tax

treatment for gifts made during lifetime than gifts made (through a will) at death.

3. Increased Estate and Gift Tax Exemption.

The Permanent Estate Tax Relief Act of 2006 would increase the exemption amount to \$5 million per person effective January 1, 2010.

4. Lower Estate and Gift Tax Rates.

The Permanent Estate Tax Relief Act of 2006 would reduce the rate of tax on estates up to \$25 million to the capital gains tax rate (currently 15 percent, set to increase to 20 percent in 2011 unless extended). The bill would reduce the rate of tax on estates of \$25 million or more to twice the capital gains rate (currently 30 percent, set to increase to 40 percent in 2011 unless extended).

5. Portable Spousal Estate and Gift Tax Exclusion Amount.

The Permanent Estate Tax Relief Act of 2006 would simplify estate tax planning by allowing married couples to take full advantage of the \$5 million exemption by carrying over any unused exemption to the surviving spouse.

H.R. 5970, Estate Tax and Extension of Tax Relief Act of 2006.

When HR 5638 failed to receive the requisite 60 votes for passage in the Senate, HR 5970 was offered up for consideration at the end of July 2006. The Committee's summary follows:

1. Reunification and gradual increase of the unified credit exemption amount for gift, estate and GSTT purposes.

- i. \$3.75 million in 2010
- ii. \$4 million in 2011
- iii. \$4.25 million in 2012



Glenn Price and Chuck Farrington.

- iv. \$4.5 million in 2013
- v. \$4.75 million in 2014
- vi. \$5 million in 2015
- vii. After 2015 the \$5 million amount is indexed for inflation

2. Rate of tax on the amount in excess of the unified credit equivalent amount.

i. A rate equal to the Federal long-term capital gain rate in effect on the date of the gift or date of death on the first \$25 million.

ii. For amounts above \$25 million they would be subject to the following rate in effect on the date of the gift or date of death.

1. 40% in 2010
2. 38% in 2011
3. 36% in 2012
4. 34% in 2013
5. 32% in 2014
6. 30% in 2015 and years after
7. The \$25 million amount is indexed for inflation beginning in 2016.

3. Portability of unused unified credit effective exemption amount between spouses.

i. For spouse's who die after December 31, 2009 whatever remaining

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unified credit effective exemption that remains is available for use by the surviving spouse and is referred to as the “deceased spousal unused exclusion amount,” (“DSUEA”)

ii. The DSUEA can be used by the surviving spouse for lifetime gifts or at death.

iii. DSUEA is NOT available for generation skipping transfer tax purposes.

iv. A surviving spouse can accumulate DSUEA from multiple predeceased spouses, but the aggregate amount of DSUEA available to the surviving spouse cannot exceed the basic applicable exclusion amount available at the time of use.



After reviewing where we’ve been, our guess about what happens in the next two years depends in part on the ability of the parties to work together. The estate tax issue in particular, and tax policy in general, has been a political football throughout the past decade. With the political landscape newly littered with bodies — and maybe lots of unexploded ordnance — following the midterm elections, it’s unclear exactly what the future holds for this issue.

Many people, including most of the Congress, believe it would be bad for the country for the 2001 Tax Act to be allowed to “sunset”. The majority of

congressional Republicans and a significant number of Democrats believe that the “2010/2011 Solution” (see page 1 explanation), if nothing is changed, would be disastrous, and are likely to make sure that neither 2010 nor 2011 happens. The easiest way to achieve this would be for Congress to enact legislation in 2007 or 2008 extending and making permanent the transfer tax law the way it is in those years. (\$1 million gift tax exemption, \$2 million estate & GSTT exemption and a 45% marginal rate). Alternatively, Congress could decide in 2007, 2008 or 2009 to make the 2009 transfer tax law permanent. (\$1 million gift tax exemption, \$3.5 million estate and GSTT exemption and 45% top marginal rate).

Finally, and we think less likely, you could see Congress agree to larger transfer tax reductions. With the new political landscape in Washington D.C. beginning in January, ’07 reductions as large as those last proposed in HR 5970 are unlikely.

In summary, both parties will come to the realization that to do nothing and let the 2001 Tax Act expire would be a train wreck and “a pox on both their houses.” The perennial question in our nation’s capital invariably boils down to exactly how much political horse-trading and ideological arm-twisting will be brought to bear on an issue. Federal estate tax policy has seen its share of both.



Washington voters on November 7 overwhelmingly rejected **Initiative 920**, which called for repeal of the Washington state estate tax which took effect on May 17, 2005. Supporters of repeal touted their campaign as an effort to help small business. But if campaign contributions are any measure, no one had a greater stake in I 920 than multimillionaire Seattle developer Martin Selig, who contributed nearly \$1 million to the effort. He was quoted as saying he wasn’t bankrolling the campaign out of self-interest, but on behalf of small business. The Committee to Abolish the Washington State Estate Tax also



“Darn it! I’ve spent too much money on ways to avoid the estate tax to have it end now!”

had the financial support of “small business” people such as John Nordstrom (\$75,000) and Seattle Times publisher Frank Blethen, who has devoted lots of time, money and his paper’s ink to abolish all estate taxes.

Washington’s tax applies to about 200 estates per year — about one half of one percent of all deaths, according to the state Department of Revenue. Estates worth less than \$2 million (\$4 million for couples) are exempt. The value of farming property can be deducted from the taxable estate. The money generated—about \$100 million a year — goes to a dedicated fund to pay for schools. According to Selig, lawmakers linked the tax to education to put “a fancy shirt” on it.



See our [June, 2005 FastFacts](#) in our website archive: “[Planning Alert: Washington State’s New Estate Tax and How it Works](#)” for an explanation of the WA tax, with examples. As always, we wish you good planning.

GDP



Aphorisms: Wisdom & Folly



- *A wise man’s questions contain half the answers.*
- *The first step towards madness is to think oneself wise.*
- *The talk of a fool is like a heavy pack on a journey.*
- *When a book and a head collide and there is a hollow sound, is it always in the book?*
- *A fool always finds someone more foolish than he is to admire him.*
- *I prefer rogues to imbeciles, because they sometimes take a rest.*
- *Wise men are more dependent on fools than fools on wise men.*
- *If poverty is the mother of crime, stupidity is its father.*

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