

# Price & Farrington's Estate and Tax Planning FastFacts

October, 2008

Estate, Tax and Family Wealth Planning for Advisors and Clients

Price & Farrington, PLLC

Attorneys and Counselors at Law

12501 Bel-Red Road, Suite 215

Bellevue, Washington 98005

425-451-3583

Email: [contact@pricefarrington.com](mailto:contact@pricefarrington.com)

## On Death and Taxes and the Presidential Election: What the Future Holds

The debates are over and this seemingly interminable presidential election cycle is finally winding down. Although taxes have been a major political battleground in the campaign, Sens. Barack Obama and John McCain agree on a couple of *estate tax* issues that could benefit many clients and their heirs.

Both candidates agree on changing the law to make the federal estate tax exclusion "*portable*". This means that the *applicable exclusion amount* — \$2 million this year and \$3.5 million in 2009 — would become *transferable from one spouse to the other*. This would in effect double the surviving spouse's exclusion amount. In essence, that means that spouses would be able to use each other's estate tax exclusion without having to set up *credit shelter trusts* and undertake other planning that many of our clients are now required to do. Portability would be one of the most important changes in estate planning in many years for our clients with estates subject to the federal estate tax.

The presidential candidates also agree on the idea of maintaining the system currently in place for *valuing inherited property*, including stocks and mutual fund shares. But they disagree sharply on at least two

major issues: what the (1) *estate tax exclusion amount* and (2) *top tax rate* should be.

Because of tax law changes in recent years, the federal estate tax now hits far fewer estates than it once did. The I.R.S. received a total of only about 23,000 taxable estate tax returns in 2006. That was down sharply from 52,000 returns in 2001. Most returns in both those years involved estates valued at \$3.5 million or less. And only about 4,300 of the returns in 2006 were for gross estates of \$5 million or more.

Even so, the estate tax (known derisively as the "death tax" by its political opponents) is still a hot political issue. Here's the update on the current law, where the candidates stand, and what the areas of agreement could mean for many families and their heirs:

**Exemption and rates.** For 2008, the basic federal estate tax exclusion amount is *\$2 million* per person, and the top estate tax rate is *45%*. Next year the exclusion is scheduled to jump to *\$3.5 million*, the largest one-year increase in history. For heirs of wealthy individuals who die after December 31, 2008 the tax savings could be enormous.

In 2010, the estate tax is supposed to disappear completely — but most tax advisors think Congress won't



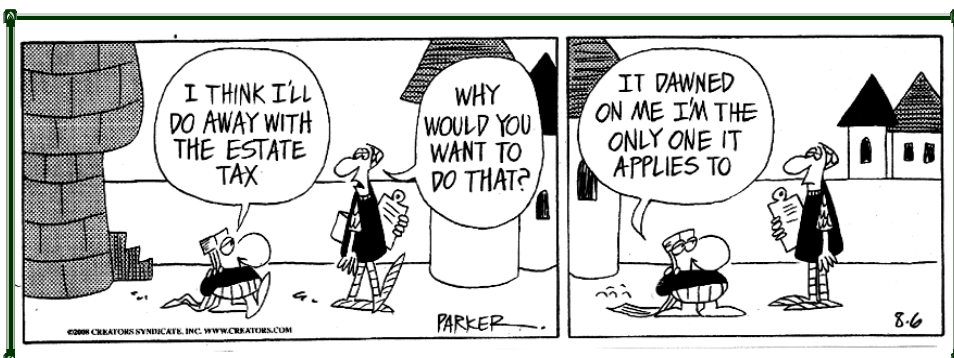
Charles P. Farrington and Glenn D. Price

allow that to happen. Starting in 2011, the tax is set to spring back to life with a vengeance — with the exclusion dropping to *\$1 million* and a top tax rate back up to *55%*.

Sen. McCain proposes raising the exclusion "as soon as possible" to *\$5 million* and cutting the top tax rate to *15%*, says his senior policy advisor. Sen. Obama wants to keep the exclusion amount at *\$3.5 million* and the top rate at *45%*.

**Portability.** Both candidates agree the exclusion should be easily portable. "*Families should not be required to undertake complex and unnecessary financial planning or be penalized for failing to take advantage of sophisticated strategies,*" the economic policy director for the Obama campaign said. He added that the Democratic nominee "*believes we should eliminate the estate tax for 99.7% of families*".

McCain also favors portability. His policy advisor says that the Republican nominee "*opposes situations where taxpayers may have unfavorable tax consequences*" simply because they couldn't afford — or



Estate, Tax, Business and Asset  
Protection Planning provided by  
Price & Farrington, PLLC  
Attorneys and Counselors at Law  
[www.pricefarrington.com](http://www.pricefarrington.com)

didn't know — “to seek sophisticated tax planning advice. All of the costs and effort involved in such planning would be unnecessary or greatly reduced if there was portability of the estate tax exemption. Such a proposal also meets another of John McCain's goals of simplifying our complex tax code whenever we can.”

Under current law this year (2008), a married couple could leave a total of **\$4 million** to their children free of federal estate tax, but because the exclusions aren't portable, proper estate planning is required in advance to achieve this result.

**Example.** Suppose a husband and wife each has \$2 million. The husband dies and leaves everything to his wife. Although there is no federal estate tax imposed on his death because of the **unlimited marital deduction**, the wife now owns a \$4 million estate but can protect *only \$2 million of it*. Her



*our clients will need to take special estate planning steps anyway because of the Washington state estate tax .*

Although many tax advisors expect major estate tax changes next year no matter who wins the presidency, don't count on them just yet. Even though both candidates agree on portability, nobody knows **how quickly** such a change might happen, what the **effective date** might be, and how the **fine print** of the legislative language might read. And in these

*protecting assets from creditors, preserving assets for children, planning for special needs, and many other goals.*

**Capital gains issues.** The **valuation** of assets at death is a key issue when calculating **capital gains taxes** on the **sale of inherited assets**. **Example:** Suppose your aunt dies and leaves you stock she originally purchased decades ago for \$100,000 and the value has now grown to \$500,000 as of her date of death. Your tax basis would typically be \$500,000 (or, under certain circumstances, the value six months after the date of death). That means you don't have to figure out what your aunt originally paid for the stock. Under current law, **this system is scheduled to undergo major changes in 2010**, which could create new complexity and impose substantial recordkeeping burdens on taxpayers. Advisors to both candidates have said they want to retain the current, simpler system, but who really knows on exactly which terrain cash-strapped politicians will choose to wage their tax wars after November 4? ■

**Tax-planning is just one of many important aspects of estate planning. We're here to help advisors help their clients. Don't hesitate to contact us.**

## Obama vs. McCain on the Estate Tax



Estate Tax Issue	McCain	Obama
Portability of Exemption	Yes	Yes
Step-up in Basis	Yes	Yes
Exemption	\$5 million	\$3.5 million
Highest Rate	15%	45%

death this year would trigger a federal estate tax of about **\$900,000**. A similar result occurs if the entire \$4 million is owned by the husband and his wife dies first.

To avoid this problem, many couples sit down with an estate planning attorney to design a plan to **avoid wasting the combined federal exclusion amounts**. Indeed, we've been helping clients design and implement favorable estate tax planning strategies for many years, sparing their families a substantial estate tax hit on the death of the surviving spouse. If the exclusions were portable, this advanced planning would be unnecessary. **Important note: Even if the federal estate tax exclusion amount does become portable, many of**

times of national economic turmoil, nobody knows what kinds of **fiscal and budgetary pressures** might ultimately be brought to bear on Congress, influencing their priorities.

**State estate tax.** Many people will continue to benefit from establishing **trusts** and taking other important planning steps, including our clients who live in Washington or other states which have “**decoupled**”—or separated—from the federal estate tax system. **Beginning in 2009, the Washington state estate tax will apply to estates that are exempted from the federal estate tax.** And even in the absence of estate tax consequences, use of a similar trust can accomplish other important planning concerns, such as

