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The $4 Billion Question — How Much Can a Tycoon's Heirs Really Expect?

If pipeline entrepreneur Dan Duncan had died three months earlier, his heirs would have been required to hand over half of his $9 billion estate to the U.S. government.

But Duncan died of a brain hemorrhage in late March at age 77. And thanks to the one-year lapse in the federal estate tax, the businessman's family will likely receive nearly $9 billion free of tax. Forbes magazine ranked Duncan as the 74th wealthiest person in the world.

What Can the Government Do?

Congress could renew 2009's estate tax exemption of $3.5 million per person ($7 million per couple) and assessment rate of 45% and apply it retroactively to Jan. 1. If so, then Uncle Sam rakes in nearly $4 billion of Duncan's riches.

However, a retroactive tax appears less likely with each passing day that Congress sits idle on the issue. After all, the tax returns whether lawmakers take action or not.

The estate tax automatically reboots in 2011 at an exemption rate of $1 million per person and an assessment of 55%. And so, while 2010 is the most lucrative year for a client's beneficiaries, next year will be the most expensive.

A Bit of Estate Tax History

The federal estate tax was enacted in 1916. The tax generally affects about 5,500 estates a year. When John D. Rockefeller, America's first billionaire, died in 1937, his estate paid 70%. Since then, rates have varied, but this year is the first time the tax was repealed.

The one-year lapse was signed into law by former President George W. Bush as part of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). The exemption rate steadily increased from $675,000 in 2001 to $3.5 million in 2009 before the repeal set in.

When President Barack Obama campaigned for office in 2008, he indicated being in favor of extending 2009's rates and exemptions to 2012. Financial experts predicted Congress would halt the repeal, but lawmakers became embroiled in the healthcare reform debate, and the estate tax issue went on the backburner.

The U.S. Treasury collected more than $28 billion in estate taxes in 2008, according to the Wall Street Journal.

One Tax Gone, Another Pops Up

Even without an estate tax this year, Duncan's beneficiaries might face some tax consequences.

If the family sells any inherited shares from his pipeline company, capital gains taxes would be owed on the difference between Duncan's original cost, which was likely quite low, and their market value when sold. Capital gains taxes are capped at 15 percent.

During his life, Duncan contributed to a variety of wildlife foundations and community and medical institutions. His 2006 Will designates that a handful of non-profit groups and charities are to receive donations, all of which would have been exempt even when the tax was in effect.

What Can Duncan's Story Mean to Your Clients?

As an advisor, you can use the Duncan case to launch a conversation about the importance of strategic planning and building flexibility into estate planning documents.

No matter what Congress does with the estate tax issue, it's important to help clients prepare for the possibilities.

As always, I hope this article has helped you and your clients. If there is a specific case or concern you'd like to discuss, please call our office.

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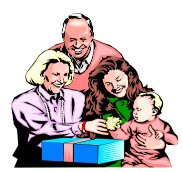

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