



Robert W. Wood

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Dying To Know About Estate Tax?

Your kids or grandkids may be worrying whether they've been naughty or nice, but estate tax watchers are more worried who's wealthy or sick. In late 2009, some clung to life to achieve a [sans-estate tax bonanza in 2010](#). In the last hours of 2010, there's some more [ghoulish estate planning](#) afoot.

But for the vast majority of the well-to-do who aren't in their last weeks of life, 2011 is looking like a [pretty good year](#) for a modest and orderly estate tax, assuming Republicans and the President get their way. While that still looks likely, it isn't a done deal. Indeed, in the lame duck and decidedly testy debate, the biggest holdup is the estate tax, with some Democrats saying 35% over \$5 million just isn't enough.

Right now, of course, we have the 2010 hiatus before the estate tax springs back to life (er death) in 2011. If you die in the last few weeks of 2010, there's no federal estate tax but you won't get the usual benefits of an unlimited step-up in basis for income tax purposes. For details, see [Ghoulish Estate Planning Before New Year's?](#) In fact, the estate of anyone who died at any time during 2010 would receive an election to use 2010 or 2011 rules. Which is better involves a comparison between the estate tax and the step-up in basis for income tax purposes.

One of the big bones of contention is rates. The 35% rate is a comparative bargain, not only viewed against the 45% that many

Democrats favor, but especially viewed against the 55% estate tax rate we're facing come January if Congress doesn't act. For those in the truly wealthy category, the tax rate is huge. Yet, most people in the well-to-do category seem more worried about the exemption than the tax rate.

For 2011 and 2012 deaths, a \$5 million exemption means that with proper planning a married couple should be able to pass on \$10 million of value tax free. In fact, if the bill passes in its current form it should be easier than in the past for **each** spouse to claim the full \$5 million. The concept of "portability" should allow more couples to use the full \$10 million rather than losing half by giving all assets to the survivor. The executor of a deceased spouse's estate will be able to transfer any unused exemption to the surviving spouse.

Another great feature is unifying the estate, gift and generation skipping taxes with one \$5 million exemption for all three. The logic of this is beyond reproach, but we've long had a patchwork system that can impose different tax results on gifts during life than at death.

Even assuming the Senate bill passes in this form, this is only a 2 year stopgap. After 2012, it would be back to the drawing board. That's disturbing, given the mess that occurred when Congress failed to act and let the estate tax lapse in 2010. See ["Temporary" Tax Code Puts Nation in a Lasting Bind](#). Perhaps optimistically, the bill calls for indexing the \$5 million exemption starting in 2012.

For more, see [Estate Tax Steps For This Year](#).

*Robert W. Wood practices law with [Wood & Porter](#), in San Francisco. The author of more than 30 books, including *Taxation of Damage Awards & Settlement Payments* (4th Ed. 2009, [Tax Institute](#)), he can be reached at wood@woodporter.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.*