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# Estate Tax Repeal Is Not Just For Morons

The estate tax remains terribly controversial. It didn't exactly help that volatile reputation when White House adviser Gary Cohn allegedly said that "only morons pay the estate tax." He was evidently trying to say that the well-heeled plan around it, even if they have big estates. That is often true, but it hardly means that you are a chump or worse if you pay it. In fact, MarketWatch touts IRS data showing that for 2015, 4,918 households paid a total of $17.1 billion on their estates valued at $88.2 billion. Those people surely did not especially want to pay. Meanwhile, 6,999 households who did not pay *any* estate tax had combined gross estates of $79.2 billion. But that hardly means you are a moron if you pay. Besides, estate taxes generate an emotional fervor that most taxes do not.

Right now, the federal estate tax remains at 40%. Hillary Clinton wanted to *raise* the estate tax to an astounding 65%. Last year Democrats proposed to increase it to 45%, and to cut the exemption materially to $3.5 million per person. Trump vowed to repeal it. The estate tax can make people's blood boil, even if it is not widely paid. Current law exempts estates worth $5.49 million or less, up from $5.45 million in 2016. Beyond that, you pay 40%.

President Trump wants to repeal the estate tax entirely. Mr. Trump stands to benefit, as would his heirs. But it would benefit many others too. Steadfast proponents of the estate tax argue that it helps to stop wealthy people from getting even wealthier. But given that income taxes must be paid on earnings that eventually make up the estate's value, opponents claim that the tax is a true double tax.

Strangely, another argument for the estate tax (for repealing the tax or keeping it!) is that you can plan around it. Well, there's that moron point again. Yet maneuvering to avoid the tax can be difficult, is expensive, and requires years of planning. Wealthy or not, the estate tax catches many people off guard, after they have worked and paid income taxes their whole lives. The estate tax can force sales of family companies, family farms and ranches. Ironically, it was only recently--in 2013--that Americans *finally* got some certainty with a $5 million per person exemption. Indexed for inflation, it now stands at $5.49 million, $10.98 million for a married couple.

Still, small and family businesses and farms can be particularly hard hit. Already, it is hard for many family-owned businesses to stay afloat after the death of a key figure. Not all of the reasons are managerial. Many are financial, and taxes can force a sale. Stephen Moore of the Heritage Foundation calculated that by eliminating basis step up (as President Obama had proposed), we would end up with the world's highest estate tax rate. President Obama argued that allowing a basis step up on for income tax purposes on death was a huge loophole. He proposed *no* basis step up, hoping to raise approximately $200 billion over the next decade. When combined with state estate taxes, this proposal would yield the highest estate tax rate in the world.

Dick Patten, chairman of the Family Business Defense Council calculated an effective death tax rate of 57%. If you add in state inheritance taxes, the combined tax rate could go as high as 68%. That sounds reminiscent of the 65% estate tax rate Hillary Clinton proposed as a candidate.

*For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.*