Forbes

# Robert W. Wood

THE TAX LAWYER

TAXES 8/09/2016

# Clinton Vows Estate Tax Hikes, While Trump Vows Repeal

Donald Trump wants to completely repeal the federal estate tax. Hillary Clinton wants to raise it in two key ways. On this issue, their views could not be more opposite. Whether you call it an estate tax, a death tax, or a tax on accumulated wealth, it is controversial. It is entirely distinct from income tax. You pay income tax as you earn, but whatever you have left at your death, might be taxed again.

Presently, estates worth $5.45 million or less are exempt from federal estate tax. Beyond that dollar limit, the estate tax kicks in, generally requiring you to pay a tax of 40%. Clinton wants to raise that 40% tax rate to 45%. She also thinks the $5.45 million exemption threshold is too high. She would cut it materially so that more people have to pay estate tax, dropping the exemption amount from $5.45 million to $3.5 million.

*This photo combo of file images shows U.S. presidential candidates Donald Trump, left, and Hillary Clinton. (AP Photo/Mary Altaffer, Chuck Burton)*

In contrast, Trump wants to repeal the estate tax entirely. Some of this is about revenue, but it is also about emotions and fairness, concepts that are hard to define. Proponents of the estate tax argue that it helps to stop wealthy people from getting even wealthier, generation after generation. They see the estate tax as helping to curtail dynasties, keeping them from growing unchecked. 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 having no place in America. As Trump put it on August 8, 2016 in Detroit:

> ‘ No family will have to pay the death tax. American workers have paid taxes their whole lives. It's just plain wrong and most people agree with that. We will repeal it."

Most estate planning lawyers will say that the really big estates can find ways around most of the rules to at least materially reduce their impact. However, according to the Tax Policy Center, only approximately 10,800 estate tax returns will be filed for deaths in 2015. Of those, less than half (about 5,300) will be taxable. In that sense, the dollars at stake are arguably not too significant. However, emotions and perceptions of fairness are something else. There are deep-seated notions of fairness rooted in how many Americans think about death taxes.

Besides, the notion that the federal estate tax is even going to significantly curtail the accumulation of wealth may be a little naive. What the estate tax succeeds at doing, though, is catching many people unawares after they have worked and paid income tax their whole life. Estate taxes can force sales of family companies, and sales of family farms and ranches. A sale to pay taxes can be a bitter pill to swallow after the already difficult time that the death of a family patriarch or matriarch can be.

There have been ups and downs over estate tax reform for decades. Then, Americans finally got some certainty in 2013, with a $5 million per person exemption. After indexing for inflation, the exemption now stands at $5.45 million, $10.9 million for a married couple. Republicans hope for repeal, as Donald Trump has promised. Conversely, House Democrats want to raise the estate tax materially. Hillary Clinton and other Democrats agree that we should restore the estate and gift tax rate and exemption to the same amounts as in 2009.

You can read here how Clinton would slash the estate tax exemption to $3.5 million, and raise the tax rate to 45%. Clinton is pushing, and many Democrats could go even farther in their wealth redistribution efforts. President Obama has argued that allowing a basis step up on death–for income tax purposes–is 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, President Obama's proposal would yield the highest estate tax rate in the world. Small and family businesses could 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. With no step up, we could have the world's highest estate tax rate. Some have calculated an effective death tax rate of 57%. Then, if you add in state inheritance taxes, the combined tax rate could go as high as 68%.

There is no doubt that Trump–a billionaire–would benefit enormously from estate tax repeal. But estate taxes may be unique in being viewed as quite negative by many low and middle income voters. Many taxpayers who will probably never have to pay the federal estate tax may still have a very negative view of it.

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