Robert W. Wood
THE TAX LAWYER

TAXES 10/17/2016

Hillary Clinton's 65% Estate Tax Plan Overshadows Child Care Credit

Hillary Clinton has launched an ambitious expansion of the child care credit. Her new child tax credit expansion seems sure to draw in more voters. Of course, she may not need them given the expanding scope of Trump's deepening problems. Yet one thing a few voters may still have a hard time accepting is Clinton's new proposed estate tax plan, raising the estate tax up to an astounding 65%. Current law exempts estates worth $5.45 million or less, and beyond that, you pay a 40% tax. Ms. Clinton wants to reduce that exemption to $3.5 million, and to increase the rates.

Most people will never pay this, so much of the aversion is emotional. Instead of 40%, she wants a 50% rate for estates worth over $10 million per person, 55% for estates over $50 million, and 65% for estates exceeding $500 million. Already, the Obama administration is doing its part to hike estate taxes without Congress with a volley of new regulations that make valuation discounts scarce and worth less. Estate taxes can force sales of family companies, family farms and ranches.

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. President Obama has argued that allowing a basis step up on for income tax purposes on death 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, the President's proposal would yield the highest estate tax rate in the world. Small and family businesses could be particularly hard hit.

Stephen Moore of the Heritage Foundation calculated that by eliminating basis step up, we would end up with the world's highest estate tax rate. 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%. The President's *simpler and fairer* tax code is detailed here.

Hillary Clinton's astounding 50% to 65% rates would make this even worse. Yet proponents of the estate tax argue that it helps to stop wealthy people from getting even wealthier. Of course, income taxes must be paid on earnings that eventually make up the estate's value. Opponents of the death tax say it is a true double tax having no place in America. Trump has said that he will repeal it.

Assuming a Clinton victory, there is a good chance that at least some of her estate tax changes will become law. Politics can make tax and estate planning difficult. After a decade of uncertainty, Americans finally got some predictability in 2013 with a $5 million per person exemption. Indexed for inflation, it now stands at $5.45 million, $10.9 million for a married couple. Republicans still tout repeal, while House Democrats want to raise the estate tax or restore it to the same levels as prevailed in 2009.

Many estate planning lawyers say that big estates can still find ways around many rules, to at least materially reduce their impact. Yet planning to avoid the estate tax is expensive, and requires years of advance notice and work. The estate tax succeeds at catching many people unaware. It can be a hardship to family companies and family farms. In that sense, Hillary Clinton may have hurt herself with her high rate proposals, even if few wealthy people are likely to be impacted.

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