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Prospects Dimming For Post-Election Tax Cuts?

I'll bet that headline got your attention! You may have been busy over the past few weeks watching the World's Series or campaigning for your favorite candidate, secure in the knowledge that there's ***plenty*** of time before year-end. Those annoying countdowns of only _X_ more shopping days 'til Christmas aren't ubiquitous yet. It's barely November, let alone December.

But don't forget that your whole tax future remains in limbo. See [Making Tax Decisions In Limbo]. Whether you sell in 2010 or hold until 2011, whether you accelerate deductions and defer income—or vice versa—remain uncertain. So what should you do over the next seven weeks 'til New Year's Eve?

As polling places rolled up their signs, chads and other paraphernalia to hibernate until next time, don't assume Congress will turn ***immediately*** to extending the vaunted Bush tax cuts or figure out what to do about the estate tax or AMT. Taxes are a big priority, of course, but with the quasi-sea change this election is effecting, they need some time to settle on who does what. Besides, the game of musical chairs won't occur until January, and you need to make tax moves now. See [Tea Leaves And Tax Moves In 2010].

Both House and Senate have incentives to act soon, but exactly how and when? Although I believe it is highly unlikely that all Bush tax cuts will be allowed to entirely expire, one big question is whether the 15% capital gain tax rate will stick for all or only some. The President's plan calls for extending the 15% rate only for couples having less than $250,000 in joint income or $200,000 alone. If you make less, your long term capital gain rate will probably remain 15% regardless of whether you sell in 2010 or 2011.

If Congress were to let the Bush cuts expire in December the long term capital gain rate for most people would be 20% in 2011. Yet if you sell an asset you've held for more than five years your rate would only be 18%. For higher income taxpayers, the choices are tougher and the possibilities more complex.

If the Bush tax cuts are extended for everyone, you'll pay 15%. If the President's plan passes, joint filers with taxable income above $250,000 will pay a 20% long term capital gain rate. If the Bush rates simply expire, your rate will be 20%, or 18% if you held the asset for more than five years.

AMT Exemption Extender. Another biggie is the AMT. In fact, I would argue it is a far larger issue than the capital gain rate or the spread between 35% and 39.6%. One report suggests that given the Bush tax cut treatment of AMT, four million people paid AMT in 2009. If something's not done, approximately 29 million people will pay AMT in 2010. See Tax Cuts to Dominate Lame-Duck Congress. Those are staggering figures. Anyone who has seen a tax bill skyrocket due to AMT despite copious deductions should watch this one very closely.

Estate Tax Rebirth. Then there is the death tax. The last estate tax legislation—a type of band-aid bill passed way back in 2001—called for reductions in the estate tax each year until December 2009, no estate tax in 2010, followed by a return to 2001 law in 2011! Back in 2001, ***everyone*** knew some type of legislative compromise would be worked out between 2002 and 2009. That ***seemed*** plenty of time to iron out differences between Republicans and Democrats.

Instead, those who died with big estates in 2010 may be home free, especially since an attempted retroactive estate tax for 2010 deaths at this late date seems more and more unlikely. See How Steinbrenner

Saved His Heirs a $600 Million Tax Bill. Besides, there's plenty to negotiate for 2011. Some aged and infirm taxpayers with family businesses, farms or ranches have even suggested they may orchestrate their own deaths in the waning weeks of 2010 rather than see their families face a crippling estate tax burden in 2011. See US rep.: Estate tax rise has some planning death. I do not think they are joking. The fact that Congress let it get this far is truly inexcusable.

Watchful Waiting. What to do next is as clear as mud. I wouldn't make tax driven decisions over the days following the election. But I sure suggest running projections based on multiple scenarios for 2010 and 2011. Do this yourself or get some professional help.

Project what happens if you sell in 2010, there's no tax change but you sell in 2011, if you accelerate income or deductions, defer them, etc. Mix and match, and play the odds. This isn't that hard to do, and some of the results (especially AMT results) may surprise you. You still won't know what kind of tax sausage Congress will be sending our way. But you'll have a better idea how to spice it when it arrives.

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