



Policy and Taxation Group

Memo

To: Policy and Taxation Group Supporters
From: Jeff Cook
Date: 6/22/2009
Re: Opportunities and Challenges for Estate Tax Reform

This spring, Congress and the President have taken several steps that have begun to set the stage for the upcoming fight this fall over estate tax reform.

Budget Battle

In March, the House and Senate Budget Committees included in their versions of the budget resolution the President's proposal to permanently freeze the federal estate tax at 2009 levels – at a 45% rate and a \$3.5 million exemption. The estate tax provision was expected to cost \$72 billion over five years (\$256 billion over ten years). The freeze of current law passed easily on the House floor as part of the budget resolution (H. Con. Res. 85), but proponents of estate tax relief made a strong stand in the Senate.

Senators Blanche Lincoln (D-AR) and Jon Kyl (R-AZ), with the assistance of the Policy and Taxation Group, had been working for several months to gauge and build support among their colleagues for a compromise better than a freeze of current law that they believed could pass in their chamber. They crafted a moderate bipartisan proposal that would make permanent a 35% rate and a \$5 million exemption indexed for inflation, reunify estate and gift taxes and provide spousal portability, but would not include any deduction or credit for state estate taxes. With PATG's help, they were able to gain the full support of the Family Business Estate Tax Coalition, the first time in the coalition's history it was able to agree on any proposal other than full repeal.

In the days leading up to Senate consideration, PATG intensely worked the phones and met with legislative staff to secure votes for the Lincoln/Kyl compromise. On April 2, the sponsors offered their amendment to the budget resolution (S. Con. Res. 13) on the Senate floor. To pay for the cost of additional estate tax relief of \$30 billion over five years (\$85 billion over ten years), the amendment included a deficit neutral reserve fund, which would have required offsets to be determined later.

In a major surprise to the Senate Majority leadership and a solid victory for proponents of estate tax relief, the amendment was agreed to by a 51-48 vote. The proposal earned the support of every Republican and 10 Democrats, including Senators Lincoln, David Pryor (AR), Bill Nelson (FL), Evan Bayh (IN), Mary Landrieu (LA), Max Baucus (MT), Jon Tester (MT), Ben Nelson (NE), Maria Cantwell (WA) and Patty Murray (WA) (11 Democrats if including Senator Arlen Specter (PA), who had not yet switched parties).

Majority Whip Dick Durbin (D-IL) immediately offered a hastily-worded conflicting amendment to create a point of order against any estate tax relief beyond a freeze of current law unless an equal amount of tax relief for individuals earning less than \$100,000 per year was also included. Despite the opposition of all Republicans and Democratic Senators Bill Nelson and Mary Landrieu, the amendment was agreed to 56-43, and the resolution passed the Senate.

In conference committee, House and Senate negotiators stripped both amendments from the budget resolution. The final conference report that passed both chambers on April 29 included only the originally proposed freeze of a 45% rate and a \$3.5 million exemption as an assumption for future Congressional action. While the Lincoln/Kyl compromise did not make it into the budget, a majority of the Senate is now on record in support of estate tax relief better than a freeze of current law, a critically important victory as we prepare for consideration of legislation this fall.

Health Care Reform Challenge

As the budget battle came to its conclusion, attention on Capitol Hill began to shift to health care reform. On May 11, the Treasury Department released its "Greenbook", which detailed the Administration's revenue proposals for the 2010 fiscal year. In the 130-page document, Treasury proposed partially offsetting the cost of health care reform with increases in estate and gift taxes that would add to the burden on individuals and family businesses. The changes, which are discussed in our fact sheet, would limit valuation discounts for family-controlled entities, increase reporting requirements for small family businesses and place new restrictions on grantor retained annuity trusts (GRATs).

On May 20, the Senate Finance Committee released its "options" paper focusing on possibilities to pay for health care reform and included the President's estate tax-related increases as an addendum to its own proposals. Over the past several weeks, we have met with our key allies on the Hill, educated them on the potential consequences for family businesses and armed them with policy arguments against the proposals. We will remain vigilant and focused on this threat as health care reform moves forward through June and July.

Looking Forward

Senate Finance Committee Chairman Max Baucus has indicated that he plans to address estate tax reform at some point after the August recess. Senator Baucus has already introduced legislation that would freeze the estate tax at the current 45% rate, index the current \$3.5 million exemption for inflation, reunify estate and gift taxes, provide spousal portability, improve special use valuations and retain stepped-up basis and deductibility of state estate taxes.

The House similarly is not expected to consider estate tax reform until September at the earliest. While we have a strong starting position on the Senate side due to demonstrated support for the Lincoln/Kyl compromise, the House is a bigger concern. Some Ways and Means Committee staffers have indicated that they prefer only a one-year freeze of the estate tax at 2009 levels, which would force us to face an even tougher fight in 2010 against the scheduled 55% rate and \$1 million exemption set to take effect in 2011. PATG has been educating House and Senate staffers of the potential risk of a one-year freeze and delivering the message that permanency and certainty are essential components in any estate tax reform legislation.

Meanwhile, we have been working to strengthen the hand of our allies on the Hill. We have consulted regularly with staff for Senators Lincoln and Kyl, who plan to introduce their compromise as a stand-alone bill later this year, and we have secured the commitment of a leading Ways & Means Democrat to sponsor a companion bill in the House. We continue to engage our friends on the necessity that any offsets for estate tax reform not increase other estate tax burdens on family businesses.

Conclusion

2009 remains a critical year. Many opportunities and challenges lie ahead this summer and fall that will shape the battle for years to come. As our opponents push for higher taxes and we fight along with our allies for substantive relief, a freeze of the current rate and exemption is still the most likely outcome. A better permanent solution remains a real possibility, but the risks of a one-year freeze and harmful valuation and planning changes are significant as well. And that's why our work is so important. With your support, we are continuing to fill the void in Washington, educating members and staff on the Hill about the impact of the estate tax on families, facilitating better communication among our allies, and helping legislators navigate toward the best possible real relief for families. Thank you for your continuing support.