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Tax Legislation

Senate Tax Plan May Create Gifting Bonanza Among Very Wealthy

The Senate GOP's tax reform proposal to double the estate tax exemption but not ultimately repeal the tax would likely create a spike in gift-giving among the extremely wealthy.

''For clients with a lot of wealth, it gives them an opportunity to give more assets away today to future generations and avoid appreciation,'' William I. Sanderson, a partner at McGuireWoods LLP in Washington, told Bloomberg Tax.

The Senate tax reform proposal would keep the controversial 40% estate tax. The move breaks from the House proposal—which would repeal both the estate and generation-skipping transfer taxes after 2024, according to a Joint Committee on Taxation explanation.

However, like the House bill (H.R. 1), the Senate proposal would double the exemption amount for the estate tax. The current exemption level, indexed for inflation, is $5 million for individuals and $10 million for married couples.

The House and Senate plan would also double the current $5 million lifetime gift tax exclusions.

The plans would give the wealthiest taxpayers—those making nine figures or more—an opportunity to make gifts of highly appreciable assets during life up to the maximum exemption amount, removing those assets from their taxable estates, Sanderson said.

Patrick Beaudry, a senior wealth planning strategist at Abbot Downing in Winston-Salem, N.C., echoed that sentiment. ''While a full repeal would be preferable, the increased exemptions provided under both the House and Senate bills should enable greater wealth transfers for clients of great wealth'' without incurring transfer tax, he told Bloomberg Tax in an email.

Not Easy to Give $20M However, only the extremely wealthy can benefit from this type of planning, Sanderson said.

''You have to have really a lot of money to give up to $20 million as a couple and it not impact your lifestyle or your bottom line,'' he said.

The effect would be similar to what happened in 2012 when there was a boost in gifting because taxpayers feared the American Taxpayer Relief Act wouldn't pass and the estate tax exemption would return to $1 million per person.

Gift tax returns filed in 2013—which reflected the gifts made in 2012—show that total gifts grew to about $421.3 billion from $134.8 billion over the previous year's returns, according to Internal Revenue Service Statistics of Income data.

Moderately Wealthy For wealthy taxpayers who may be impacted by the estate tax under current law but are subject to the new exemption levels in the Senate plan, the proposal means they wouldn't need to lower the value of their estates through lifetime gifting, said Jeffrey P. Geida, a shareholder and director at Weinstock Manion in Los Angeles, who advises high-net-worth individuals.

Taxpayers with estates under the higher exemption amount may be able to simplify their estate's plans if the Senate's proposal becomes law, he told Bloomberg Tax in an email.

In addition, the need for life insurance planning—for example, using an irrevocable life insurance trust to help avoid estate taxes on the benefits paid on sizable life insurance policies—''would be drastically reduced for many clients,'' he said.

''The increased exemptions also could reduce the amount of charitable giving at death, since estate tax reduction is the primary motivation with many of those types of gifts,'' Geida said.

Comparison to House Bill The House plan would create a level of unpredictability, said Sanderson, who prefers the Senate approach. ''The problem with the House proposal is that the estate tax may be repealed and then there might be a move to reinstate the tax, and that kind of uncertainty makes planning difficult,'' he said.

Beaudry said if the House version prevails, ''we would anticipate a resurgence of the 'what-if' type of language in planning documents that provide one disposition if the estate tax applies, and another if the estate tax does not apply.''

Absent the possibility that the estate tax comes back at a later date, the House bill would ''eliminate the need for wealthy families to do any type of long term estate tax planning, since they would receive an enormous tax benefit from holding assets until their deaths,'' Geida said.

The House proposal retains an income tax perk known as basis step up, under which the tax basis of an asset held until death is readjusted to fair market value, permitting heirs to sell the asset without realizing any taxable gains. And because the bill also repeals the estate tax, there's nothing to offset that benefit, Geida said.

The House bill would also have an greater negative impact on charitable giving than the Senate proposal

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''because the estate tax benefit of making charitable gifts would be eliminated,'' Geida said.

Palmer Schoening, chairman of the Family Business Coalition, a pro-estate tax repeal group, told Bloomberg Tax the coalition prefers the House's treatment of the estate tax.

''FBC will be pushing for passage of the House bill while we work with the Senate to improve the estate tax provisions,'' he said in an email. ''If the Senate bill doesn't improve, we'll be urging members to offer amendments, and if the current Senate bill passes we'll be pushing for the House plan in conference.''

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