

**CHANGES IN ESTATE TAX –  
STATE AND FEDERAL**

Currently in existence, both at the federal level and at the state level, there are provisions regarding taxation on the values of a person's estate upon death. In Ohio, the estate tax generally applies to estates of \$338,333, with the distribution of those taxes going 80 percent to the local political subdivision, be it township or municipality (including villages) and 20 percent to the State of Ohio. Currently pending before the Ohio General Assembly is H.B. 326. This legislation is intended to significantly alter Ohio's current estate tax scheme.

This bill does several things. First, H.B. 326 proposes to amend the division of the Ohio Estate Tax from the 80 percent local and 20 percent to the State, to a division of 100 percent to the municipal corporation or township in which the tax originates.

In addition, the legislation proposes to reduce the overall amount of the estate tax by increasing the current tax credit. As a result, where the value of the estate is less than or equal to \$366,250, that estate would be exempt from filing an Ohio Estate Tax return. The proposed legislation also provides for an annual review and adjustment to this tax credit based upon the percentage increase in the consumer price index. Thus, as the CPI increases, so proportionally would the estate tax credit.

Finally, H.B. 326, as introduced, would give the governing body of the municipality/township (or its citizens by initiative petition) the right to exempt estate property in its community from the estate tax. The potential overall affect of H.B. 326 would be to allow each local community to decide if it wanted to eliminate the affect of the Ohio estate tax for its citizens.

The issue on the federal front with respect to the Federal estate tax is currently less certain. In 2001, Congress passed the Economic Growth and Tax Relief Reconciliation Act which set in place certain estate tax provisions. At that time, based upon that legislation, the estate tax credit put in place gradually increased from \$1 million in 2001 to \$1.5 million in 2004 to \$2 million in 2006 to \$3.5 million in 2009 to currently, for individuals who die in 2010, there is no applicable federal estate tax or generation-skipping transfer tax. If no action is taken by Congress, then in 2011 the estate tax credit reverts back to the \$1 million credit that existed in 2001. In addition, the step-up-in-basis rules are also changed. For estates for individuals who die in 2010, the basis for the decedent's assets transferred to the beneficiaries will be the decedent's basis. Beneficiaries do not receive a step-up-in-basis in 2010.

Interestingly, but probably not surprising, Congress passed the current legislation because of an inability to reach a more complete consensus on the estate tax situation. It was believed, at that time, that Congress would have plenty of time to reach a consensus before we got to calendar year 2010 and the provision whereby the estate tax is, in essence, eliminated for one year. Obviously over the preceding ten years, Congress was not able to reach an acceptable consensus on the estate tax issue. As a result, we are currently faced with the existing situation.

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It is a very difficult time for tax planning with respect to one's estate, not only given the current status of the law, but also given the fact that this is a very volatile area, i.e., one that Congress is well aware of the existing status. There is conversation about re-enacting these taxes retroactively, but that has not occurred.

I am including with this notice a recent article from The Ohio State University Gift Planning Department regarding attempts to influence Congressional action with respect to the estate tax.

You are encouraged to call regarding your own estate plan and how the existing tax situation could affect your estate.

### **DELAWARE COUNTY SPECIAL NEEDS REGISTRY**

Residents in Delaware County have the opportunity to inform first responders - police, paramedics, and firefighters - about any special medical conditions or needs. The information is kept confidential and shared by dispatchers with first responders responding to an emergency situation at the specified address. For more information, visit [www.delcospecialneeds.com](http://www.delcospecialneeds.com).

For individuals living outside Delaware, you may choose to contact your first responders to see if a similar service is available.

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We appreciate your consideration of this law firm. If you would like further information regarding any of the items discussed in this Estate Planning Bulletin, or if we can assist you with any other aspect of your estate planning, please contact our office at 740-363-1313.

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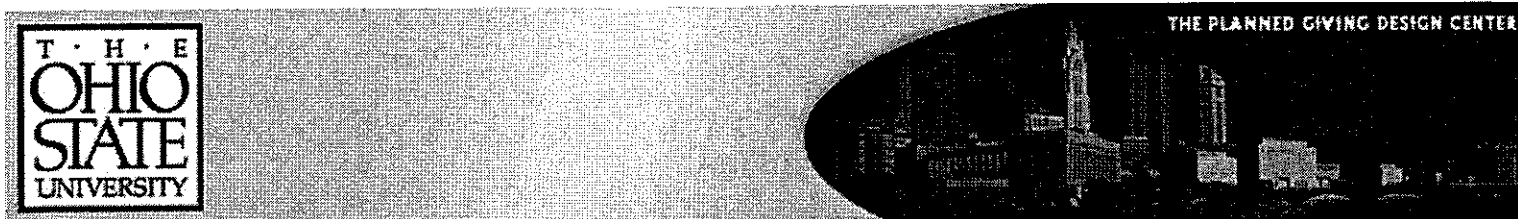
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## Coalition Makes Recommendations Regarding Estate Tax

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A coalition of labor unions, women's groups, religious and public-interest organization has called on Congress to reinstate the federal estate tax with an exemption of \$2 million (\$4 million for couples), a top tax rate of at least 45 percent and with an additional 10 percent tax on estates exceeding \$10 million. The group cited the estate tax as an incentive for charitable giving.

### Americans for a Fair Estate Tax Statement of Principles on Estate Tax Legislation

Our nation desperately needs revenue to invest in education, health, nutrition, and other priorities to promote a competitive workforce and ensure opportunity for every American. Only one-third of working adults have a college degree. One out of three Americans lacked health insurance at least once over the last couple years. Poverty, joblessness, and home foreclosures are harsh realities for millions of Americans.

We are told over and over again that increased investments in the American people are not affordable because the federal budget deficit is too great. And yet, Congress has gradually eliminated an important revenue source that can help fund these priorities and reduce the budget deficit.

Through a period of war, natural disaster, and now the worst economic downturn since the Great Depression, the Bush Administration and Congress set in place the gradual elimination of the federal estate tax. Since 2001, the tax was cut to exempt more and more estates so that in 2009, only one-quarter of one percent of all estates in the U.S. were expected to pay the tax. In 2009, only individuals with estates worth more than \$3.5 million (\$7 million for married couples) were subject to the tax. In January 2010, the estate tax was completely eliminated for one year.

**The federal estate tax has been repealed for 2010 and under current law will reappear in 2011. Congress must permanently reinstate the estate tax for 2010 and subsequent years because it serves these crucial purposes:**

- **The estate tax raises revenue that we need to invest in the American people.** When Congress enacted the gradual repeal of the estate tax in 2001, it did not want to own up to the enormous cost of full repeal, which would exceed **\$800 billion** over ten years. Therefore, after a year of outright repeal in 2010, the legislation calls for the estate tax to return to its old levels starting in 2011. Supporters of the Bush estate tax repeal assumed in 2001 that Congress would not allow the tax to be reinstated. Now that repeal has taken effect, Congress must take a hard look at the damage it is inflicting. Continuing the repeal will deepen the budget deficit by about \$800 billion between 2012 and 2021. Keeping the estate tax at its 2009 level will cost about \$400 billion over ten years.
- **The estate tax ensures that families who have benefited the most from public goods pay their fair share to maintain them.** Families that have accumulated massive fortunes in America could not have done so without the infrastructure, educated workforce, stability and other public benefits that taxes make possible. Society only works when *everyone* contributes to the common good.
- **The federal estate tax provides a check on the concentration of power in the hands of those born into great wealth.** Such a concentration of power is contrary to American values and democratic principles. This is a growing problem today, as hardworking Americans are finding fewer opportunities for success because education and other paths to advancement are increasingly out of reach. The United States now has the greatest concentration of wealth in the hands of the rich in nearly a century. As billionaire Warren Buffett reminds us, "Without the estate tax, you in

effect will have an aristocracy of wealth, which means you pass down the ability to command the resources of the nation based on heredity rather than merit."

- **The estate tax corrects a feature of our tax system that would otherwise allow certain income to escape taxation entirely.** Over half the value of inherited estates is capital gains income that has *never* been taxed. Most large estates include assets such as real estate, stocks or bonds. Any increase in the value of these assets is capital gain income that would be subject to the income tax if they were sold during the owner's lifetime. However, this income is not subject to the income tax if the owner dies and leaves it to an heir.
- **The estate tax encourages charitable giving.** The estate tax is not imposed on assets bequeathed to charity. Many wealthy individuals take advantage of this unlimited deduction for charitable giving. In 2004, the Congressional Budget Office estimated that if the estate tax had not existed in 2000, charitable donations would have been \$13-\$25 billion lower that year.

**Despite claims to the contrary, the estate tax does NOT affect the vast majority of small businesses and family farms.** The Brookings/Urban Institute Tax Policy Center estimates that in 2009, only eighty small business and small farm estates nationwide owed *any* estate tax, and these estates paid an average tax of only 14 percent. This has not stopped estate tax opponents from spending millions in lobbying and advertising claiming that the estate tax hurts small businesses and family farms. This is simply a ruse to convince average Americans to support another massive tax cut for the wealthy that they would otherwise reject.

**We call on Congress and the President to take the following steps when addressing the estate tax:**

**1. Exempt no more than the first \$2 million (\$4 million for married couples) of assets in an estate.**

A \$2 million per-spouse exemption for the estate tax was in effect from 2006 through 2008. This shielded over 99 percent of the estates of people who died during those years from taxation. A \$2 million per-spouse exemption is also twice as large as the exemption that takes effect in 2011 under current law.

**2. Set a tax rate of no less than 45 percent for the taxable portion of estates, with an additional 10 percent tax on the taxable portion exceeding \$10 million.**

The taxable portion of an estate includes assets in excess of the exemption, and it excludes any assets bequeathed to a spouse or charity. Therefore, even if the taxable portion of an estate is taxed at a statutory rate of 45 percent, the *effective* tax rate on the entire estate, i.e. how much is actually paid, is much lower.

A fundamental tenet of a fair tax system is that those who have the greatest ability to pay should pay a larger share. Great wealth is the best indicator of ability to pay. The estate tax should continue to target the very wealthy, and the largest estates should be taxed at a higher rate.

**3. Restore a credit for state estate and inheritance taxes.**

The credit for state estate and inheritance taxes was gradually repealed under the tax cut legislation enacted in 2001, but will reappear in 2011. This credit allows states to share in estate tax revenues without having to administer a separate state tax.

Before the 2001 estate tax cuts were enacted, all 50 states had a tax on estates or inheritances. Many of these taxes have since disappeared because they were tied to the credit in the federal estate tax. Currently, only 20 states have such taxes. This is particularly problematic now, as this loss of tax revenue contributes to the severe budget shortfalls that many states are facing.

**4. Simplify the estate tax.**

The estate tax should be simplified in two ways. First, the gift tax, estate tax, and generation-skipping transfer taxes should

be "reunified," so that transfers made during the lifetime or at death are subject to the same rules, exemptions, and tax rates. This will ensure tax fairness and reduce the need, and incentive, for complicated tax planning.

Second, the estate tax should allow for the "portability" of any unused estate tax exemption from one spouse to another. If one spouse dies without using his or her entire \$2 million exemption, the unused portion should automatically transfer to the surviving spouse. This would greatly simplify estate tax planning for many Americans and avoid the need to split up and re-title assets or set up complicated trusts. It also would eliminate situations in which some families have to pay the estate tax just because they failed to plan for it.

### Endorsing Organizations

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