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Clinton v. Trump on estate taxes

The federal estate tax has remained unchanged since 2012, giving estate planners and their clients time to adjust to the permanent larger exemption and the portability of the exemption between spouses. That comfort level could change in 2017, as both Presidential candidates have called for major changes in the federal estate tax.

Donald Trump advocates the complete repeal of the federal estate tax. Repeal would not mean the end of planning for death taxes, however. During the year that the federal estate tax was suspended, 2010, executors and heirs had to learn the intricacies of carryover basis, which took the place of the estate tax. (Current law permits a tax-free step-up in the basis of inherited assets, a very valuable tax privilege.) In effect, the capital gains tax was substituted for the estate tax.

Many estate planning strategies have both tax and nontax objectives. Should Mr. Trump succeed and then persuade the Congress to accept his ideas for the estate tax, the tax planning benefit of many strategies would be reduced or eliminated.

Hillary Clinton goes to the other extreme. She wants to roll the federal estate tax exemption back to the level it was in 2009, \$3.5 million, coupled with a bump in the estate tax rate. She likely also would advocate a range of technical restrictions on estate tax planning strategies, similar to what President Obama has included in his budget proposals.

Unless Republicans lose control of the House of Representatives, enactment of her program seems unlikely. But should it happen, history suggests that there might be a frenzy of major gift giving. Back in 2012, when the federal exemption was scheduled by law to be reduced, many wealthy families tried to “lock in” the higher exemptions with intra-family transfers. That phenomenon would be likely to recur.

The two visions for the federal estate tax are not expected to play any role in the outcome of the election, but those who are planning to make or review estate plans might want to keep these points in mind.

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