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## Congress working to change estate tax

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Congress is working on a compromise to the estate tax that would eliminate the incentive to keep dying people on respirators until next year.

Under current law, the estate tax will disappear in 2010, then rise from the dead in 2011 in a gruesome state - estates of more than \$1 million per person would be taxed at rates as high as 55 percent.

That's the same estate tax that would have existed if Congress hadn't passed a bizarre law in 2001. That law gradually reduced the estate tax from 2001 through 2009, killed it in 2010 and resurrected it in 2011 at the level it would have been if the law had never passed.

The law has created havoc for estate planners and lots of half-serious jokes about keeping your loved ones alive until 2010.

Given the state of the economy and the mood of the people, Congress is not likely to let the estate tax expire next year. Nor are lawmakers likely to bring back the tax at 2001 levels.

President Obama favors maintaining the tax indefinitely at this year's level: Estates up to \$3.5 million per person are exempt from estate tax, and estates over that amount are taxed at rates up to 45 percent. Obama would index the exemption amount to inflation.

The House of Representatives this month passed a budget resolution that incorporated Obama's proposal.

The Senate budget resolution started out the same way. But two senators, Blanche Lincoln, D-Ark., and Jon Kyl, R-Ariz., proposed an amendment more favorable to large estates. Their plan would exempt estates up to \$5 million per person and levy a maximum rate of 35 percent, as long as the tax cut didn't increase the deficit. Every Republican and 10 Democrats voted for the amendment, and it passed 51-48.

Legislators have introduced a handful of bills that change the estate tax. The most onerous appears to be HR2023, introduced last week by Rep. Jim McDermott, D-Wash. His bill would tax estates over \$2 million per person at a maximum rate of 55 percent.

Ronald Aucutt, an estate attorney with McGuireWoods, says people interested in the estate tax should focus on what happens as the House and Senate try to work out their differences in the budget reconciliation process.

Although anything could happen, he's optimistic that a compromise will be reached before the new fiscal year starts in October.

The most likely outcome, he says, is that the 2009 estate tax is made permanent, with the \$3.5 million exemption indexed to inflation. It's also likely that Congress will make the estate tax exemption "portable" for married couples.

Today, a married couple should be able to shelter \$3.5 million apiece or \$7 million total from estate tax. But without careful planning, they could lose some of the exemption.

For example, if the first spouse to die had \$2 million and the surviving spouse had \$4 million, the first spouse could not transfer his or her unused \$1.5 million exemption to the second spouse. The surviving spouse could be subject to estate tax on \$500,000.

The portability provision would let the unused portion of the exemption go to the surviving spouse. It would make it easier for married couples to maximize their exemption.

Stephan Leimberg, editor of Leimberg Information Services, is not sure the portability provision will pass "because it would add a layer of complication and cost," he says.

Leimberg predicts the estate debate will be volatile. "The thing is a seesaw. There are lots of hidden agendas," he says. But he predicts that in the end, Congress will make the 2009 estate tax, or something close to it, permanent.

If that happens, the vast majority of people won't have to worry about estate tax, says Robertson Williams a senior fellow with the Tax Policy Center.

The center estimates that if the 2009 estate tax is made permanent, only 6,410 - or one-quarter of 1 percent - of all estates will be subject to tax in 2011.

If Congress does nothing and the estate tax reverts to the pre-2001 law, the center estimates that about 46,000 estates - or 2 percent of the total - will be subject to tax in 2011.

Even if there is no estate tax, there are still good reasons to have an estate plan, says Steve Hartnett, associate director of education with the American Academy of Estate Planning Attorneys.

Many states (excluding California) still have estate taxes, typically starting on estates over \$1 million, he says.

An estate planner can help you set up trusts that will keep your estate out of probate or prevent young people from blowing their inheritance. If an heir has a debt problem, a trust can help shelter the inheritance from creditors. You can also set up a "divorce protection" trust that would prevent an heir's inheritance from going to an ex-spouse, Hartnett says.

### **Estate tax**

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Year	Exemption*	Top rate
2009	\$3.5 million	45%
2010	Unlimited	0
2011	\$1 million	55

\*Per person

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