NAR Issue Summaries

Federal Tax / Estate Tax Reform

NAR Committee:

Federal Taxation Committee

What is the fundamental issue?

In 2001, Congress enacted legislation to phase out the estate tax, with full repeal scheduled to occur in 2010. Because of unique procedures associated with passage of the 2001 legislation, however, the estate tax was set to be reinstated as of January 1, 2011, at its pre-2001 levels. The amount excluded from estate tax would have been $1 million. Any remaining taxable estate would have been taxed at a maximum rate of 55%.

Technically, the estate tax was repealed for 2010, but, as a practical matter, the repeal was never activated. In December 2010 Congress, with President Obama's approval, voted to extend the 2009 estate tax rate through December 31, 2012. The estate tax exclusion was increased to $5 million (from $3.5 million) for 2010-2012, and the maximum tax rate was reduced to 35%.

However, without action by Congress, the pre-2001 estate tax rules ($1 million exemption and 55% rate) were set to become effective for those who died on or after January 1, 2013.

Fortunately, Congress and President Obama enacted the "American Taxpayer Relief Act (ATRA) of 2013" on January 2, 2013. This Act made permanent the changes Congress made to the estate tax rules in December 2010, except that the top estate tax rate was increased from 35% to 40%. Thus, for decedents dying after December 31, 2015, the estate tax exclusion is $5.45 million per person (the $5 million amount from 2010, indexed for inflation), and the top tax rate is 40%.

The estate tax was further changed by the Tax Cuts and Jobs Act of 2017, which temporarily (from 2018 through 2025) increased the estate tax exclusion from $5.45 million to $11.4 million per person, plus adjustments for annual inflation. By 2024, the exclusion amount for a couple was $27.22 million.

However, this exclusion was set to drop to just $5 million per person ($10 million for a couple) on January 1, 2026, according to the law as passed in the Tax Cuts and Jobs Act.

As part of the One Big Beautiful Bill Act (OBBBA), which was signed into law on July 4, 2025, the per person exemption level as made permanent at $15 million per person starting in 2026.This amount is indexed for inflation starting in 2027.

I am a real estate professional. What does this mean for my business?

The great amount of uncertainty that has surrounded the estate tax rules for the past two decades has been confusing and frustrating to owners and investors (and prospective owners and investors) of real estate. While many policy makers were pleased with the 2001 Act's scheduled repeal of the estate and gift tax, others felt there should be some level of estate tax left in place, although with higher thresholds and lower tax rates. The provisions made permanent in OBBBA of 2025 represented a huge boost to the

exemption compared to what was scheduled to happen under the TCJA of 2017.

NAR Policy:

NAR generally supported repeal of the estate tax but was opposed to certain other portions of the 2001 Act, such as the provisions that required the use of so-called "carryover basis." If repeal cannot be achieved, NAR supports the lowest possible rate (but in no event a rate higher than the maximum capital gains tax rate) and a substantial exclusion.

Proponents of estate tax repeal believe that individuals should be able to pass their property at death to whomever they wish without having to pay a tax. Others believe the estate tax harms economic growth and kills jobs by causing family-owned businesses to have to be liquidated to pay the tax.

Opposition Arguments:

Opponents of NAR policy believe that one of the reasons we have an increasing amount of inequality of wealth in our society is that the tax laws favor high-income and wealthy taxpayers, and that a more equitable public policy would assess a much higher rate of tax on accumulated wealth so that not as much of it is passed on to heirs.

Legislative/Regulatory Status/Outlook

As long as Republicans continue with their “trifecta” (having a Republican president and majorities in both the U.S. Senate and the House of Representatives), there is little chance that the estate tax exemption level passed in the OBBBA will change. However, when Democrats again achieve a majority in either or both chambers of Congress, and/or a Democrat again wins the White House, the odds of a decrease in the new exemption level go up.

Current Legislation/Regulation (bill number or regulation)

None at this time.

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