estate planning
BULLETIN

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In under the radar

For several years President Obama has proposed adding a requirement to the tax code for consistent basis reporting for estate and income tax reporting. There was a perception that basis mismatches were costing the Treasury considerable sums. The proposal never went anywhere.

Until this summer, that is, when it was attached to a temporary extension of highway funding. The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, signed by the President on July 31, 2015, includes a new requirement that taxpayers who receive property from a decedent use as their income tax basis the value of that property as finally determined for estate tax purposes. New reporting requirements have been created for executors of estates, who must advise both the IRS and the estate’s beneficiaries of the values. New regulatory projects will have to be under way shortly at the IRS.

The requirement only applies to property that increased federal estate taxes due. That means it doesn’t affect property from estates lower than the exemption amount or property excused from taxation via the marital or charitable deduction.

According to the Joint Committee on Taxation, the new provision will raise $117 million next year, more than $1.5 billion over the next ten years. Note that although the highway funding is temporary, the sunset provisions don’t apply to the new basis reporting portion of the law—those are permanent.

The highway bill also includes a reversal of the Supreme Court’s decision in *U.S. v. Home Concrete & Supply LLC* [132 S. Ct. 1836 (2012)]. That case held that an overstatement of basis is not an understatement of gross income for purposes of triggering the six-year statute of limitations. Now it is.

National Treasury Employees Union under fire

Under current federal law, employee unions are prohibited at the FBI, CIA, Secret Service and the Government Accountability Office. Senate Republicans have proposed adding the IRS to that list.

The idea was floated in the Senate report on the targeting of conservative groups by the IRS and the politicization of the agency. According to the report, in 2012 the National Treasury Employees Union (which represents IRS employees)

gave 94% of its political action committee contributions to “anti-Tea Party Democrats.” For many years, NTEU political contributions have skewed toward the Democrats. “The charge of the IRS is to administer the tax law in a fair and impartial manner. It is difficult, if not impossible, for that to occur when the union presence is so pervasive,” the report concluded.

NTEU’s president, Tony Reardon, noted in a statement that the key figure in the targeting controversy, Lois Lerner, was not a member of the union because she was in management. Lerner continues to invoke the Fifth Amendment in refusing to discuss her IRS job performance before Congressional committees.

Flatter taxes?

Senator Rand Paul (R-Ky.) has called for the elimination of the federal estate tax, but this proposal is only one element of his complete overhaul of taxation by the federal government. Paul proposes having a single income tax bracket of 14.5%, which would be the same for dividends, interest and capital gains. There would be a standard deduction of $15,000 per filer and a personal exemption of $5,000. That means a family of four, for example, would be exempt from income tax up to $50,000 of income. The plan would retain deductions for mortgage interest and charitable gifts, but all other adjustments to taxable income would be eliminated. The earned income tax credit and child tax credit also would survive.

Paul would eliminate the corporate income tax, replacing it with a 14.5% business transfer tax. Capital expenditures would be fully expensed the first year. However, wages and salaries would not be deductible for purposes of this tax. The result would be something that resembles the European value-added tax. The business transfer tax also would apply to nonprofits and governments.

In addition to eliminating federal estate and gift taxes, Paul would drop Social Security taxes. Therefore, a large segment of taxpayers would receive a 100% reduction of their income tax liabilities.

Closing letters for estates no longer automatic

Without fanfare the IRS in June announced that the issuing of a closing letter following the filing of a Form 706 will no longer be automatic. Instead, each taxpayer that wants one must request a closing letter. The request should be made four months after the due date for the estate tax return. The change was implemented through an amendment to the IRS’ *Frequently Asked Questions About Estate Taxes.*

The reasons for the new policy were not specified, but it may well be attributable to a surge in estate tax filings made solely to make the DSUEA portability election. Coupled with the cutbacks in the IRS budget growing out of the controversy over the IRS’ targeting of conservatives, the Service simply may have reprioritized. Those who are filing an estate tax return solely to make the portability election may not need a closing letter.

Addition to the “no rule” list

In *Rev. Proc. 2015-37*, released in June, the IRS added a new circumstance for which private letter rulings will not be issued: whether the assets in a grantor trust receive a basis step-up at the death of the grantor if the grantor is treated as the owner of the trust for income tax purposes. Tax observers have suggested the moratorium may indicate that the Service is preparing more authoritative guidance in this area.

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