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estate planning
BULLETIN

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A final IRS reprieve on basis reporting

On July 31, 2015, the President signed into law the *Surface Transportation and Veterans Health Care Choice Improvement Act of 2015.* One minor component of the legislation implemented an idea that had been included in the President's earlier budget messages: requiring consistent basis reporting for income tax and estate tax purposes. To this end, executors of estates large enough to be required to file a federal estate tax return will have additional paperwork requirements. They have to inform both the IRS and beneficiaries of the tax basis of all bequests.

The law requires such filing within 30 days of the due date for the estate tax return or 30 days after the actual filing of the estate tax return. There was no transition rule, so the IRS created one with Notice 2015-57, 2015-36 IRB 294, which provided that no such filings would be due before February 29, 2016. The IRS further extended the deadline to March 31, 2016, and finally set June 30, 2016, as the absolutely final extension. No further guidance is expected from the IRS before then.

At the Fiduciary Income Tax session of the American Bar Association Section of Taxation meeting in Washington, DC, in early May, practitioners raised a number of problems with the new law. Most substantively, in most large estates distribution of assets does not occur within 30 days of the estate tax filing. How is the executor supposed to tell the beneficiaries about their tax basis when the specific property going to the beneficiary is unknown? The IRS solution is to tell all the beneficiaries the tax basis of all of the property in the estate. The IRS representatives at the meeting reported that they did not favor the 30-day rule, but the Congress wrote the law that way so they had no choice.

Another question about the proposed Regs. concerned the reporting of subsequent transfers. Attendees pointed out that there is no statutory authority in the law requiring the reporting of a transfer of inherited property. In this area, the IRS personnel reported that they didn't feel bound by the statute, but by a practical problem. Without reporting of subsequent transfers of inherited property, it would be too easy to defeat the purpose of the law.

Projects nearing completion

At that same DC conference, the IRS speakers noted that a number of IRS projects are expected to be finished by July. These include regulations for:

- Section 2704, the treatment of certain lapsing voting rights and restrictions in interests in closely held companies;
- final regulations under Section 1022, for those who inherited property in 2010, the year with the optional estate tax;
- guidance under Section 664 on qualified contingencies in charitable remainder trusts;
- additional Proposed Regs. under Section 2053, deductibility of administration expenses;
- guidance under Section 2032 on distributions from an estate to a trust or retirement account and the alternate valuation date;
- Clarification to Rev. Proc. 2001-38. That procedure provided that a QTIP election will be null and void if it is not needed to reduce estate taxes (generally, the outcome that the taxpayer favored). Now practitioners may not want the election to be voided if it means that they can take advantage of portability instead.

Tax them like it's 2009

Democrats on the Ways and Means Committee are supporting H.R. 4996, the "Sensible Estate Tax Act of 2016," introduced by ranking minority member Sander M. Levin (D-Mich.). Key elements of the bill include:

- reducing the federal estate tax exempt amount to $3.5 million;
- chopping the federal gift tax lifetime exemption to $1 million;
- capping the Deceased Spouse's Unused Exemption at $1 million;
- boosting the estate tax rate to 45%.

The bill isn't expected to get much traction this year, but it could be a preview of coming attractions should Congress change hands next year.

Is the estate tax hurting the environment?

A paper by Brian Seasholes of the Reason Foundation makes the case that the federal estate tax has been harming the environment for years. Conservationists advocate for the preservation of large tracts of land. The estate tax had tended to cause large tracts to be subdivided and sold to developers in order to raise funds to pay the tax.

The effect is most pronounced in estates that are land rich and cash poor.
Seasholes offers three case studies of how large tracts had to be broken up, and the subsequent environmental harm.

The tax system creates pressure to sell property, rather than keeping it in the family. For example, a Maine family owned 12,000 acres of timberland, which they harvested from time to time to supply their sawmills. If the family sells it, there would be a tax at low long-term capital gain rates after recovery of their cost basis. If they keep the property in the family, an estate tax of 40% would apply to the entire value.

The paper noted a 2006 study that found that each year 1.3 million acres of U.S. forest land are sold. To put that in context, only 2.4 million acres are harvested each year. Of the acreage sold, 400,000 acres are converted to less ecologically friendly forms of land use. The 2006 study also found that owners of forest land were far more likely to be hit by the estate tax than others.

The paper recommended repeal of the estate tax, not reform, to head off further environmental damage. Conservation easements and the like have proven too complex and unpopular to achieve long-term environmental goals.