

Cohen Smith & Company, P.A.

NEWSLETTER



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In This Issue

- Rivals In Estate Tax Fight Are Calling On Lawmakers To Move On Restoration
- Worker Classification Issues
- Spear-Phishing
- IRS Issues Guidance On Tough New Reporting Requirements For Stock Sales In 2010
- Tax Calendar

Rivals In Estate Tax Fight Are Calling On Lawmakers To Move On Restoration



Anti-poverty advocates, business groups and unions all realize it's now or never for Congress to move on restoring the estate tax.

With the August recess looming, both sides of the debate are calling on lawmakers to act now on the tax. Lawmakers will return to Capitol Hill in the fall, hesitant to take a potentially toxic vote so close to the midterm elections on what could be termed a tax increase.

The estate tax – which has lapsed since the beginning of the year – will return in 2011. It will be at its highest rate in 10 years, with a tax rate of 55 percent. Those with assets worth less than \$1 million at the time of their death will be exempt.

In 2009, estates of 3.5 million or more were taxed at a rate of 45 percent. Those with assets valued at less than \$3.5 million were exempt.

United for a Fair Economy, an anti-poverty group, is lobbying for the estate tax to be restored to 2009 levels. It has found high-profile supporters, too. On a conference call organized by the group AFL-CIO President Richard Trumka and former Treasury Secretary Robert Rubin came together to support reinstating the tax.

Concerned that more burdensome estate tax could be imposed, business associations, as well as trade groups for ranchers and farmers, have gotten behind a compromise bill sponsored by Sens. Blanche Lincoln (D-Ark.) and Jon Kyl (R-Ariz.).

That proposal would institute a rate of 35 percent and an estate tax exemption level of \$5 million.

“The goal of the Family Business Estate Tax Coalition (FBETC) has always been full repeal of the estate tax, and we believe this is the best solution to protect all family-owned businesses from the estate tax. While we understand that full repeal may not be immediately possible, the FBETC supports the parameters outlined in the Lincoln-Kyl proposal,” the coalition states.

Members of the coalition include the American Farm Bureau Federation, the National Federation of Independent Business and U.S. Chamber of Commerce.

Trumka described the Lincoln-Kyl proposal as a weak compromise that he could not support, and the measure is unlikely to win the votes of liberal Democratic senators.

He favors legislation sponsored by Sens. Tom Harkin (D-Iowa), Bernie Sanders (I-Vt.), Sheldon Whitehouse (D-R.I.) and Sherrod Brown (D-Ohio).

Their bill would reinstate the estate tax at 2009 levels, but include a more progressive tax rate. For example, it would tax estates worth \$3.5 million to \$10 million at 45%; estates worth more than \$10 million and below \$50 million would be taxed at 50 percent; and estates worth more than \$50 million would be taxed at 55 percent.

Continued careful monitoring of evolving estate tax law remains important in order to properly plan.

Worker Classification Issues



One of the most common areas of contention between the IRS and businesses is the issue of worker classification. If a worker is an employee, the business is responsible for payroll taxes and fringe benefits. However, if the worker is an independent contractor, the business is generally not responsible for payroll taxes.

The IRS estimates millions of workers are misclassified as independent contractors, depriving the federal government of huge sums of tax revenue. Consequently, the IRS is focusing on worker classification issues and has several audit initiatives in progress.

If a business incorrectly treats an independent contractor as an employee, the business will unnecessarily pay FICA and FUTA taxes and collect FIT withholding. However, if the business incorrectly treats an employee as an independent contractor, the business—

- may risk increased income and FICA taxes, penalties, and interest;
- may owe back FUTA taxes, with penalties and interest;
- may owe back pay and overtime under wage and hour laws;
- may jeopardize qualified benefit plans;
- may jeopardize other benefit plans;
- may be liable for the retroactive effect of reclassifying workers under state workers' compensation and disability statutes, and state mandated benefits (such as parental leave or vacation time);
- may not be in compliance with other federal laws that only apply if the number of employees equals or exceeds certain thresholds (OSHA, ADA, FMLA, etc.); and
- may face other risks [for example, increased business liability for workers' actions and liability for failing to obtain a Form I-9 (Employment Eligibility Verification) upon hiring the worker].

Classifying workers incorrectly can have significant consequences—from past due payroll taxes to fringe benefit plans. Thus, businesses should exercise due diligence when classifying workers as independent contractors.

Spear-Phishing

“Spear-phishing,” a relatively new e-mail scam, has recently emerged as a significant source of revenue for cyber criminals. In a typical phishing e-mail scheme, a fraudster spreads his net wide by



sending a corrupted e-mail message to millions of individuals. However, in a spear-phishing scheme, the fraudster narrowly directs an e-mail to an individual or individuals within a company of a particular industry, hence the directness of the “spear.”

In both schemes, the fraudster’s goal is to develop a genuine looking e-mail message intended to convince the potential victim to give up crucial personal or business information. In the spear-phishing scheme, the fraudster wants to convince the recipient that the message is coming from someone who is in a position of authority in the company – for example, a network administrator – who’s asking for confidential information. Such information is then used by the “phisher” to access bank accounts, credit cards, etc. for illegal gain. Therefore, you should always be suspicious of anyone initiating contact and asking for private information.

IRS Issues Guidance On Tough New Reporting Requirements For Stock Sales In 2010

The IRS will soon be looking over the shoulders of tax return preparers and their clients when they report stock sales on Schedule D, Form 1040.



For stock acquired and sold after 2010, the IRS will receive information returns from brokers reporting the adjusted basis of the stock sold and whether the capital gain or loss on the sale is short-term or long-term. These information returns will allow the IRS to double check accounts reported on Schedule D.

The new requirements generally apply to a sale of any of the following:

1. Shares of corporate stock.
2. Notes, bonds, debentures, or other evidences of indebtedness.
3. Commodities or contracts or derivatives with commodities.

The applicable date is January 1, 2011, for shares of corporate stock; January 1, 2012, for mutual fund shares and stock shares acquired through a dividend reinvestment plan; and January 1, 2013 (or another date set by the IRS) for other specified securities.

Brokers will report the information on a revised **Form 1099-B**. Form 1099-B is currently used to report the gross proceeds of security sales; under the new requirements, it will also provide the adjusted basis and long-term/short-term information.

The basis reported by a broker is the total amount paid by you or credited against your account as a result of the acquisition of the securities, adjusted for commissions and the effects of other transactions occurring within the account.

When you sell less than the entire position of a security in your account, you can provide the broker with instructions as to which shares are being sold. The proposed regulations require the broker to follow adequate instructions in determining the basis and capital gain holding period of the shares when completing Form 1099-B. This gives you the power to identify the shares being sold as the ones that provide the best tax results.

To qualify as an adequate instruction, you must generally identify the shares in writing (e-mails qualify) no later than the settlement date. The proposed regulations provide that a standing order or instruction for the

specific identification of stock will be treated as an adequate identification.

Absent a valid instruction from the seller, the proposed regulations clarify that a broker must report the basis of a security (other than one eligible for averaging) using the first-in, first-out method when completing Form 1099-B. In the case of mutual fund and dividend reinvestment shares, a broker must report basis using a default method selected by the broker.

This new reporting of cost basis increases the importance of reviewing your brokerage statements to insure accurate cost basis information is shown for all holdings. Failure to provide accurate cost information may result in overstated gain (or understated loss) on the Form 1099 sent to the IRS.

Tax Calendar



AUGUST 2010

August 2

Social Security, Medicare, and withheld income tax. File Form 941 for the second quarter of 2010. Deposit any undeposited tax. (If your tax liability is less than \$2,500, you can pay it in full with a timely filed return.) If you deposited the tax for the quarter in full and on time, you have until August 10 to file the return.

Federal unemployment tax. Deposit the tax owed through June if more than \$500.

All employers. If you maintain an employee benefit plan, such as a pension, profit-sharing, or stock bonus plan, file Form 5500 or 5500-EZ for calendar year 2009. If you use a fiscal year as your plan year, file the form by the last day of the seventh month after the plan year ends.

August 10

Employees who work for tips. If you received \$20 or more in tips during July, report them to your employer. You can use Form 4070.

August 16

Social Security, Medicare, withheld income tax. If the monthly deposit rule applies, deposit the tax for payments in July.

Nonpayroll withholding. If the monthly deposit rule applies, deposit the tax for payments in July.

SEPTEMBER 2010**September 10**

Employees who work for tips. If you received \$20 or more in tips during August, report them to your employer. You can use Form 4070.

September 15

Individuals - Make a payment of your 2010 estimated tax if you are not paying your income tax for the year through withholding (or will not pay in enough that way). Use Form 1040-ES. This is the third installment date for estimated tax in 2010.

Employers - For Social Security, Medicare, withheld income tax, and nonpayroll withholding, deposit the tax for payments in August if the monthly rule applies.

Corporations - File a 2009 calendar year income tax return (Form 1120 or 1120-A) and pay any tax due. This due date applies only if you timely requested an automatic six-month extension.

Deposit the third installment of estimated income tax for 2010. Use the worksheet Form 1120W to help estimate tax for the year.

Partnerships - File a 2009 calendar year return (Form 1065). This due date applies only if you were given an automatic five month extension. Provide each partner with a copy of Schedule K-1 (Form 1065) or a substitute Schedule K-1.

Electing large partnerships - File a 2009 calendar year return (Form 1065-B). This due date applies only if you were given an automatic six month extension

S corporations - File a 2009 calendar year income tax return (Form 1120S) and pay any tax due. This due date applies only if you timely requested an automatic six-month extension. Provide each shareholder with a copy of Schedule K-1 (Form 1120S).

Estates and Trusts - File a 2009 calendar year return (Form 1041). This due date applies only if you were given an automatic five month extension. Provide each beneficiary with a copy of Schedule K-1 (Form 1041).

Other helpful line services

[www.IRS.gov](http://www.irs.gov)

www.MyFlorida.com

www.Volusia.org