

## Estate Tax Repeal: Who Stands to Gain?

by Dustin Stamper

**With estate tax rollback in some form becoming increasingly likely, there is some question as to who will reap the benefits.**

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What do Paris Hilton and the National Potato Council have in common?

They'll both be cheering if the estate tax is rolled back later this year. And they'll be joined by a large and eclectic coalition that includes lobbying heavyweights like the U.S. Chamber of Commerce and lesser-knowns like the Western Peanut Growers Association. It no longer appears to be a question of whether the estate tax is rolled back, but only how far the rollback goes.

"We've won the public battle," said Republican pollster Frank Luntz at an estate tax rally last week in the Capitol. Luntz is largely credited with the semantic transition from the term "estate tax" to "death tax."

"It does not matter what you call this anymore," Luntz said. "The public perceives deeply, morally, that this tax is wrong and un-American."

With a top spot on the GOP's priority list, a number of Democrats on board (42 House Democrats voted for a full repeal bill earlier this year), and compromise negotiations in the Senate already underway, it appears estate tax repeal advocates need only to decide whether to accept something less than full repeal. Senate procedural hurdles that require 60 votes to overcome may complicate efforts, but the estate tax is at least ripe for some pruning. (For related coverage, see *Doc 2005-11063* [\[PDF\]](#).)

And while any rollback will likely be celebrated by billionaire heiresses and Midwestern dairy farmers alike, there is some question about who will really be reaping the benefits. Advocates for repeal prefer to focus on the plight of the farmers and small-business owners, but there is significant evidence that it is the very richest Americans paying most of the tax.

According to IRS statistics, more than 66,000 estate tax returns were filed in 2003. However, less than half of those estates paid any tax at all. Of the 30,637 estates that owed tax, those worth more than \$20 million (about 1 in every 60) paid more than one-quarter of all the estate taxes collected in 2003, each paying an average of \$10.2 million. Carving out all the estates worth more than \$5 million (about 1 in 10) yields more than half of all the estate taxes collected in 2003, which was about \$21 billion. The bottom two-thirds of estates worth under \$2.5 million were responsible for only \$3.8 billion in total estate tax receipts, paying an average of just \$175,000 each.

Statistics suggest that small-business owners are not carrying the estate tax burden (although that may depend on the definition of small). And with only 2,000 returns showing estate tax liability in 2003 claiming any farm assets, some of the estate tax lobby's arguments begin to ring a little hollow.

Repeal advocates, however, point out that there is a significant burden to estate planning itself, as evidenced by the fact that 30,000 estates that were required to file returns owed nothing in taxes. But with the estate tax temporary phaseout enacted in 2001, that burden should be shrinking rapidly.

Under current law, the exemption from the estate tax is scheduled to rise to \$3.5 million in 2009. The Joint Committee on Taxation estimates 2.5 million persons will die in 2009. According to the JCT, only 7,500 of those people -- less than 0.5 percent -- will have any estate tax liability. (See *Doc 2005-2468* [\[PDF\]](#) or *2005 TNT 30-17* [\[PDF\]](#).)

But opponents of repeal point out that 56,300 of taxpayers dying in 2009 will have estates valued between \$1.3 million and \$3.5 million. That figure is important because estates worth more than \$1.3 million (\$4.3 million for some married decedents) will be subject to new rules for calculating the basis of inherited property when the estate tax is fully repealed for one year in 2010. Currently, inherited assets are "stepped up" to their value at the time of the holder's death. But in 2010, under full repeal, the basis of inherited assets will not be stepped up; heirs will take a carryover basis.

That means one year makes all the difference. Heirs of the estimated 56,300 estates that will escape estate taxes in 2009 (without full repeal) will take a stepped-up basis in inherited assets. But some of those same heirs would face substantial capital gains taxes on inherited assets if the triggering death occurs in 2010, when the estate tax will be fully -- albeit temporarily -- repealed.

The Small Business Council of America, one of the few small-business organizations in favor of relief and not repeal, maintains

that most of the vocal farming and small-business groups crying for repeal don't realize most of their members will be worse off under the carryover basis rules.

"Unfortunately, many small businesses will actually end up paying more taxes under the proposed repeal in 2010 and beyond than they would with the increased exemption proposed to be in effect in 2009," the council wrote in testimony before the House Small Business Tax, Finance and Exports Subcommittee.

*The Seattle Times* Publisher Frank Blethen, a long-time advocate for estate tax repeal, told Tax Analysts that he not only understands that, but embraces it.

"This is about holding on to businesses and farms," he said. "If you don't sell, you don't have to worry about basis."

Digging down to the essence of estate tax repeal, the debate becomes less and less about how small businesses and farms are affected and more about the fairness of the tax itself. Some of the staunchest advocates are not afraid to admit that many of their supporters, in the end, have nothing to gain.

"For most of you in this room, this is not your tax," Luntz said at last week's rally. "It's a principle and a moral issue."

Proponents for repealing the estate tax like to point out that in most years it raises about 1 percent of all federal revenue; however, 1 percent is no small figure in terms of government collections. The JCT estimates that repealing the tax would cost \$59 billion in 2013, \$67 billion in 2014, and \$72 billion in 2015. (See *Doc 2005-7722* [PDF].)

Contrast that with the alternative minimum tax, which many lawmakers from both parties agree has long outlived its purpose. AMT repeal has been postponed by annual temporary relief measures because permanent repeal would cost an average of about \$60 billion a year over the next 10 years, according to the Congressional Budget Office. (See *Doc 2004-8344* [PDF] or *2004 TNT 75-33* [PDF].)

The AMT courts disdain, but it does not enjoy the powerful and rich lobby that estate tax repeal draws. While lawmakers this year punt the AMT to President Bush's tax reform panel, the estate tax lobby has apparently narrowed its problems to one: when to declare victory.

Some of the estate tax repeal's fiercest advocates began publicly revealing for the first time a schism in their ranks at last week's rally. While many continue to claim they are on the path to fully eliminating the tax within the next year or two, there is growing support among others for accepting a compromise measure now, while the ideological battle is won and before the opportunity is lost.

Luntz is one of the first to call on his fellow repeal advocates to avoid becoming victims of their own success. He said an alarming number of Republicans would not be upset to find the issue dragged into the next election. It is a tremendous political winner for the GOP, particularly in Midwestern and farming states, Luntz said, and Republicans used it to bounce former Senate Minority Leader Tom Daschle, D-S.D., from office in 2004. But Luntz warned that estate-tax-repeal advocates who are planning to reject a compromise instead to wait for full repeal could be making a big mistake. "As a matter of principle they are correct. As a matter of politics they are not," he told reporters. "They have a unique opportunity. I hope they don't miss it."

Blethen told Tax Analysts that he understands Luntz's point of view, but he will continue to push for full repeal until his Senate allies tell him it is impossible. Only at that point would he seize the opportunity for a compromise.

"For those of us that have been doing this for 10 or 15 years, you know every year they say wait one more year," he said.

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