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ESTATE-TAX SHIFTS BRING UNCERTAINTY

Russ Wiles, The Arizona Republic

It's not as topical as the economy, jobs or the stock market, but estate planning has been making headlines lately.

And it will make more headlines if Congress doesn't follow up on a massive overhaul of the nation's estate-tax laws undertaken three years ago.

Reform of the federal estate-tax code in 2001 has gradually raised the amount of assets that each person can exclude from these taxes.

Yet this provision is set to expire in 2011, so things will pretty much revert to the way they were if Congress doesn't make the changes permanent.

"A lot of people are confused or concerned about the limbo Congress has left us in with estate taxes," said Robert F. Hughes, an attorney at Hughes Law Group in Phoenix.

Plus, Democratic challenger John Kerry doesn't see eye to eye with President Bush over various tax matters, so the issue could become more prominent in the election campaign.

"We don't know what's going to happen with a new Congress and, possibly, a new president," said John C. Vryhof, an estate-planning attorney at Snell & Wilmer LLP in Phoenix. "The estate-tax laws are really up in the air."

A person who dies this year can exclude up to \$1.5 million in assets from federal estate taxes -- an amount that has risen from \$675,000 per person in 2001 and will increase to \$3.5 million in 2009, with full repeal of estate taxes in 2010.

Meanwhile, top tax rates are down from 55 percent in 2001 to 48 percent now and will ebb to 45 percent in 2009.

Changes not set

But if Congress doesn't make the changes permanent, taxes will return at a top 55 percent rate in 2011, at which time the exclusion amount would be \$1 million per person.

Plus, heirs wouldn't receive a "step-up in basis" on stocks, real estate and other inherited property that has appreciated over the years, as they do now.

"Basis" is the value of an asset on which capital-gains taxes don't apply, so an increase or step-up allows heirs to avoid at least some capital-gains taxes on inherited property.

This tax-saving rule is set to end in 2010.

"Doing away with the step-up in basis could affect a lot of people," Hughes said.

There have been other estate-planning developments.

Three months ago, for example, Arizona lawmakers repealed a set of laws passed just last year known as the Uniform Trust Code.

The code's intent was to fill in gaps on various rules that apply to trusts and make them more similar to those of other states, but it also generated controversy.

One unpopular provision would have required that people who set up or oversee trusts notify beneficiaries that a trust exists and provide a list of assets on request.

Critics complained the rule would have made trusts less private.

On the other hand, Arizona lawmakers sanctioned a novel type of deed a few years ago that has stood the test of time.

Called the "beneficiary deed," this one-page document allows people to name an adult beneficiary or recipient to take ownership of their home or other Arizona real estate when they die, probate-free.

And because the deed delays a transfer until the owner dies, that person remains in full control until then -- something that's not assured if the owner names the intended heir as co-owner.

"That's been very popular, a good change," Vryhof said of beneficiary deeds.

Even without legal changes, estate planning is tricky. Hughes, for example, said an ongoing point of confusion involves living trusts.

"A lot of people think they don't need a trust if they don't have an estate-tax problem, yet there are so many other things you can do with a trust that you can't do with a will," Hughes said.

These range from naming a conservator to manage your affairs should you become incapacitated to providing supervision to make sure an heir doesn't squander your assets after you're gone.

That said, a lot of people would benefit simply by having a will drawn up.

"I've read that about 75 percent of the people have nothing," Hughes said.

'MONEYLINE' RETURNS

The Arizona Republic is sponsoring "MoneyLine," a call-in program about personal finance and estate planning, from 6 to 9 p.m. today.

Readers may call during that time to speak to a financial expert at no cost.

Like a similar "MoneyLine" program in March, callers will be able to ask a general question about personal finance. In addition, this panel will include experts who specialize in estate planning, wills and trusts. There will be two phone numbers for the event: (602) 444-4320 for general questions on personal finance, and (602) 444-4323 for estate-planning questions.

MEET THE NOMEYLINE PANEL

- 1) Stephen Barnes of Barnes Investment Advisory Inc. in Phoenix is a certified financial planner and chartered financial analyst who has been named a top adviser by Worth magazine. He is a director of the Arizona State Treasurer's Board of Investments and is a former chairman of Desert Schools Federal Credit Union.
- 2) John R. Becker is a partner at Braun, Becker, Kruzell in Scottsdale. He received a bachelor's degree from the University of Nebraska, a law degree from Arizona State University and a degree in taxation from New York University School of Law. He is a specialist in tax law and estate and trust law. He earned a certified public accountant designation.
- 3) Michael Phillips Black is a CFP and certified divorce financial analyst at Michael Phillips Black & Associates in Scottsdale. He's a University of Arizona graduate who majored in accounting and finance. He began his career in public accounting.
- 4) Jim Darling of Jenner & Darling CPA PLC in Tempe holds both the CPA and CFP designations. He received an accounting degree at ASU and worked in the tax area at Ernst & Young. He is former chairman of the public-relations committee of the Arizona Society of CPAs.

- 5) James P. Dew of Dew Wealth Management of Scottsdale is a CFP, certified senior adviser and chartered financial consultant. He received a bachelor's degree in mathematics from the University of Arizona and an MBA from ASU.
- 6) Dave Fernandez is owner and president of Wealth Engineering LLC in Scottsdale. He is a fee-only certified financial planner who received a bachelor's degree in finance from ASU. He worked as a financial planner and investment manager at the Vanguard Group.
- 7) Lauren L. Garner is an experienced litigator with an emphasis on probate, trusts and guardianships. She also advocates mediation and other non-traditional dispute resolutions. She received a law degree from the University of Florida and a bachelor's degree from Smith College. She works for Jaburg & Wilk PC in Phoenix.
- 8) Paul F. Green, a longtime member of the Arizona State Bar, has been employed by the Internal Revenue Service as an estate tax attorney since earning his law degree from the University of Arizona. He has spent nearly his entire career in Arizona.
- 9) Lana E. Hock of Hoffman & Hock Inc. in Phoenix is a CFP who received a bachelor's degree in business from Kansas State University. Her company is the largest female-owned financial-planning firm in Arizona and has been recognized by Bloomberg Wealth Manager magazine.
- 10) Robert F. Hughes specializes in estate planning, asset protection and related areas at Hughes Law Office in Phoenix. A native Arizonan, he earned a bachelor's degree in government and psychology as well as a law degree from the University of Arizona. Among past positions, he was an estate and gift-tax attorney at the IRS.
- 11) Susan R. Linkous is a registered investment adviser and owner of the Linkous Group Ltd. in Fountain Hills. She is a certified insurance and investment counselor who received a bachelor's degree in business from the University of Hawaii.
- 12) Joseph I. McCabe is the managing partner at Phoenix law firm McCabe O'Donnell, where he focuses on taxation, estate planning, trust litigation and related areas. He received a bachelor's degree in accounting and a law degree from the University of Iowa, and a CPA certificate. He's a past president of the Central Arizona Estate Planning Council.
- 13) Tom Steele is the founder and managing senior partner of Steele, Larson & Associates in Mesa. He earned a bachelor's degree in business management and previously worked for Northern Trust NA in Arizona. He earned the CFP designation and is an enrolled-agent tax specialist.
- 14) Michael J. Tucker is a shareholder in the law firm Polese, Pietzsch, Williams & Nolan in Phoenix, where he concentrates on trusts and estates. He received a bachelor's degree and a law degree from the University of Texas. He is a past president of Valley Estate Planners and a past chairman of the Maricopa County Bar Association's estate planning and probate section.
- 15) John C. Vryhof works at Snell & Wilmer LLP in Phoenix, where he specializes in estate planning. Before, he worked at Streich Lang in Phoenix and Sidley & Austin in Chicago. He received a law degree from the University of Michigan and a bachelor's degree in economics at Michigan State University.

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