From the Editor:

Estate Tax 'Compromise' Takes One Baby Step Forward

By Robert J. Wells (bwells@tax.org)

A deal that would retain a slimmed-down version of the federal estate tax moved slightly closer to fruition last week, according to Republican Sen. Jon Kyl, who has been working with Senate Finance Committee ranking minority member Max Baucus on finding a compromise that could obtain the 60 votes needed to clear procedural hurdles in the Senate.

According to Kyl, who has long favored permanent repeal of the estate tax, ''We have an agreement on basic parameters.'' Although final details are still to be worked out, those ''basic parameters'' are retention of basis step-up at death, a cut in estate tax rates, and what Kyl described as ''a good-sized exemption that would be indexed for inflation'' (p. 263).

That deal appears to meet the technical definition of a compromise, but will the two parties be equally happy (or unhappy) with it? We suspect not.

Here's an analogy from the sports world. Tie games are often described as being like kissing your sibling. Back when Ivy League football was still taken seriously, a furious Crimson comeback against a powerhouse Yale squad in the final 42 seconds of ''The Game'' in 1968 resulted in probably the most famous headline in the history of collegiate journalism: ''Harvard Wins, 29-29.''

In a related historical perspective, Joseph Thorndike reviews the history of redistributive rhetoric as a justification for the federal estate tax (p. 291).

And in his economic perspective column, Gene Steuerle offers a compromise proposal for estate tax reform that would allow wealthy individuals to avoid paying tax while passing on significant assets to their heirs, on just one condition — making substantial contributions to charity (p. 343).

More News Highlights

Participants at the latest Tax Analysts-hosted roundtable discussion on tax reform agreed the current tax system is too complicated but disagreed on how simple the code could be made and on whether technology was important in making the system less complex (p. 269).

The Financial Accounting Standards Board released an exposure draft on its proposed interpretation of accounting for uncertain tax positions (p. 272).

The Tax Court, four months after the Supreme Court invalidated its internal procedures for lack of transparency, has proposed revising its rules to give parties access to special trial judges' original findings (p. 274).

The resurfacing of an unedited draft of an IRS report on the evolution of the Criminal Investigation Division has open-government advocates wondering whether the IRS views section 6103 disclosure curbs as a way to shield taxpayers or the agency itself (p. 279).

Much More Good Stuff

In a news analysis, Lee Sheppard offers some lively soccer talk and reviews the European Court of Justice's decision against the taxpayer in the *D* case and explains why it was a fortunate one for ''the tax systems of Europe.'' A decision in D's favor, Sheppard writes, would have disrupted ''many common national tax practices and bilateral treaties by guaranteeing mobile individuals a tax version of 'most favored nation' treatment'' (p. 282).

In an economic analysis, Martin Sullivan reports that there is a second incentive — in addition to the low Irish corporate tax rates — for U.S. corporations to invest in Ireland: a multibillion-dollar subsidy provided by the IRS (p. 287).

We recommend Sullivan's article to Republican Rep. Todd Tiahrt, chair of the new House Economic Competitive Caucus, who says that Ireland transformed itself from a ''third world country'' to the ''envy of Europe'' by slashing corporate tax rates (p. 263).

A special report by Howard A. Cooper outlines the rules for qualifying for the section 45 credit for electricity produced from renewable resources, as modified and expanded by the American Jobs Creation Act of 2004, and discusses ways to maximize the benefit of the credit (p. 327).

In another special report, Kathleen Pakenham, Danielle M. Smith, and Tricia Marlar review a recently released IRS audit technique guide that the IRS has been using internally for a couple of years and that was developed to help field personnel identify abusive tax shelters and transactions (p. 337). Among the places the guide recommends field agents look for leads on abusive shelters: Lee Sheppard's articles in *Tax Notes Today*!

In a viewpoint, John Buckley explains why the ''budget gimmick'' of using the individual alternative minimum tax to reduce the cost of tax cuts will make solving the AMT problem ''extraordinarily costly'' (p. 347). The Reports in Brief column contains summaries of two articles published in a recent issue of the *Florida Tax Review* that both deal with the AMT. One, by Prof. Linda Beale, argues that AMT reform, not repeal, is the way to go (p. 371). The other, by Profs. Brant Hellwig and Gregg Polsky, discusses the tax treatment of litigation expenses under the AMT (p. 372). The full texts of both articles are available on *TNT*.

A practice article by Prof. Gregory Geisler reports on the AMT trap that ensnared Teresa Heinz Kerry in 2003 (p. 317). Another practice article, by Robert Wood, wonders what the IRS will do regarding contingent attorney fees in the wake of the Supreme Court's retroactive *Banks* decision (p. 319).

Another viewpoint, by Robert Willens, reports on the sickly but still breathing remote continuity of interest doctrine as applied to the conduct of an acquired business in a lower-tier entity (p. 353). In the latest installment of Camp's Compendium, Prof. Bryan Camp discusses the Tax Court's jurisdiction to hear stand-alone petitions from taxpayers who have been denied equitable relief under section 6015(f), one of three spousal relief provisions enacted as part of the Internal Revenue Service Restructuring and Reform Act of 1998 (p. 359). (Warning for Chicago Cubs fans: The context for Prof. Camp's discussion is the ongoing *Bartman* case.) ■