



Robert W. Wood

THE TAX LAWYER

TAXES 2/23/2017

Trump Vows Estate Tax Repeal, But California Plans Its Own 40% Estate Tax

California doesn't like Trump, but sure does like tax increases. At around the same time as President Trump was being elected, California was increasing state income taxes again. The state's [high 13.3% California tax](#) are only temporary though, just through 2030! Of course, that was back in November. It must be time for another tax hike. The latest is a move by the Golden State to tax estates, even if the feds do not.

If the federal estate tax law is repealed by President Trump and Congress, estates in California will *still* pay. A bill was [introduced by state Sen. Scott Wiener](#) (D-San Francisco), asking voters to keep the estate tax after all. The proposal would have to go to voters. As [Mr. Wiener](#) put it:

- 6 If Donald Trump and congressional Republicans are hell-bent on cutting taxes for our wealthiest residents, we should counter-balance those tax cuts by recapturing the lost funds and investing them here at home in our schools, our healthcare system, and our roads and public transportation systems."



U.S. President Donald Trump discusses the federal budget in the Roosevelt Room of the White House on February 22, 2017 in Washington, DC. (Photo by Olivier Douliery-Pool/Getty Images)

The estate tax remains terribly controversial. It generates emotional fervor that most tax issues do not. Right now, the federal estate tax remains at 40%. But, consider that Secretary Clinton wanted to *raise* the estate tax to [an astounding 65%](#), while Donald Trump vowed to repeal it. And with a Republican House and Republican Senate, he just might. He is after other taxes too, of course, such as those enacted as part of Obamacare.

But the estate tax can make people's blood boil, even if it is not widely paid. Current law [exempts estates worth \\$5.49 million or less](#), up from \$5.45 million in 2016. Beyond that, you pay 40%. A number of Democrats, including Secretary Clinton, called for whittling the \$5.45 million figure down to \$3.5 million, and upping the 40% estate tax rate to 45%. Then, as the election drew near, she proposed much higher 50%, 55%, and 65% estate tax rates, depending on your wealth. The proposed 50% rate was for estates worth over \$10 million per person, 55% for estates over \$50 million, and 65% for estates exceeding \$500 million.

President Trump wants to repeal the estate tax entirely. More than a few commentators have noted that Mr. Trump himself stands to benefit from such a plan, as would his heirs. But it would benefit many others too. Steadfast proponents of the estate tax are not ready to give up, of course. They argue that it helps to stop wealthy people from getting even wealthier.

But given that income taxes must be paid on earnings that eventually make up the estate's value, opponents claim that the tax is a true double tax having no place in America. As Candidate [Trump said](#) on August 8, 2016 in Detroit:

- 6 No family will have to pay the death tax. American workers have paid taxes their whole lives. It's just plain wrong and most people agree with that. We will repeal it."

Strangely, another argument for the estate tax is that you can plan around it. Yet that is becoming more and more difficult. The notion that clever and wealthy people can find ways around the tax may be changing, with new administrative rules that make valuation discounts scarce and worth less. In any case, planning to avoid the estate tax is expensive and requires years of planning. Wealthy or not, the estate tax catches many people off guard after they have worked and paid income tax their whole lives.

It can force sales of family companies, and sales of family farms and ranches. Ironically, it was only recently—in 2013—that Americans *finally* got some certainty with a \$5 million per person exemption. Indexed for inflation, it now stands at \$5.49 million, \$10.98 million for a married couple. And the Republicans want it repealed. Conversely, [House Democrats want to raise the estate tax](#) materially.

Notably, [the Sensible Estate Tax Act of 2016](#) would slash the estate tax exemption to \$3.5 million and raise the tax rate to 45% as detailed [here](#). Moreover, not long ago, President Obama argued that allowing a basis step up on for income tax purposes on death was a huge loophole. He proposed *no* basis step up, hoping to raise approximately \$200 billion over the next decade. When combined with state estate taxes, this [proposal would yield the highest estate tax rate in the world](#).

Small and family businesses can be particularly hard hit. Already, it is hard for many family-owned businesses to stay afloat after the death of a key figure. Not all of the reasons are managerial. Many are financial, and taxes can force a sale. Stephen Moore of the Heritage Foundation calculated that by eliminating basis step up, we would end up with [the world's highest estate tax rate](#). Dick Patten, chairman of the Family Business Defense Council calculated an effective death tax rate of 57%. If you add in state inheritance taxes, the combined tax rate could go as high as 68%.

President Elect Trump will surely dampen any such discussion and push for repeal. If it happens, there could be a fight in California over the state's reverse me-too tax move. But if the feds repeal it, and California enacts its own estate tax replacement, will all the billionaires remain, or will [high California taxes spark an exodus](#)? It isn't a silly question.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.