



The Tangled Web The Tax Man Weaves

Twelve major estate-planning features under the 2001 Tax Act.

By Mike Janko



On May 25, 2001, Congress passed the Economic Growth and Tax Relief Reconciliation Act of 2001. This act represents a very complicated change in Federal tax law for income taxes as well as gift, estate and generations skipping (GST) taxes. The focus of this article is the effect the law has on estate planning.

A common misunderstanding that Americans and even many of their advisors have is that taxation on estates was or will be eliminated by this Tax Act. That simply is not the case. Planning for taxation of estates is just as important as ever, and will continue to be far into the future. Further, tax and other planning strategies for estates are now a good deal more complicated in many cases and the results more unpredictable.

Another misunderstanding that many Americans may have is that they no longer need to even plan for things such as probate avoidance, eventual transfer of their estate to the rightful heirs, asset protection, etc. But the Tax Act has no bearing at all on these non-tax issues of estate planning. Those concerns still need to be planned for the same as before.

In this article, we will generically refer to "death taxes." By that, we mean any tax, which may be imposed because of someone dying and leaving assets, especially if some of the assets will be sold by the heirs. We are not limiting the term "death taxes" to just estate taxes or to any other single tax.

There are twelve major features of the Tax Act for estate planning purposes, and numerous more minor ones. We will provide a simplified overview of the major features below. After the overview, we will provide comments on how these features impact the planning for taxation of estates.

Twelve Major Estate Planning Features of 2001 Tax Act

1. The estate tax unified credit exemptions and GST tax exemptions will increase in a series of steps to \$3.5 million in 2009. See [Table 1](#) for the specifics. The "Exempt Amount" shown in [Table 1](#) is the value of an estate, which is free of any estate taxes for the year indicated. This amount increments up to the \$3.5 million level before the tax is completely eliminated.
2. The top rate for estate and GST taxes will decrease in a series of annual steps through 2007. See [Table 1](#) for specifics. The percentage "Rate" shown in the Table represents the maximum estate or GST tax rate for the year indicated.
The minimum rate is 37 percentage for each year shown. So, some amount of an estate, which exceeds the exempt amount, will be taxed at 37 percentage, and, if large enough, the rest of the estate would hit higher brackets, topping out at the rate shown in the table for that year.
3. Estate and GST taxes are repealed, eliminated, from 1/1/2010 forward.
4. The gift tax unified credit exemption amount for life time gifts will go to \$1 million in 2002 and remain at that level unless the law changes it later (gift taxes will not be repealed in 2010). See [Table 2](#) for specifics.

(Continued Next Page)

Mike Janko is the Executive Director of the National Association of Financial and Estate Planning located in Salt Lake City, Utah. He can be reached at 801-266-9900.

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