

If you hate the Yankees, the existing estate tax law will make you want to hate them even more!

By **Jim Moniz**

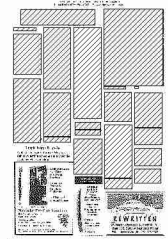
It's all but expected in Boston (and maybe anywhere other than New York) to hate the Yankees. And, with the passing of Boss George Steinbrenner, there may soon be even more reason to loathe the Bronx Bombers and all they stand for. The culprit here isn't a new ace pitcher they bought from another team; but rather, the state tax law.

Back in the first year of George Bush's term as president, the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) was passed, which essentially phased out the estate tax. In 2009, the amount a person could pass on to the heir's estate was \$3,500,000. In 2010 the estate tax was repealed by and replaced by a long-term capital gains tax. However this part of the law will expire December 31. In 2011, unless action is completed by Congress the exemption rate of \$1 million per person and an assessment of 55% tax will become law again.

So what does that have to do with the New York Yankees? Well, let's assume that Steinbrenner's only real estate holding was the New York Yankees. Some experts value the team as more than \$1 billion. Because of the timing of Steinbrenner's demise, the transfer of this valued asset to his children could be potentially federal estate-tax free. Now, had Mr. Steinbrenner lived another year, the taxes on this asset would have been greater than \$400 million. The capital gains taxes is 15% or \$160 million. There's been some talk that Congress could renew the 2009 exemption of \$3.5 million and make it retroactive. Watch for some serious challenges should this become fact. It's difficult to imagine that George Steinbrenner's heirs wouldn't mount a mighty effort to derail this potential law, as is the case of entrepreneur Dan Duncan who died in March with an estate

valued in excess of \$9 billion. Since Dan's heirs potentially could lose \$4 billion if the law was made retroactive, the heirs would certainly have the funding available to fight the IRS all the way to the Supreme Court. It's likely that Mr. Duncan's heirs would find kindred spirits in the form of the Steinbrenner heirs. Congressional members are busy trying to save their seat, and there is little activity in the area of estate tax reform on the docket. Some pundits suggest a Republican takeover of the House of Representatives but not the Senate. It is unlikely that a new Congress would have political muscle to override a Presidential veto. President Obama, while campaigning for office, indicated he was in favor of extending the 2009 rates, but Congress became embroiled in healthcare reform and stimulus packages.

So let's look at the impact of the tax law



on a small estate here in Massachusetts.

Tom, a Red Sox fan, owns a small business, real estate and personal property totaling approximately \$7 million. If Tom stays healthy through 2010 but passes away in 2011, his heirs will pay over \$3.2 million assuming nothing is done. If Congress were to freeze the rates at the 2009 rates, his heirs would pay just under \$2 million. The difference is staggering. George's heirs will receive over 85% of George's estate, while Tom's heirs face a different reality – only 50%. The idea of a potential repeal of the estate tax, or as the Republicans call it, a "death tax" is appealing. However, in 2008 the treasury collected more than \$28 billion in the estate tax from families. The federal debt and spending has increased at alarming rates, the government wants to cover all Americans for healthcare, extend unemployment benefits, and increase spending at meteoric levels. Remember, also, that the nation is fighting two wars. The problem with an estate tax repeal, is that we would have to replace that revenue

somehow. It is probable that there will be a change in the estate tax law, and not to the benefits of the heir. So what can be done? If you have been putting off your estate planning assuming Congress is going to eliminate the taxes you might face, it is time to revisit a conversation on the importance of strategic planning. It is possible to create programs that will be adjustable assuming changes in the estate tax

rules. However it is always better to plan around taxation takes on current law, not on a whole other change that may never come. Meantime, the Yankees appear well on their way to another division win – as if there weren't enough reason to hate them already!

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