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Estate Tax is One More Reason to Hate the Yankees

BY JIM MONIZ



It's all but expected in Boston (and maybe anywhere other than New York) that baseball fans 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 reason here isn't some new ace pitcher they bought from another team, but rather the estate tax law.

Back in the first year of George W. Bush's term as president, the Economic Growth and Tax Relief Reconciliation Act of 2001 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 In 2010 the estate tax was repealed and replaced by a long-term capital gains tax. However this part of the law will expire December 31. In 2011, unless Congress takes action, the exemption rate of \$1 million per person and an assessment of up to 55 percent 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 estate holding was the New York Yankees. Some experts value the team at 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 Steinbrenner lived another year, the taxes on this asset would have been greater than \$400 million. Assuming the rules stay the same, his heirs would pay capital gains on the sale. Assuming they sell under current rules, the capital gains taxes would be 15 percent, or \$160 million.

There's been some talk that Congress would take some action. On July 21, the Senate rejected a bid by Sen. Jim DeMint, R-S.C., to end the "death tax." Efforts failed last December to freeze the 2009 exemption of \$3.5 million and make it retroactive. Watch for some serious challenges should this ever happen. It's difficult to imagine that

Steinbrenner's heirs wouldn't mount a mighty effort to derail this potential law, as might Dan Duncan, who died in March with an estate valued in excess of \$9 billion. Since Duncan's heirs potentially could lose \$4 billion if the law were made retroactive, they would certainly have the funding available to fight the IRS all the way to the Supreme Court. It's likely that Duncan's heirs would find kindred spirits in the form of the Steinbrenner heirs.

Members of Congress are busy trying to save their seats, and there is little activity in the area of estate tax reform on the docket. Some pundits suggest a Republican takeover of the House, but not the Senate. It is unlikely that a new Congress would have the 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 health care 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 in estate taxes, 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. Steinbrenner's heirs will receive over 85 percent of his estate, while Tom's heirs face a different reality — only 50 percent.

The idea of a potential repeal of the estate tax, or as the Republicans call it, the "death tax," is appealing. However, in 2008 the Treasury collected more than \$28 billion in estate taxes from families. The federal debt and spending have increased at alarming rates, while the government wants to cover nearly all Americans with health care insurance, extend unemployment benefits, and increase spending at meteoric levels. Remember, too, that the nation is fighting two wars. The problem with an estate tax repeal is that we would have to somehow replace that revenue. It is probable that there will be a change in the estate tax law, and not to the benefit of the heirs.

So what can be done? If you have been putting off your estate planning and assuming Congress is going to eliminate the taxes you might face, it is time to have a conversation on the importance of strategic planning. It is possible to create programs that will be adjustable, assuming there are changes in the estate tax rules. However it is always better to plan around taxation based 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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