House votes 225 to 200 to continue estate tax at 45% rate

By Agri-Pulse Staff

Washington, Dec. 4 – The House voted Thursday to extend the current estate tax indefinitely, which would otherwise have expired at the end of the year. It makes this year's rates permanent – 45 percent tax rate for estates over $3.5 million for individuals and $7 million for couples.

The vote marks the first skirmish over Bush-era tax cuts, which are all set to expire in 2010, though it brings only a degree of clarity to a complicated issue.

In order to avoid an expiration of the tax, the Senate must also vote before Dec. 31. But that is unlikely with the Senate tied up with healthcare reform. A likely option is a temporary extension of the current law that would tide the Senate over until it can take up the issue more fully.

Otherwise, if Congress takes no action, the estate tax would end on Dec. 31, then spring back in 2011 at a higher rate – 55 percent – for estates of more than $1 million. That means that a $5 million taxable estate would have a liability of $675,000 in 2009, $0 in 2010, and $2 million in 2011, according to Deloitte Tax in Washington.

Most Republicans and anti-tax groups backed this Bush-era strategy because they felt certain Congress would not allow the higher rate to kick in in 2011, and would instead vote next year to make the expiration of the estate tax permanent.

"The history of the Bush tax cuts is that it's very difficult to reinstitute any of these cuts once you get it in the public mindset that these tax cuts are meant to be permanent," says Robert Bixby, executive director of the Concord Coalition, a fiscal watchdog group.

Financial clarity or a 'death tax'?
House Democrats on Thursday called the vote a move for clarity, fiscal discipline, and fundamental fairness.

"Without the estate tax, you will have an aristocracy for the wealthy," said Rep. Jared Polis (D) of Colorado during the debate. "America is and should be a meritocracy."

Republicans, who opposed the bill unanimously, said that reviving the "death tax" was a job killer that would run down family farms and small businesses.

"The truth of the matter is we wouldn't be here today if President Clinton hadn't vetoed full repeal of the death tax," said Rep. Kevin Brady (R) of Texas.

The vote, 225 to 200, was a tough call on both sides of the aisle. Twenty-six Democrats, on the left and right end of the caucus, joined the GOP minority in opposition. But interest groups opposing the estate tax were split, too. Some worried what would happen if Congress did not vote to abolish the estate tax permanently in 2010. This bill represented an acceptable hedge for some.

Who is affected

One of the first moves of the Bush presidency was to phase out the estate tax. Since 2001, the amount of an estate's value that is exempt from the tax has risen from $675,000 to $3.5 million.

The result is that now, "the estate tax only affects a very small sliver of society," says Chuck Marr, director of federal tax policy for the Center on Budget and Policy Priorities. The number of estates that pay any tax at all has shrunk from 1 in 50 to 1 in 500.

But critics say that those statistics obscure the cost to family businesses in trying to avoid the tax.

"It's not just family farms," says Chris Edwards, tax director at the CATO Institute. There are small businesses that have quite large inventories, such as car dealerships, also caught up in the tax.

"It's the worst tax in terms of the amount of money the government collects versus the paperwork burden it creates for families to hire expensive tax lawyers to do all the paper work to try to avoid it," he adds.

The Senate might well have its own ideas on the tax whenever it takes up the issue. Sen. Max Baucus (D-MT) who chairs the Senate Finance Committee proposes indexing the new estate tax for inflation.

"There is strong support for an even weaker estate tax on the Senate side," says Mr. Bixby of the Concord Coalition. "It's ironic that you are locking in a tax cut for the very wealthiest people at a time when the government is searching for revenues."

Unacceptable for family farmers and ranchers

"Freezing the tax rate at its current level of 45%, not indexed for inflation, is unacceptable for families trying to keep their farm or ranch intact when a family member passes on," the National Cattlemen's Beef Association (NCBA) said Tuesday in a letter to Reps. Louise Slaughter (D-NY) and David Drier (R-CA), chairman and ranking member, respectively, of the Rules Committee. NCBA urged the lawmakers to also allow debate on proposals offered by Rep. Shelley Berkley (D-NV) and Reps. Mike Thompson (D-CA) and John Salazar (D-CO). The Berkley measure would raise the exemption level to $5 million and lower the top tax rate to 35%, indexed for inflation. The Thompson-Salazar bill would exclude farm assets from estate taxes as long as they remain part of a farming operation. Both bills provide "true estate tax reform," NCBA said in the letter.

On a related matter, *Agri-Pulse* has learned the House intends to consider legislation next week that would extend a host of soon-to-expire tax breaks, including the biodiesel tax incentive.

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#30