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## Estate Tax Extension Awaits Senate Vote

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By Editor Test     *Wed, Dec 9, 2009*

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The House has voted to eliminate the one-year repeal of the estate tax that was set for 2010. As of December 6, the Senate had not acted on the matter.

The House on December 3, 2009 passed the Permanent Estate Relief for Families, Farmers and Small Businesses Bill of 2009 (H.R. 4154), permanently extending the top federal estate tax rate of 45%, with an exclusion of \$3.5 million (\$7 million for married couples who fully utilize their exclusions).

The House Bill eliminates the one-year repeal of the federal estate tax and the carryover basis regime for decedents dying after December 31, 2009, and before January 1, 2011. The one-year hiatus was stipulated in the Economic Growth and Tax Relief Reconciliation Act of 2001.

Only about one in 460 or two-tenths of one percent of all deaths in the U.S. result in a taxable estate, according to the Tax Policy Institute. The rate at the start of the Bush administration was 55% and the exclusion was \$1 million (\$2 million per couple).

The estate tax is expected to generate about \$14 billion from 5,500 estates in 2009. In 2008, 17,172 estates owed tax. About 7,500 of those estates were in California, Florida, New York, or Texas.

The 225 to 200 vote reflected the urgency felt by some House lawmakers to provide certainty to estate planning and disagreement over whether to abolish the tax entirely or provide for a lower exclusion. The House Bill also provides for continuation of the gift and generation-skipping transfer (GST) tax provisions as they exist in 2009. The \$233 billion cost over 10 years of the House Bill is not offset.

The bill passed mainly along partisan lines, but 26 Democrats joined the Republican caucus in opposition to the measure. Nine House members did not vote. With passage by the House, the bill now has to make it through "the gauntlet that is the Senate," the website OMBWatch.org reported. One of the biggest stumbling blocks to passage in the Senate is the House's decision not to index the \$3.5 million exclusion for inflation.

It is unclear if the Senate will take up the House Bill before year-end. The Senate's schedule for is dominated by debate on health care reform, leaving little time for action on an estate tax bill. Observers expect the Senate to pass a measure that will merely extend the current rate on a temporary basis. The Senate probably will deal with the issue when it works on comprehensive tax reform legislation in 2010.

The bill would maintain the so-called "step-up in basis" tax rules, which protect many heirs from paying additional capital gains taxes on inherited assets. H.R. 4154 does not include provisions for indexing the estate tax for inflation, reunification of the estate and gift taxes, or portability. A portability provision would let the heirs of the second-to-die in a family to deduct both the husband and wife without the need to

establish a trust.

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