This Tax Change Could Keep Your Business Alive After Your Death

As 2014 draws to a close, many people are thinking of tax planning strategies. Some might donate to charity, others might choose to pay state taxes early. One novel idea that has just been proposed on Capitol Hill would allow people to decide when to pay estate taxes.
True, people could not postpone their estate taxes forever, but they would be able to delay them until their estates were sold, under a bill introduced by Rep. Andy Harris (R-MD) on December 11. By paying a surcharge on their annual tax return of 1% of adjusted gross income for at least seven years, taxpayers could avoid estate tax until their heirs liquidate the estate.

Entitled the American Solution for Simplifying the Estate Tax Act of 2014 (ASSET), H.R. 5872 could provide a model for estate tax reform in the 114th Congress. It is too late for the 113th.

Most people agree that the estate tax, also known as the death tax, is one of the least efficient components of the U.S. tax system. Collecting the estate tax is laborious, and fewer than 1% of Americans pay it, because they hire smart tax lawyers to shield their assets.

In 2012, 9,400 people filed estate tax returns. About $14 billion was collected, less than one half of one percent of total IRS revenues.

Look at Bill Gates and Bill Clinton, for example — they have put their fortunes in family-run foundations. They won't be paying 40% tax on their assets above $5.25 million. Neither will Warren Buffett or George Soros.

Even those far less-wealthy than Gates and Clinton spend substantial sums on tax planning and avoidance, and some even move to low estate-tax jurisdictions, such as Florida, to ease the tax bite.

But not everyone can completely avoid the estate tax, and some family firms have to be broken up to raise the funds to pay the tax. That's where the ASSET Act comes in. People who don't want their estates broken up can pay extra income tax during their lifetimes and postpone estate tax until their estate is sold. This benefits family-held firms that cannot afford to pay estate tax without liquidating some holdings.

The beauty of the ASSET Act is that it is optional, and it is revenue-neutral. The 1% tax surcharge has to be paid for at least seven years in order to qualify for the estate tax postponement. Importantly, on average the revenue raised by the surcharge would balance out the postponement of estate tax payments.

The current federal estate tax rate, 40% on estates of $5.25 million or more, was part of the American Taxpayer Relief Act signed into law by President Barack Obama in January 2013. These rates are higher than in 2010, when the estate tax temporarily went to zero due to the phaseouts in the Economic Growth and Tax Relief Reconciliation Act of 2001.

The federal government gradually reduced its estate tax from 2002 through 2010, but 14 states and the District of Columbia have their own estate taxes, and seven states have inheritance taxes. New Jersey and Maryland are two of the worst places to die — those states levy both estate taxes and inheritance taxes.

The ASSET Act is the brainchild of Jack Fitzgerald, owner of Fitzgerald Auto Mall, a Maryland auto dealership. Fitzgerald is in his 70s, and he is concerned that some of his dealerships would have to be sold to pay estate taxes. He founded the ASSET Coalition to try to find a solution. It is supported by different organizations such as the National Black Chamber of Commerce, Catholic Charities DC, Americans for Tax Reform, and Sixty Plus.

Rep. Harris said, "I am very pleased to have introduced the ASSET Act so that we can stimulate debate on how to improve a system in which our tax code restricts economic growth and creates substantial inefficiencies equal to or exceeding the actual revenues brought in by the current estate tax."

Rep. Harris has a good idea, and Congress should pass his bill. Rep. Harris is from Maryland, whose residents rebelled against their heavy taxes by electing Republican Larry Hogan as their next governor. That circumstance no doubt focuses Harris's energies on one of his constituents' primary concerns — lower taxes.

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