



Misconceptions and Misunderstandings About the Estate Tax Exclusion

By: *Randall H. Borkus*



If you are married and have a net worth of \$10M+, or single and have a net worth of \$5M+, or you are a professional that supports individuals in either tier of net worth please, read on.

What if I told you it does not matter what Congress does about the estate tax exclusion? (Except in the case of complete elimination of the estate tax altogether.) We have watched as Congress debated everything from the complete elimination of the estate tax to minimizing the taxpayer's ability to avoid it by returning the applicable exclusion to \$1M. Personally, I see a government that is desperate for money and the estate transfer tax is low-hanging fruit and thereby an easy mark for the tax collector.

For years now wealthy individuals and their estate planning attorneys have been stymied by Congress' inability to resolve the estate and gift tax law. Moreover, the rumor is that the return to a \$1M applicable exclusion is being discussed by The Joint Select Committee on Deficit Reduction (the "Super Committee") as recently as November 2011. What continues to go on in Washington is embarrassing and not likely to change during our lifetimes.

Mark Twain once said "The political and commercial morals of the United States are not merely food for laughter, they are an entire banquet." Notwithstanding the banquet in Washington, I believe that no matter what Congress does with the estate tax, advanced estate planning and asset protection planning techniques are still worth the investment!

Having said that, if Congress completely eliminates the estate tax it would be the one improbable case where advanced estate planning would not retain its value; at least as to limiting one's estate tax exposure.

The reason the estate tax is an easy mark for Congress is that a large percentage of Americans do not take the time

to put their estate planning in order. Furthermore, the Congress and the government know that most are guilty of fractured planning at best and count on it to raise funds. Excuses for not planning are numerous; "I forgot", "I'm too busy", "I'll get to it next year", but the very worst and inaccurate excuse is "I'll wait to see what Congress does with the estate tax law."

Therein lies a huge lost opportunity for wealthy individuals who believe that waiting is the answer. The truth is when an individual pursues comprehensive estate planning and asset protection planning, the investments and benefits created are effective no matter what Congress does with the estate tax exclusion.

In order to support this proposition, we ran simulations at Wealth Preservation Concepts, LLC looking at sample net worth clients of \$10M, \$20M, \$30M and \$50M and isolated the advantage created from advanced planning in each scenario. What we found when isolating the advantage from the advanced planning is that it is consistently valuable regardless of what Congress does with the estate tax exclusion.

In our research, we examined the advantage created from advanced planning using exclusion scenarios of \$1M, \$2M, \$3.5M or \$5M. We compared a sample advanced planning scenario to a "no planning scenario" under the same exclusion assumptions and projected the estate over a 20 year period using a 4% annual growth rate. See the \$20M example in Exhibit 1 (THE BENEFITS OF INVESTING IN ADVANCED PLANNING).

In every case when a client implemented advanced planning that transferred a percentage of their wealth outside of their taxable estate (35% of their net worth in our example), the benefit to the heirs held despite any assumed action by Congress to change the estate tax exclusion. This holds true except in the unlikely event Congress completely eliminates the estate tax.

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Unfortunately, many wealthy individuals and their advisors have not investigated this advantage to a point of fully understanding the value of investing in advanced planning. Over the years I have witnessed wealthy individuals and their estate planning attorneys deciding not to implement advanced planning based upon an inaccurate understanding of how the estate tax and the exclusion really impacts the planning.

So what do you do if you are an individual who will likely be adversely affected by the estate tax? The first thing is to find an attorney or consultant experienced working with estates in excess of \$10M.

Here are some things to ask when interviewing an estate tax attorney –

- Does the attorney have a specific process for high-net worth clients that is different from their standard client process?
- Does the planning process include other professionals or does the attorney work alone in a vacuum?
- Does the attorney understand that paying estate tax is optional?
- How many high net-worth individuals has the attorney or one of the team members planned for?
- Is the attorney part of a group or network of attorneys that provide intellectual stimulation, education, brainstorming and a second set of eyes?
- Does the estate planning attorney ask clients for 2 years of individual income tax returns as part of their analysis process prior to making recommendations?
- If so, do they run a cash-flow analysis and simulations as a normal step in their planning process?
- Does the estate planning attorney ask what a client's lifestyle spending is?
- Do they have an ongoing monitoring process to maintain the planning they recommend and implement for their clients?

Ultimately, if the attorney is looking for a transactional relationship where there is little interaction or investigation, where you are asked to pay a fee and receive nothing more than a pile of documents to sign and some funding instructions, you are likely not in the right office. Given the huge opportunity and the fact that it does not matter what Con-

gress does about the estate tax exclusion, it is very important to find an attorney who understands the importance of the relationship and the advantage created from advanced planning techniques.

About the Author:

Randall is the senior manager of Wealth Preservation Concepts, LLC, a national business planning, strategic design and implementation oversight firm. Randall is also the founder of the law firm Borkuslaw, Ltd.

He is in the business of counseling ultra-high net worth individuals, business owners and entrepreneurs as well as their advisors in asset protection, business succession, philanthropic and wealth transfer planning arenas. Such individuals include closely-held business owners, venture capitalists, investors, lawyers, doctors and former professional athletes.

Randall has collaborated with professionals across the country on hundreds of cases involving ultra-high net worth clients. Randall also mentors and teaches attorneys, financial advisors and CPAs devoted to asset protection, business succession, philanthropic and wealth transfer planning.

THE BENEFITS OF INVESTING IN ADVANCED PLANNING

COMPARISON OF PLANNING BENEFITS WITH VARYING EXEMPTIONS

Assumes 4% Annual Growth on \$20M Current Estate & Death in 20 Years

Planning Scenarios	With No Planning				With Advanced Planning				
	Scenario 1	Scenario 2	Scenario 3	Scenario 4	Scenario 5	Scenario 6	Scenario 7	Scenario 8	
	\$1 Million Exemption	\$2 Million Exemption	\$3.5 Million Exemption	\$5 Million Exemption	\$1 Million Exemption	\$2 Million Exemption	\$3.5 Million Exemption	\$5 Million Exemption	
Planning Assumptions									
Estate Reduction %	A	0%	0%	0%	0%	35%	35%	35%	35%
Assets Transferred Outside Estate	B	\$0	\$0	\$0	\$0	\$15,337,700	\$15,337,700	\$15,337,700	\$15,337,700
Total Estate in 20 Years (4% growth)	C	\$43,822,000	\$43,822,000	\$43,822,000	\$43,822,000	\$28,484,300	\$28,484,300	\$28,484,300	\$28,484,300
Estate Tax									
Taxable Estate before Exemptions	D	\$43,822,000	\$43,822,000	\$43,822,000	\$43,822,000	\$28,484,300	\$28,484,300	\$28,484,300	\$28,484,300
Combined Exemptions (Married)	E	(\$2,000,000)	(\$4,000,000)	(\$7,000,000)	(\$10,000,000)	(\$2,000,000)	(\$4,000,000)	(\$7,000,000)	(\$10,000,000)
Net Taxable Estate after Exemptions	F	\$41,822,000	\$39,822,000	\$36,822,000	\$33,822,000	\$26,484,300	\$24,484,300	\$21,484,300	\$18,484,300
Estate Tax @ 55%	G	\$23,002,000	\$21,902,000	\$20,252,000	\$18,602,000	\$14,566,000	\$13,466,000	\$11,816,000	\$10,166,000
Heir's Benefit = B+D-G		\$20,820,000	\$21,920,000	\$23,570,000	\$25,220,000	\$29,256,000	\$30,356,000	\$32,006,000	\$33,656,000
Loved One's Benefit (from Advanced Planning)**						\$8,436,000	\$8,436,000	\$8,436,000	\$8,436,000

** Loved One's Benefit is derived by subtracting the "Heir's Benefit" in the "No Planning" column of the appropriate applicable exclusion (\$1M, \$2M, \$3.5M, or \$5M) from the "Heir's Benefit" in the corresponding "Advanced Planning" column (\$1M, \$2M, \$3.5M, or \$5M). This allows us to isolate the benefit of the Advanced Planning investment.

