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Money left on the table

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George Steinbrenner, billionaire and long-time owner of the New York Yankees, saved his family between \$500 million and \$600 million by dying in 2010. That's because a congressional stalemate allowed the federal estate tax to lapse, meaning his heirs will likely avoided paying a 45 percent or 55 percent tax on their inheritance.

But the stalemate means uncertainty about how to plan for the future.

Accountants and attorneys alike are struggling to make sense of the financial limbo that resulted from the expiration of the estate tax last year. If Congress doesn't act before the end of the year, or retroactively reinstate the tax, it will return to 2002 levels — which means it will affect a lot more Americans.

Meanwhile, heirs of those dying in 2010 may not pay any estate tax, but if they sell inherited property, they'll face higher taxes through levies on capital gains.

Given those variables, wealth management advisers and estate planners face a tough question: How do you advise clients when you don't know what will happen?

“Accountants, attorneys, financial advisers, real estate experts — all of those people that are connected to this — are all kind of scrambling to figure out what language do they use, to help the client feel like they've got some plan in place to address it,” said Scott Niekamp, a wealth management adviser with Northwestern Mutual in St. Louis.

Estate taxes affect a tiny percentage of Americans — in 2009, only one-quarter of 1 percent of those who died paid the tax — yet they're a controversial political subject. Many Republicans would like to permanently repeal the tax, which they call a “death tax,” while many Democrats want to reinstate it. In most cases, the taxes must be paid within nine months of a person's death.

In 2009, the amount exempted from estate taxes was \$3.5 million (or \$7 million for couples), meaning that was the maximum inheritance a deceased person could leave behind tax-free. If Congress does not act, on Jan. 1, 2011, the exemption will drop to \$1 million (\$2 million for couples). What's more, the tax rate would rise to 55 percent, up from 45 percent in 2009.

Niekamp said that in the face of this uncertainty, some clients are turning to different estate-planning tools, including guaranteed life insurance policies that pay out upon a person's death and can be used for various purposes.

Other tools include irrevocable and revocable trusts, which vary widely depending on an individual's situation; intra-family gift-giving, which can disperse a person's wealth without tax penalties so long as it's less than \$13,000 per distributor; and writing wills to permit beneficiaries to "disclaim" assets, which could shelter them from taxes. But there are no quick fixes, said Dave Heilich, a principal at **Brown Smith Wallace** and leader of the accounting firm's family wealth planning group in St. Louis.

"There are some complicated things to do that get real tricky," he said. "But I can tell you, none of it is a good answer."

Despite the uncertainty, the estate tax lapse is an opportunity for financial advisers and tax attorneys to touch base with their clients and perform general estate plan reviews, according to Travis Knight, managing adviser in the Springfield, Mo., office of BKD Wealth Advisors, a subsidiary of BKD LLP. Wealth advisers can at least ensure clients' portfolios are where they want them to be.

"By not doing anything, or at least getting the blessing of the attorney, you have a big risk there," Knight said. "We need to work with clients to help them recognize what their risk exposure is. That's where advisers can add some value and help be the quarterback."

Several experts still believe Congress will do something by the end of the year, but what happens largely depends on whether the Republicans retake control of the Senate, where the estate tax faltered this year. The Obama Administration wants to return the estate tax to its 2009 level, with a \$3.5 million exclusion and 45 percent rate.

Heilich noted that several billionaires have died in 2010, including Steinbrenner; Janet Morse Cargill, of the family that founded Cargill; and California real estate mogul Walter Shorenstein.

"There's a lot of money on the table if the IRS wants to go back and try to retroactively apply this tax," he said.

Niekamp said wealth management advisers will be able to handle whatever Congress decides, but they should not hesitate to help clients continue preparing their estates.

"It's just another unknown that we are then having to plan around," he said. "Not doing the planning is so much more devastating than whether they call it an estate tax or a capital gains tax."