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How the Highway Trust Fund Bill Could Affect Your Inheritance

ESTATE PLANNING, SD MEDALLION SERVICES, TAX
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On July 15, the House of Representatives passed the Highway and Transportation Funding Bill of 2015, Part II (H.R. 3038) by a 312 to 119 vote. Introduced two days earlier by Rep. Paul Ryan [R-WI], the bill is intended to temporarily extend the authorization for the Highway Trust Fund from July 31 through December 18 at current levels. So what exactly does the Highway Trust Fund have to do with your inheritance?

The basis of property inherited from a decedent is generally stepped up to the fair market value of the property on the decedent's date of death. This can result in significant tax savings if the beneficiary later sells the property. By way of illustration, assume that a taxpayer purchased land 30 years ago for $100,000. Further assume that the taxpayer passes away in 2015, when the property is worth $1 million, leaving the property outright to his daughter. Daughter immediately sells the property for $1 million. Under these facts, Daughter's basis in the property is stepped up to $1 million, and she has no gain on the sale. The $900,000 in appreciation during the decedent's lifetime permanently escapes taxation.

But what if the decedent's executor believed that the property was only worth $500,000 and reported the property on the decedent's federal estate tax return at this lower value? Would Daughter then be bound by the executor's actions and thus obligated to report and pay taxes on a gain of $500,000 upon the sale, even though she did not sign the estate tax return and disagrees with the value claimed by the executor? Current law does not provide a definitive answer.

Treasury Regulations state that the value of property as of the date of a decedent's death as appraised for purposes of the federal estate tax return is "deemed" to be its fair market value. The Internal Revenue Service (the "IRS") has taken the position that such value can be rebutted by clear and convincing evidence. However, the IRS and courts have frequently imposed a "duty of consistency" on taxpayers such that they are prohibited from claiming that the fair market value of property at death is different than the estate tax value. Accordingly, under current rules, whether a beneficiary is bound by the value an executor assigns to an asset on an estate tax return is ultimately decided on a case-by-case basis.

THE FUTURE OF THE HIGHWAY TRUST FUND BILL

These rules may soon change. The Highway Trust Fund Bill contains a provision that would mandate consistency between estate tax value and income tax basis for assets whose inclusion in the decedent's estate increased the estate's tax liability. In addition, the executor of an estate that is required to file a federal estate tax return would be required to furnish the IRS and each beneficiary acquiring property from the estate a statement identifying the value of such property. Penalties would be imposed upon beneficiaries for inconsistent basis reporting as well as upon executors who fail to furnish the required valuation statements.

The future of H.R. 3038 is uncertain. Although the bill passed the House of Representatives by a substantial majority, Senate Republicans oppose the short-term measure and instead passed its own bill containing a multi-year extension. It is clear that a highway funding bill is must-pass legislation. Whether the final measure contains a provision to limit the basis of inherited assets remains to be seen.

Contact us if you have questions about the Highway Trust Fund Bill and its impact on potential inheritance taxes, and visit the Our Thoughts On blog for more articles related to Estate Planning.

H.R. 3038
Treas. Reg. §1.1014-3(a)
Rev. Rul. 54-97

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