Who Pays Federal Estate Tax and How Much?

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With the most up-to-date data from the Internal Revenue Service based on the date of reporting\(^4\) for federal estate tax purposes,\(^2\) the difficulty in interpreting data published by IRS has taken on additional dimensions for 2010 and 2011 to the point that such information for those years has limited usefulness. The 2012 data provide the latest full-year insights since 2009 because of the repeal of the federal estate tax in 2010\(^3\) (with estates making federal estate tax payments for deaths after 2009 reporting principally in 2010 and 2011).

The federal estate tax data situation was further complicated by the fact that, for deaths in 2010, executors of estates were given an option to choose - (1) to apply the estate tax rate and applicable exclusion amount for 2011 with a new income tax basis at death (figured up or down as the case might be) which was attractive for those with smaller estates or (2) to elect to apply the estate tax rules for deaths in 2010 (no federal estate tax) and use the modified carryover basis rules applicable to deaths in 2010, which meant treating the property as though it had passed by gift.\(^4\) This option was favored by those with larger estates that faced significant federal estate tax liability.

Thus, the year 2012 was the first year since 2009 to represent a full year of federal estate tax payments under comparable rules for the full year.

The overall picture

The number of estates in recent years paying federal estate tax has been quite modest and the number for payments received in 2012 show a further reduction in the number of estates paying federal estate tax and the revenue generated nationally from that tax. Of the approximately 2.468 million deaths in the United States, the number from the 2012 data, a total of 3,738 incurred federal estate tax liability.\(^5\) That was approximately 0.15 percent of all deaths whose estates paid some federal estate tax. In 2012, estates paid a total of $8,492,115,000 in federal estate tax which averaged about $2,271,833 for each estate paying the tax.

The 495 largest estates (those with taxable estates exceeding $20,000,000) paid an average of $10,660,482 each in federal estate tax in 2012. The 798 estates with taxable estates from $10,000,000 to $20,000,000 paid an average of $2,388,737 each in federal estate tax. The 2114 estates with taxable estates of $5,000,000 to $10,000,000 paid an average of $579,585 each in federal estate tax. That is a measure of the tax benefit had the federal estate tax

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been repealed for 2012. It is obvious what is helping to drive the efforts to repeal the federal estate tax.

**Taxable estates owning farm property**

Of the total number of taxable estates, 3738, paying federal estate tax in 2012, 500 decedents reported some farm property in 2012. Note that this is principally personal property inasmuch as farm real property is not reported separately by the Internal Revenue Service. Farm real estate is reported under the category of “Other Real Estate.” A report released by the Congressional Research Service on June 9, 2003, showed that approximately $1.6 billion of assets reported in the “Other Real Estate” category were believed to be farmland at the time of the study, 2001. The conclusion by the Congressional Research Service was that farm real estate made up approximately 1.28 percent of all taxable estate value.

**Average value of farm property by estate tax bracket**

As noted in Table 1, the largest average value of farm property by size of taxable estate was $4,972,582 for those in the $20,000,000 or more tax bracket who reported some farm property. Those in the under $5,000,000 bracket reported an average of $1,023,551 in farm property. The figure was $2,355,572 for those in the $5,000,000 to $10,000,000 taxable estate bracket.

Table 1. Average Value of Farm Property by Estate Tax Bracket (Taxable Estates)

<table>
<thead>
<tr>
<th>Tax Bracket</th>
<th>Number</th>
<th>Average Value of Farm Property</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under $5,000,000</td>
<td>29</td>
<td>$1,023,551</td>
</tr>
<tr>
<td>$5,000,000 to 10,000,000</td>
<td>276</td>
<td>$2,355,572</td>
</tr>
<tr>
<td>$10,000,000 to $20,000,000</td>
<td>116</td>
<td>$3,324,974</td>
</tr>
<tr>
<td>over $20,000,000</td>
<td>79</td>
<td>$4,972,582</td>
</tr>
<tr>
<td>Total</td>
<td>500</td>
<td></td>
</tr>
</tbody>
</table>

Obviously, up-to-date numbers on a more precise basis for farm real estate would produce a clearer picture. That awaits a reworking of IRS data collection and processing of numbers from the filed federal estate tax returns.

**ENDNOTES**

1. The latest date for which date of death data are available was for 2009.
5. SOI Estate Tax Data Tables, Internal Revenue Service, December 26, 2013.

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**CASES, REGULATIONS AND STATUTES**

by Robert P. Achenbach, Jr

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**BANKRUPTCY**

**GENERAL**

**AUTOMATIC STAY.** The debtor purchased 84 head of dairy cattle in June 2012 and agreed to pay in installments of monthly milk assignments. The debtor made two such payments and made a third by cash. The creditor/seller learned that the debtor was in financial difficulty and removed 45 cattle on November 30, 2012, one day after the debtor had filed for Chapter 12 unbeknownst to the seller. On December 6, 2012, the seller participated in a count of the debtor’s cattle as part of the bankruptcy case. On advice of counsel, the seller returned 42 cattle on December 21, 2012. The remaining three had already been sold. The debtor filed a motion for contempt, claiming damages from the repossession of the 45 cattle from lost milk proceeds, including losses caused by the frequent moving of the cattle in December to and from the debtor’s property. The court awarded these damages plus punitive damages for violation of the automatic stay for over three weeks before the return of the cattle. On appeal the appellate court affirmed. In re Purdy, 2014 U.S. Dist. LEXIS 43280 (W.D. Ky. 2014), aff’d, 2013 Bankr. LEXIS 2247 (Bankr. W.D. Ky. 2013).

**FEDERAL TAX**

**AUTOMATIC STAY.** The debtor filed for Chapter 7 in February 2013 and listed a 2012 federal income tax refund as an asset of the estate. The debtor claimed the refund as an exemption. The debtor also listed a debt to the U.S. Department of Agriculture Rural Development Service which was a deficiency remaining on a guaranteed but foreclosed mortgage. The IRS informed the debtor that the refund had been withheld and applied on the