



ISSUE PAPER

# Reinstate the Estate Tax

## Position:

The Council on Foundations supports the reinstatement of an estate tax to provide robust incentives for charitable giving.

## Background

The Internal Revenue Code imposes a gift tax on certain lifetime transfers, an estate tax on certain transfers at death, and a generation-skipping tax to ensure that property does not skip a generation without a transfer tax being assessed. Since 2001, the value of assets that can be excluded from these taxes has been increasing—from \$600,000 in 2001 to \$3.5 million in 2009 (effectively \$7 million per couple)—and the tax rate has been decreasing—from 60 percent in 2001 to 45 percent in 2009. On December 31, 2009, the estate tax expired as efforts to extend current rates into 2010 or beyond failed. Unless Congress reinstates the tax and makes the application retroactive to the beginning of the year, estates created this year will not be subject to tax at any level. In 2011 the tax will automatically reinstate at pre-2001 rate of 55 percent and with a per-person exemption of \$1 million. Congress has indicated that they hope to adopt legislation reinstating the tax retroactive to January 1, 2010.

## Proposal

The Council supports reinstatement of the tax at the 45 percent rate and \$3.5 million exemption that were in effect when the tax expired at the end of 2009. This position represents an appropriate balance between the need for the federal government to raise revenue while permitting every American family to leave significant resources to their heirs tax free. This revenue is essential to address a growing federal deficit and national debt and to continue providing essential government services that foundations could never take over.

## Rationale

Revenue: The estate tax affects less than 2 percent of taxpayers yet raises more than \$25 billion per year, about 1.2 percent of total federal revenues. In 1997, estates with a gross value of more than \$5 million (the top 5 percent) accounted for nearly half of all estate tax revenues. Most analysts believe that estate tax revenue will grow significantly as the population ages and the stock market's value increases.

## Charitable Giving Incentives:

The deduction in the estate tax for charitable contributions generates a significant increase in contributions to the nonprofit sector, especially among the wealthiest households. Studies conducted at various times over the past decade suggest that outright repeal of the estate tax would reduce charitable bequests by as much as 37 percent. A CBO study in 2004 estimates the effect of total repeal to be between a 16 and 28 percent decrease in charitable bequests and a 6 to 12 percent decrease in all charitable giving.

## Status of Legislation

The House of Representatives passed HR 4154 on December 3, 2009. A provision within the legislation amends the Internal Revenue Code of 1986 to permanently extend the estate tax at 2009 levels (\$3.5 million individual exemption; 45 percent rate). Legislation including a similar provision (S. 722) was introduced in the Senate by Chairman of the Senate Finance Committee, Max Baucus (D-MT) but has not passed. The president's 2011 budget request proposes to permanently extend the estate tax at the 2009 levels.

*March 2010*