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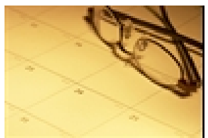
Will You See Higher Tax Rates in 2011?



The year was 2001. The top marginal federal income tax bracket was 39.6%, and the tax rate that applied to most long-term capital gains was 20%. Then came the Economic Growth and Tax Relief Reconciliation Act of 2001, followed two years later by the Jobs and Growth Tax Relief Reconciliation Act of 2003. By mid-2003, the top marginal tax rate was 35%, and the 20% capital gains rate had dropped to 15%. But this tax relief was designed to be temporary--the provisions that established lower rates were crafted to self-expire after a period of time. And now, in 2010, we're only months away from seeing those provisions expire.

Federal income tax brackets

Right now, there are six marginal income tax brackets: 10%, 15%, 25%, 28%, 33%, and 35%. For 2010, these brackets apply to married couples filing joint federal income tax returns in the following manner:

2010 Marginal Income Tax Brackets *Married Filing Jointly*	
Taxable Income	**Marginal Tax Rate**
Not over $16,750	10%
Over $16,750 to $68,000	15%
Over $68,000 to $137,300	25%
Over $137,300 to $209,250	28%
Over $209,250 to $373,650	33%
Over $373,650	35%

As it stands now, these marginal tax brackets will expire at the end of 2010. There would be no 10% bracket for 2011, and the remaining bracket rates would return to their original 2001 levels: 15%, 28%, 31%, 36%, and 39.6%.

Long-term capital gain tax rates

For 2010, if you sell shares of stock that you've held for more than a year, any gain is long-term capital gain, generally taxed at a maximum rate of 15%. If you're in the 10% or the 15% marginal income tax bracket, however, you'll pay no federal tax on the long-term gain (a 0% tax rate applies). That means if you're a married couple filing a joint federal income tax return, and your taxable income is $68,000 or less, you'd pay no federal tax on the gain.

However, these rates are also scheduled to expire at the end of 2010. Absent new legislation, in 2011, a 20% rate will generally apply to long-term capital gains. Individuals in the 15% tax bracket (remember, there won't be a 10% bracket in 2011) will pay the tax at a rate of 10%. Special rules (and slightly lower rates) will apply for qualifying property held for five years or more.

Finally, while qualifying dividends are taxed in 2010 using the same capital gain tax rates described above (i.e., 15% and 0%), in 2011 they'll be taxed as ordinary income.

Will Congress take action?

In the proposed 2011 budget submitted to Congress in February, President Obama asked for a permanent extension of the current 10%, 15%, and 25% marginal income tax brackets, and an expansion of the current 28% tax bracket. The current 33% and 35% brackets would be allowed to expire, resulting in the top two marginal rates for 2011 returning to 36% and 39.6%. The expanded 28% bracket would be calculated in a way that would allow individuals earning less than $200,000 (less the standard deduction amount and one exemption) and married couples filing jointly earning less than $250,000 (less the standard deduction and two personal exemptions) to escape taxation at the top rates.

The President also proposed making the current tax rates that apply to long-term capital gain (i.e., the 0% and 15% rates) permanent, but adding a new 20% rate for those in the newly reestablished 36% and 39.6% brackets.

Will Congress act, or will it simply let current rates expire? There's plenty of time before 2011, so stay tuned …

Social Security: File-and-Suspend for Higher Benefits

Although many people think of Social Security as only a retirement program, Social Security also provides survivor's benefits that can provide substantial income to your spouse after your death.

For more information, contact the Social Security Administration at 800-772-1213 or visit www.socialsecurity.gov.

If you're married and looking for opportunities to increase retirement income, you may want to look closely at your Social Security benefits. One opportunity for maximizing Social Security income, called "file-and-suspend," may enable a married couple to boost both their retirement and survivor's benefits.

What is file-and-suspend?

Generally, a husband or wife is entitled to receive a Social Security retirement benefit based either on his or her own earnings record (a worker's benefit), or on his or her spouse's earnings record (a spousal benefit), whichever is higher. But under Social Security rules, a husband or wife who is eligible to file for retirement benefits based on his or her spouse's record cannot do so until his or her spouse begins receiving benefits. However, there is one exception--someone who has reached full retirement age may choose to file for retirement benefits, then immediately request to have those benefits suspended, so that his or her eligible spouse can file for spousal benefits.

File-and-suspend is a strategy that may be used in a variety of situations, but is commonly used when one spouse has much lower lifetime earnings, and thus will receive a higher retirement benefit based on his or her spouse's earnings record. (A husband or wife's spousal benefit may be as much as 50% of what his or her spouse is entitled to receive at full retirement age.) Using this strategy not only allows the eligible spouse with lower earnings to immediately claim a higher (spousal) retirement benefit, but can also increase the amount of available survivor protection. The spouse with higher earnings who has suspended his or her benefits can accrue delayed retirement credits at a rate of 8% per year (the rate for anyone born in 1943 or later) up until age 70. Because a surviving spouse will generally receive a benefit equal to 100% of the retirement benefit the other spouse was receiving (or was entitled to receive) at the time of his or her death, suspending a benefit to accrue delayed retirement credits may substantially increase the survivor's benefit.

Example

Let's look at one hypothetical example of how filing for, then suspending, Social Security benefits might help a married couple increase their retirement income and survivor's benefits.

Henry is about to reach his full retirement age of 66, but he wants to postpone filing for Social Security benefits. At full retirement age his monthly benefit will be $2,000, but if he waits until age 70 to file, his benefit will be $2,640 (32% more) due to delayed retirement credits. However, his wife Julia, who has had substantially lower lifetime earnings than Henry, wants to retire in a few months at her full retirement age (also 66). Based on her own earnings record, Julia will be eligible for a monthly benefit of $700, but based on Henry's earnings record she will be eligible for a monthly spousal benefit of $1,000 (50% of Henry's entitlement).

So that Julia can receive the higher spousal benefit as soon as she retires, Henry files an application for benefits, but immediately suspends it. That way, he can also continue to earn delayed retirement credits, which will result in a higher monthly retirement benefit for him later.

Using the file-and-suspend strategy not only increases Julia and Henry's retirement income, but it also offers increased survivor protection. Upon Henry's death, Julia will be entitled to receive 100% of what Henry was receiving (or was entitled to receive) at the time of his death. So by suspending his own retirement benefit in order to increase it through delayed retirement credits, Henry has ensured that Julia will receive a survivor's benefit that is up to 32% higher for the rest of her life should he die first. (Note, though, that this hypothetical example is for illustrative purposes only and does not account for cost-of-living adjustments or taxes.)

Points to consider

- Deciding when to begin receiving Social Security benefits is a complicated decision. You'll need to consider a number of scenarios, and take into account factors such as both spouses' ages, estimated benefit entitlements, and life expectancies. A Social Security representative can help explain your options.
- Ask a tax professional to help you weigh the tax consequences of delaying Social Security income.
- Using the file-and-suspend strategy may not be advantageous when one spouse is in poor health or when Social Security income is needed as soon as possible.
- The spousal benefit will be reduced if the spouse claiming it is under full retirement age.

Avoiding Probate: Is It Worth It?

When you die, your estate goes through a process that manages, settles, and distributes your property according to the terms of your will. This process is governed by state law and is called probate. Probate proceedings fall under the jurisdiction of the probate court (also called the Surrogate's, Orphans', or Chancery court) of the state in which you are domiciled at the time of your death. This court oversees probate of your personal property and any real estate that is located in that state. If you own property located in a state other than the state in which you are domiciled at the time of your death, a separate "ancillary" probate proceeding may need to be initiated in the other state.

***Note:**"Domicile" is a legal term meaning the state where you intend to make your permanent home. It does not refer to a summer home or a temporary residence.*

Items that are subject to probate are known as probate assets. Probate assets generally consist of any property that you own individually at the time of your death that passes to your beneficiaries according to the terms of your will. Nonprobate assets include all property that passes outside of your will. Examples of nonprobate assets include property that is owned jointly with right of survivorship (e.g., a jointly held bank account) and property that is owned as tenants-by-the-entirety (i.e., real property owned jointly by a husband and wife). Another example is property that passes to designated beneficiaries by operation of law, such as proceeds of life insurance and retirement benefits.

Why avoid probate?

Most wills have to be probated. The rules vary from state to state, but in some states, smaller estates are exempt from probate, or they may qualify for an expedited process.

Probate can be slow. Depending on where your executor probates your estate and the size of your probate estate, the probate process can take as little as three months or as long as three years. Three years can be a long time to wait for needed income. It can take even longer if the estate is a complicated one or if any of the heirs are contesting the will.

Probate can be costly. Probate costs usually include court costs (filing fees, etc.), publication costs for legal notices, attorney's fees, executor's fees, bond premiums, and appraisal fees. Court costs and attorney's fees can vary from state to state. Typically, the larger the estate, the greater the probate costs. However, if a smaller estate has complex issues associated with its administration or with distribution of its assets (e.g., if the decedent owned property in several states), probate can be quite costly.

Probate is a public process. Wills and any other documents submitted for probate become part of the public record, something to consider if you or your family members have privacy concerns.

Why choose to go through probate?

For most estates, there's usually little reason to avoid probate. The actual time and costs involved are often modest, and it just doesn't make sense to plan around it. And, there are actually a couple of benefits from probate. Because the court supervises the process, you have some assurance that your wishes will be abided by, and, if a family squabble should arise, the court can help settle the matter. Further, probate offers some protection against creditors. As part of the probate process, creditors are notified to make their claims against the estate in a timely manner. If they do not, it becomes much more difficult for them to make their claims later on.

In addition, some states require that your will be probated before the beneficiaries under your will can exercise certain rights. Among the rights that may otherwise be limited are the right of your surviving spouse to waive his or her share under the will and elect a statutory share instead, the right of your surviving spouse to use your residence during his or her remaining life, the right of your surviving spouse to set aside certain property, and the right of your surviving spouse to a family allowance.

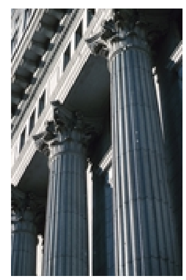
How to avoid probate

An estate plan can be designed to limit the assets that pass through probate or to avoid probate altogether. The major ways property is passed outside of probate are by owning property jointly with rights of survivorship; by ensuring that beneficiary designation forms are completed for those types of assets that allow them, such as IRAs, retirement plans, and life insurance; by putting property in a trust; and by making lifetime gifts.

See your financial professional or attorney for more information.

Why avoid probate?

- *It can be slow; getting needed assets into the hands of your heirs may be delayed*
- *It can be costly, especially if an estate is large or complex, or ancillary probate is needed*
- *It is public; documents that you wish to remain private can be accessed by the public*



How to avoid probate

- *Own assets jointly with rights of survivorship*
- *Own assets that pass by beneficiary designation, such as life insurance and retirement plans*
- *Use a trust*
- *Gift assets during your lifetime*

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Ask the Experts

My child got a scholarship for college. Is it taxable?

In certain situations, yes. If a scholarship is used to pay for college tuition, fees, books, or required equipment, it's not taxable. But if the scholarship is used to cover room and board, travel costs, or optional equipment, or if it's awarded as payment for teaching, research, or some other required service, then it is taxable.

With most scholarships, the recipient can decide how to apply the money. Your first instinct may be to have your child apply it to tuition, fees, or books (making it tax free). But be aware that this may impact your ability to claim the Lifetime Learning or the American Opportunity (formerly the Hope) tax credits. That's because these credits are based on the amount of tuition and fees you pay, and any tuition and fees paid with a tax-free scholarship can't be counted when calculating your credit.

This rule has the most impact on your ability to claim the Lifetime Learning credit, worth up to $2,000. Why? This credit is calculated as 20% of the first $10,000 of tuition and fees, so a hefty scholarship applied to these expenses may leave you with less than $10,000 in eligible tuition and fees to count toward the credit. The American Opportunity credit, worth up to $2,500, is calculated differently--100% of the first $2,000 of tuition and fees, plus 25% of the next $2,000 of such expenses. (You can only take one of these credits in a given year for the same student.)

If the scholarship has no restrictions on how it can be applied (and assuming you meet the income limits to take the credits--each credit has different income limits), consider running some numbers to determine your best option: (1) apply the scholarship to tuition and enjoy its tax-free status, but reduce the amount of eligible tuition that can be used to calculate the tax credits, or (2) apply the scholarship to room and board and pay income tax on the scholarship, but allow all tuition to be counted when calculating the credits. When running the numbers, keep in mind that generally a tax credit is more valuable than a tax deduction because it reduces your taxes dollar for dollar.

For more information, see IRS Publication 970, *Tax Benefits for Education.*

How will a college scholarship affect my child's 529 plan?

If your son or daughter gets a college scholarship, federal rules governing 529 plans allow you to withdraw from the account an amount equal to your child's scholarship. You won't owe the 10% penalty that typically applies to the earnings portion of any withdrawal not used to pay the beneficiary's qualified education expenses. However, you'll still owe income tax on the earnings portion of the withdrawal.

If you want to make a scholarship-related withdrawal from your 529 account, you must provide written notice to the plan manager, along with proof of your child's scholarship.

But withdrawing money from your 529 account isn't your only option. Another course of action is to simply leave the money in the account for your child's future use--most 529 plans allow funds to be used for graduate school. Or, you can change the beneficiary of the account to another child or qualified family member with no income tax or penalty implications. Either way, the full sum can be left to grow tax deferred in the account, and you'll enjoy the convenience of keeping the same plan.

If, though, you're unhappy with your current plan (e.g., high fees, limited investment options, poor customer service), then this may be the perfect time to roll over your funds to a different 529 plan. Under federal rules, you're entitled to roll over the funds in your 529 plan once per calendar year to a different 529 plan. You can keep the same beneficiary or name a new one. In the latter case, as long as the new beneficiary is a qualified family member, no income taxes or penalty will be due.

Note: *Investors should consider the investment objectives, risks, charges, and expenses associated with 529 plans before investing. More information about 529 plans is available in each issuer's official statement, which should be read carefully before investing. Also, before investing, consider whether your state offers a 529 plan that provides residents with favorable state tax benefits.*

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